

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF MWANZA)  
AT MWANZA**

**MISC. CIVIL APPLICATION NO. 110 OF 2021**

**LOANS FINANCE LIMITED ..... APPLICANT**

**VERSUS**

**1. THE REGISTRAR OF TITLES ..... 1<sup>ST</sup> RESPONDENT**  
**2. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**28/10/2021 & 14/03/2022**

**F. K. MANYANDA, J.**

This is a ruling in respect of an application for injunctive orders restricting the Respondents from effecting transfer of ownership of a plot of land located at Plot No. 682 Block "B", Nyamongolo Area, Ilemela Municipality from Winnie Sheba Seme to Saguda Mazungu Mungáng'a.

The application is made by way of a chamber summons under Order XXVII Rule 1(a) of the Civil Procedure Code, [Cap. 33 R. E. 2019], hereafter referred to as "the CPC". It is supported with an affidavit sworn by Zaituni Wendy Musetti.

The short background of this matter as gleaned from the affidavit and other records is that on unknown date the Applicant was tipped off that

the plot in issue which was under ownership of a person called Winnie Sheba Seme was about to be transferred by the 1<sup>st</sup> Respondent to another person known as Saguda Mazungu Mung'ang'a. The said Winnie Sheba Seme mortgaged the plot in issue for securing a loan she obtained from the Applicant. In the course, the Applicant secured a decree against the said Winnie Sheba Seme following default of the loan repayment. However, before execution of the decree is completed, the 1<sup>st</sup> Respondent signified intention of transferring the plot in issues as explained above, an act which prompted the Applicant to come up with the instant matter.

With leave of this Court, hearing was conducted by way of written submissions which; for the Applicant were drawn and filed by Mr. A. K. Nasimire, learned Advocate, and for the Respondents were drawn and filed by Ms. Sabina Yongo, learned State Attorney.

The Counsel for the Applicant submitted in support of the application based on the authority in the famous case of **Atilio vs. Mbowe** (1969) HCD n. 284. The said case laid down three conditions which have to be cumulatively established for grant of injunctive orders namely: -

- 1. That, on the facts alleged, there must be a serious question to be tried by the court and a probability that the Plaintiff will be entitled to the relief prayed for ( in the main suit)*
- 2. That, the temporary injunction sought is necessary order to prevent some irreparable injury be falling the Plaintiff while the main case is still pending; and*
- 3. That on the balance, greater hardship and mischief is likely to be suffered by the Plaintiff if temporary injunction is withheld than may be suffered by the Defendant if the order is granted.*

The Counsel was of the views that the instant application has established all the three conditions. He argued that there is an appeal pending in this Court which raises two serious questions namely: - the Registrar of Titles erred in law by entertaining transfer of right of occupancy to a property despite he been aware that the said property is attached by the Court of law. The second equally serious question is based on the claim that the Registrar of Titles erred in law by disregarding the order of the Resident Magistrate's Court of Mwanza for attachment in Misc. Civil Application No. 117 of 2020.

In the circumstances, the Counsel argued that the grant of the injunctive order is important in order to make the decree executable.





Replying, the Counsel for the Respondents submitted that the application has failed to meet the first condition for grant of injunction as propounded in **Atilio vs. Mbowe's case (supra)**.

The Counsel argued that there are no serious triable questions in the alleged appeal. She referred this Court to the provisions of section 78(b) of the Land Registration Act, [Cap. 334 R. E. 2019]. Then she submitted that under the proviso of that section, the time for the caveat elapsed. Therefore, the Registrar of Titles in such circumstances has no any other option than giving a 14 days' notice for registration of ownership unless the Applicant presents an order of this Court directing otherwise.

Moreover, the Counsel argued that the appeal has no chance of success because the necessary party in the original case who was given loan, one Winnie Sheba Seme t/a Wisheshe Enterprises was not joined as a Respondent in the appeal.

In the instant matter, the issue to be addressed is whether the facts disclosed in the Application for temporary injunction satisfy the conditions for granting the temporary injunction which has been prayed for. I shall start with the 1<sup>st</sup> condition.

In legal terms, a temporary injunction was defined in the case of **National Housing Corporation vs. Peter Kassidi & Four Others**,



Civil Application No. 243 of 2016 (unreported) by Court of Appeal of Tanzania as follows: -

*"a temporary injunction is an equitable relief for maintaining the status quo between the parties pending hearing and determination of an action in court. This remedy is in the nature of a prohibitory order granted at the discretion of the court against a party."*

The principles for grant of temporary injunction are correctly stated by the Counsel for both sides with the aid of the authority in **Atilio vs. Mbowe's case (supra)**, the same were restated by the Court of Appeal of Tanzania in the case of **Hassan Loan Namagono and 9 Others vs. The Attorney General and Another**, Misc. Land Application No. 11 of 2013 (unreported), namely: -

*The principles governing the grant of injunction in our civil litigation were laid down in 1969 by the then Chief Justice Georges in the case of **Atilio vs Mbowe** (1969) HCD n. 284. They are the following: there must be a serious question to be tried on the facts alleged, and a probability that the Plaintiff will be entitled to relief prayed; 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 on the balance there will be greater hardship and mischief suffered by the Plaintiff from the withholding of the*



*injunction than will be suffered by the Defendant from the grant of it.*

It is a settled position of law that, in the first condition, the Applicant is required to show two things: - One, the reliefs sought by the Applicant in the main suit must be one that the court is capable of awarding; and two, the Applicant should at the very minimum show in the pleadings that in the absence of any rebuttal evidence he is entitled to the said relief.

The Counsel for the Applicant argument is that there is an appeal which raises two serious questions namely: - the Registrar of Titles erred in law by entertaining transfer of right of occupancy to a property despite he been aware that the said property is attached by the Court of law. The second equally serious question is based on the claim that the Registrar of Titles erred in law by disregarding the order of the Resident Magistrate's Court of Mwanza for attachment in Misc. Civil Application No. 117 of 2020.

In this application it is not in dispute that this Court has power to grant the injunctive orders sought by the Applicant because it has such discretionary powers provided that the same is judiciously exercised. The Counsel for the Respondents argues that the application fails the



said condition because there are no serious triable questions in the appeal. She further argued that under the proviso of section 78(b) of the Land Registration Act, after expiry of the caveat and in absence of any order of this Court directing otherwise, the Registrar of Titles is at liberty to register the property after elapse of a 14 days' notice.

In my understanding of the law, the position is that the Court is required to look at the reliefs sought in the main case, in this matter, the appeal and see if they raise a serious question for determination by the court and then assess whether there is a justification for granting a temporary injunction.

Regarding the extent of proving whether there is a serious question for determination, it is not the conclusive evidence which is required but rather the facts as disclosed by the chamber summons and the affidavit and so the standard of proof required would be somehow below the expected standard in the main case. See the case of **Suryakant D. Ramji vs. Saving and Finance Ltd and Three Others**, Commercial Case No. 30 of 2000 (Unreported).

From the principles of law stated above, it my strong conviction that in this matter the first condition is met. I say so because, continuing with effecting the transfer by the Registrar of Titles after becoming aware of



existence of execution of a Court Decree creates a triable issue in the appeal.

The Counsel for the Respondents argues that the appeal has no chance of success because of some legal ailments. In my opinion discussing those legal issues and or the evidence supporting the same will amount to determining the appeal itself which is not allowable in applications like this one. It suffices for the applicant to establish a fact answering the question that there are serious triable issues in the main matter and that the same are awardable in case no defence is entered. It is my finding that the first condition has been established.

In respect of the second condition, the Counsel for Applicant submitted that the Applicant is prone to suffer irreparable loss. He gave a reason that the Applicant's business is furnishing loans to individuals, Winnie Sheba Seme is one of them, the only way to recover the money from defaulters of repayment is through attachment and sale of mortgaged properties. In the instant matter, the plot in issue is attached by the Court in execution of a decree, therefore once the same is transferred to another person the execution will be frustrated leading to irreparable loss to the Applicant.



The Counsel for the Respondents argues that the Applicant has not shown how will the loss be suffered and that there has been no evidence that the plot is the only property owned by the said Winnie Sheba Seme. With due respect, the Counsel for the Respondent did not direct herself on the issue. It is the argument for the Applicant that the property was collateralized in their agreement as security for the loan and it is under attachment by the court in execution of a decree for the purposes of realizing the loaned-out money. If it is dissipated then the Applicant will have nothing to hold on. The intention of the law of temporary injunction is as stated in **National Housing Corporation vs. Peter Kassidi & Four Others case (supra)** that it is to maintain equitable reliefs for the *status quo* between the parties pending hearing and determination of an action in court. In my firm opinion, the application has also met the second condition.

Regarding the third condition, the Counsel for the Applicant submitted that on a weighing balance, hardship is likely to hit more the Applicant than the Respondents if the injunction is withheld than if granted. The Counsel for the Respondents resisted this contention on reason that there is no evidence showing that the plot in issue is the only property owned by the said Winnie Sheba Seme. I think this condition has also

been met, I say so because it has been demonstrated above that, if placed on a weighing balance, the Applicant stands a losing position in case the plot in issue which was tied to the loan as a security.

It is from the premise stated above that this Court finds the application has succeeded to meet the three conditions set out in **Atilio vs. Mbowe's case (supra)**. Consequently, I do hereby make the following orders: -

1. The application for orders of injunction is hereby granted;
2. The Respondents are hereby restrained from effecting transfer of ownership of the plot of land located at Plot No. 682 Block "B", Nyamongolo Area, Ilemela Municipality from Winnie Sheba Seme to Saguda Mazungu Mungáng'a.
3. Costs in the course of the main case, the appeal case.



  
**F. K. MANYANDA**  
**JUDGE**  
**14/03/2022**