

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

MISCELLANEOUS LAND APPLICATION No. 7 OF 2022

PAULINA PHILIPO MASARO APPLICANT

Versus

1. MARWA DAMIAN 2. ANTONY MARATO 3. KYANKOMA VILLAGE COUNCIL 4. BUTIAMA DISTRICT COUNCIL 5. ATTONEY GENERAL	} RESPONDENTS
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RULING

04.02.2022 & 04.02.2022

F.H. Mtulya, J.:

The applicant, Paulina Philipo Masaro, applied in this court for an order to restrain the respondents, their agents or any person acting on their behalf from using the land in dispute located at Kyankoma Village within Kiagata Ward in Butihama District of Mara Region, pending determination of main land case. The application was made under section 2(3) of the **Judicature and Application of Laws Act** [Cap. 358 R.E. 2019] (the Act) and section 95 of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code).

In a nutshell, the Applicant had a land dispute filed and determined to the finality at the **District Land and Housing Tribunal for Mara at Musoma** (the Tribunal) in **Land Application No 219 of**

2017 (the Application) against Marwa Damian (the first respondent), Anthony Marato (the second defendant) and Jomu Wambura. The Tribunal, after hearing of the parties in the Application, delivered its judgment on 30th September 2021 and ordered the applicant to sue the proper parties, including the Kyankoma Village Council. Following the order, the applicant hired the legal services of Mr. Ostack Mligo, learned counsel to sue the first & second respondents in person, and government authorities in the title of Village & District Councils. The Attorney General (the fifth respondent) was invited as necessary party. Since, the Attorney General was joined as necessary party, and Mr. Mligo being aware of section 6 of the **Government Proceedings Act** [Cap. R.E. 2019], issued a ninety (90) days statutory notice to the fifth respondent.

In order to halt the continued activities at the disputed land, Mr. Mligo preferred the present application in this court praying an order of this court to restrain the respondents from entering or using the land. This application is of its own kind as there is no any pending case before this court. Generally, applications of this nature are governed by the Code, but the Code is silent on the subject. However, the application is regulated by common law and statutes of general application applicable in England by July 1920 and brought in our State via section 2 (3) of the Judicature and Application of Laws Act. The practice has already received practice

of this court and Court of Appeal in the precedent of **TANESCO v. IPTL & Two Others** [2002] TLR 324 and **Abdallah M. Mariki & 445 Others v. Attorney General & Another**, Application No 119 of 2017. For instance, our superior court in the decision of **TANESCO v. IPTL & Two Others** (supra) categorically stated that: *where there is a lacuna in the laws of Tanzania the court may make use of Common Law and Statutes of General Application, which were applicable in England in July 1920*. Being aware of the position, learned minds in the application did not dispute the competence of the application in this court.

Today morning when the application was scheduled for hearing the applicant invited three (3) learned counsels namely, Mr. Ostack Mligo, Mr. Noah Mwakisisile and Ms. Maula Tweve whereas the third, fourth and fifth respondents enjoyed the legal services of the Attorney General under representation of Mr. Kitiya Turoke, learned State Attorney and Mr. Matiko Yasson Masaro, Kyankoma Village Chairman (the third respondent) showed his presence for the third respondent. The first and second respondents declined both service and appearance.

After a brief discussions and consultations, the learned minds both in the applicant and respondent came to the conclusion that the application has merit and may be granted pending expiry of

ninety (90) days statutory notice issued to the third, fourth and fifth respondents in favour of substantive justice.

I have scanned the record of the application and heard the learned minds this morning and I think, in my considered opinion, I have no good reason to fault their submissions. The learned minds have shown appreciation of section 3A and 3B of the Code which inserted in our civil procedure law to facilitate expeditious justice at proportionate and affordable resolution of disputes brought in civil courts. This court is part of the process and will follow the course in favour of speedy determination of applications in favour substantive justice in main suits.

Having said so and considering the above cited provisions and precedents, I have decided to grant the application and hereby restrain the respondents or their representatives or any other persons in their association on entering or using the disputed land located at Kyankoma Village within Kiagata Ward in Butiama District of Mara Region pending the expiry of ninety (90) days statutory notice issued on 12th December 2022 to the third, fourth and fifth respondent.

It is so ordered



F.H. Mtulya

Judge

04.02.2022

This ruling was delivered in chambers in the presence of Mr Kitiya Turoke, learned State Attorney who appeared for the third, fourth and fifth respondent and Mr. Matiko Yasson Masaro, Kyankoma Village Chairman, who appeared for the third respondent, and in the presence of the applicants Paulina Philipo Masaro and her learned counsels, Mr. Ostack Mligo, Mr. Noah Mwakisisile and Ms. Maula Tweve.



A handwritten signature in blue ink, appearing to read "F.H. Mtulya", with a long horizontal flourish extending to the right.

F.H. Mtulya

Judge

04.02.2022