

INT THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS LAND APPLICATION NO. 44 OF 2021

(Arising from land case No. 7 of 2021 in the High Court of Tanzania at Mbeya)

REGINA NDAGALA 1ST APPLICANT

RONALD NDAGALA 2ND APPLICANT

HENRY WILSON MSUKWA 3RD APPLICANT

RAPHAEL NDAGALA 4TH APPLICANT

VERSUS

ENTERPRISES FINANCIAL LIMITED 1ST RESPONDENT

UMOJA PROFESSIONAL LIMITED 2ND RESPONDENT

HIGHLAND AUCTION MART 3RD RESPONDENT

RULING

30/07/2021 & 04/08/2021

A.A. MBAGWA, J.

This ruling is in respect of prayers made by the respondents' counsel one Mr. Daniel Bushele.

The background of this matter is as follows. On 30th July, 2021, this matter came before me for hearing of preliminary objection and *interparte* hearing of the temporary injunction orders. Earlier on i.e. 25th June, 2021 this Court (Mambi, J.) granted *exparte* temporary injunction orders pending hearing of the application *interparte*. On 16th July, 2021 the matter came for *interparte* hearing but the applicants were absent hence it was adjourned to 30th July, 2021.

On 30th July, 2021 Ms Tumaini Amenye, learned Advocate appeared for the applicants whereas the respondents were represented by Daniel Bushele, learned Advocate.

Tumaini Amenye told the court that she was holding briefs of Ezekiel Mwampaka, Advocate for the applicants. She informed the Court that Mwampaka could not appear in Court as in the very morning, while preparing to come to Court, he suddenly fell sick and as such he had to go to hospital for checkup. Ms Amenye prayed for adjournment and another hearing date preferably 27th September, 2021.

Mr. Bushele, on his part, resisted the prayer. He submitted that Mr. Mwampaka was aware that he was coming from Dar es Salam and that the matter was fixed for hearing but yet he did not give a prior notice. He said even the letter he filed in court exhibited that it was prepared and filed on 30th July, 2021, the very day the case was coming for hearing. Further, Bushele submitted that the applicants filed this application under certificate of urgency but having obtaining exparte injunction orders they are dillydallying the case. He prayed the Court not to grant adjournment as sought by the applicants. Alternatively, Mr. Bushele prayed the Court to order the applicants to refund his costs incurred for coming to Mbeya should the Court see it fit to grant the adjournment.

In rejoinder, Ms Tumaini Amenye rejected the prayer to adjourn the matter with costs stating that Mr. Mwampaka did not arrange to fall sick. She further submitted that it was not easy for him to get another advocate to proceed with the case as the time was too short to do that.

After considering the rival submission, I found it prudent to adjourn the matter shortly up to afternoon at 14:30hrs on the same i.e 30/07/2021 I further ordered that Mr. Mwampaka should appear or instruct another advocate to proceed on his behalf.

Sadly, when the matter came in the afternoon at 14:30hrs no one appeared on the applicants' side. Even Ms Tumaini Amenye who was holding Mwampaka's briefs in the morning did not come back to inform the court on the position or otherwise progress of the said Advocate Mwampaka.


Following non-appearance by the applicants, Mr Bushele, learned counsel for the respondents, prayed the matter to be dismissed with costs for want of prosecution.

I have considered the submissions and prayer by the respondents' counsel along with the circumstances of this case. It is common cause that this matter was brought under certificate of urgency. However, after obtaining the *ex parte* injunction orders, the applicants are no more eager to further pursue the matter. This is exhibited by non-appearance of all the applicants and their counsel. Indeed, the applicants' conducts have no other interpretation than praying delaying tactics

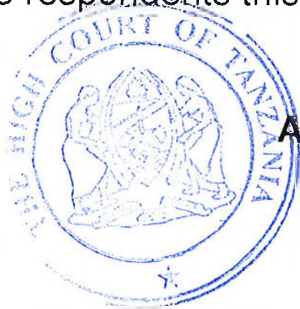
Nonetheless, it is my considered opinion that, for the interest of justice, it is not desirable to dismiss the matter at this juncture. I therefore give the applicants another chance to prosecute their case. No order as to cost.

It is so ordered




A.A. Mbagwa
Judge
04/08/2021

This ruling has been delivered in the presence of Advocate Kelvin Kuboja Gamba who was holding briefs of Daniel Bushele for applicants and in the absence of the respondents this 4th day of August, 2021




A.A. Mbagwa
Judge
04/08/2021