

**IN THE UNITED REPUBLIC OF TANZANIA
THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. LAND APPLICATION No. 34 OF 2020

(Originating from Land Case No. 15 of 2020)

ANNA ELIAS MASAMAKI & 28th OTHERS.....APPLICANTS

Versus

DAR ES SALAAM PARKLAND


HOLDINGS LIMITED.....1st RESPONDENT

ADILI AUCTION MART LIMITED.....2nd RESPONDENT

RULING

1st December, 2020 - 16th March, 2021

J. A. DE - MELLO J;

The Court, under the services of **Counsel Hosea Chamba**, is moved by **Order XXXVII Rule 1 (a) and, (2), sections 68 (e) and, 95** of the **Civil Procedure Code, Cap. 33 R.E 2019**, seeking for, Temporary Injunction, to restrain the Respondents, their Agents and, Workmen from evicting and, demolishing structures developed by Applicants in a seventy nine (79) acres land, valued about **seven hundred million (700)million**, located at **Ponde Area, Temeke Municipality Dar es Salaam**, pending the determination of **Land case No. 15 of 2020**. An Affidavit sworn by **Hosea Chamba** himself, one who is the Applicant's Counsel, while Counter Affidavit by the **1st Respondent** is affirmed by **Mohamed Kiloichi**, the Principal Secretary, are both in place. 

Satisfied of the persistent absence and, hence confirmed defiance by the second Respondent, this Court had, on **1st December, 2020** ordered for an **Ex-Parte** hearing against him.

Praying for adoption of his Affidavit, **Counsel Chamba**, contends that, the Applicants are all residents of **Tuangoma** in **Dar es Salaam**, having bought land from one **Yunus Yahaya Rubama**, featuring both as residential as well as, commercial premises. Further that, and, following the eviction of one of their own, **Salha Yahaya Rubama**, in **2017**, as a result of **Application No. 295 of 2017** and, its consequent Execution in **Application No. 355 of 2018** at the **District and Land Housing Tribunal for Temeke District**, affected the Applicants, notwithstanding the unsuccessful objection proceedings lodged. Counsel **brought the Court to the attention of eviction order of the said Salha Rubama**, in **Land case No. 15 of 2020**, supporting this application, in which the **1st Respondent** purchased from. It is his further argument that, on the balance of probability and, if not granted, it is the Applicants, the ones to suffer more, as he cited the case of **Atilo vs. Mbowe, (1969) HCD, 284**.

Opposing the Application but, similarly praying to adopt the Counter Affidavit of **Mohamed Kiloichi**, the **Principal Secretary**, Counsel **Gratian** challenges failure by the Applicant to exhibit what the principles laid down in **Atilo's case** demands, namely; absence of proof for irreparable loss leading to suffering. The case of **Christopher Chale vs. Commercial Bank of Africa, Civil Application No. 635 of 2017** of that requirement. The Application is wanting, he concludes and, hence unmerited for consideration, following unsubstantiated loss of the alleged buildings whose value is estimated at seven hundred (700) million.

Rejoining, Counsel **Chamba** disputes failure to substantiate loss, terming it baseless considering the current trial pending and hence threatening the Applicants state of affairs.

Order XXXVII Rule 1 (a) and, (b) of the Civil Procedure Code, R.E 2019 provides for the cases which temporary injunction may be granted, such case includes;

“1(a) that, any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a decree; or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders:

Provided that, an order granting a temporary injunction shall not be made against the Government, but the court may in lieu thereof make an order declaratory of the rights of the parties”

Yet even, **Order XXXVII Rule 2 (1) of the Civil Procedure Code** (*supra*) provides for any times, even after the commencement of the suit and, either before or after judgment, for temporary injunctions applications, to restrain the Defendant from committing the breach of

contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

This being the law, case law in the celebrated case of **Atilio vs. Mbowe (1969) HCD 284**, has been useful by laying down the three principles as follows; **(i) There must be a serious question to be tried on the alleged facts and a probability that the plaintiff will be entitled to the relief prayed,**

(ii) That, the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established and,

(iii) That, on the balance there will be greater hardship and mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from the granting of it."

Many and, other several cases have settled for the above principles and, to mention a few are; **Giela vs. Cassman Brown & Co Ltd (1973) E.A 358** and, **Hardmore Productions Limited & Others vs. Hamilton & Another (1983) 1A.C 191** where Lord Diplock stated at page 220 that; **"An interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court Judge by whom the application for it is heard".**

The rationale is to evolve a workable rather, duable formula, to the extent called for by the demands of the situation, keeping in mind the pros and, cons of the matter and, thereby striking a delicate balance between two conflicting interests, such as injury and, prejudice, likely to be caused to parties, if the relief is granted or refused. See the case of **SJ3 Iwawa's**

**Company vs. Access Bank Tanzania Ltd, Misc. Civil Application
No. 387 of 2019, High Court of Tanzania, at Dar Es Salaam,
(unreported)**

Has the Applicant managed to achieve so? True, there are serious questions to be tried as to ownership of land and, validity of the contract of sale entered into between the Applicants and, one **Yunus Yahya Rubama**, yet to be heard and determined. It is even evident that, there is **Land Case No. 15 of 2020** pending, for hearing relating to the suit premise, which if not protected injuries and sufferings may be occasioned to both parties, either way for who will sail through

While I appreciate Counsel's for the Respondent concern for unsubstantiated value of the subject matter, wisdom demands a bearing in mind other sufferings and, damages not tangible such as inalienable basic rights. By this, let me not be condemned for bias and, or favouritism but, all in the interest of justice, upon which both Parties are afforded their right to be heard.

In upshot, I hereby allow the application of the temporary Injunction as prayed, embracing the discretion bestowed on me and judiciously so. Costs to follow the event.

I order.


J. A. DE-MELLO

JUDGE

16th March, 2021