

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISC. LAND APPLICATION NO. 17 OF 2022

MAGRETH D/O NUHU HALIMESHI.....APPLICANT

VERSUS

KIGOMA UJIJI MUNICIPAL COUNCIL.....1st RESPONDENT

COMMISSIONER FOR LANDS.....2nd RESPONDENT

THE ATTORNEY GENERAL3rd RESPONDENT

RULING

15/8/2022 & 19/8/2022

MANYANDA, J

Magreth Nuhu Halimeshi, the applicant, is moving this court under section 2(3) of the Judicature and Application of Laws Act, [Cap. 358 R.E. 2019, (JALA) and section 95 of the Civil Procedure Code, [Cap. 33 R.E. 2019] (CPC) for mareva injunction pending determination of an anticipated suit to be filed after expiry of the 90 days' statutory notice to sue the Government.

The application is by way of a chamber summons filed under certificate of urgency supported by an affidavit sworn by the applicant herself. It is



intended to move this court to issue temporary injunction to the restraining the Respondents, their agents and co-workers from revoking building permit on Plot No. 4 Block "B" and demolishing the house thereto located at Mwasenga Area in Kigoma – Ujiji Municipal pending hearing and determination of an intended land case after lapse of the 90 days' statutory notice to sue the Government.

The application is countered by the respondents' counter affidavit sworn by Josephine Chilongozi which also raised a preliminary objection on one point of law that the application is untenable in law for violating the provisions of section 2(3) of the JALA and section 95 of the

Been confronted with a preliminary objection, I am obliged to dispose of it before I embark into determination of the application on merit. Hearing of the application was scheduled to take place on 15/08/2022. When the matter came for hearing Ms. Josephine Chilongozi, a learned State Attorney appeared for the Respondents neither the Applicant nor her advocate appeared in Court at the time the hearing was fixed, hence this court ordered hearing of the preliminary objection to proceed ex-parte against the applicant.



Ms. Josephine Chilongozi submitted in support of the preliminary objection arguing that this application is untenable in law because section 2(3) of the JALA and section 95 of the CPC provide procedure to be followed.

The State Attorney also said that section 6(2) of the Government Proceedings Act, [Cap. 5 R.E. 2019] (GPA) provides for a procedure to sue the Government by requiring the intending person to furnish a 90 days' notice first before instituting the case in court.

It was her argument further that mareva injunction are granted where there is no suit filed in court due to some impediment preventing the concerned person from doing so.

Moreover, the State Attorney advised that the Applicant to have invoked the provisions of Order XXXVII Rule 1 of the CPC because she already served the Government with the said notice on 22/03/2022 and it expired on 20/06/2022. She can apply this provision after filing a suit in court because there is no any impediment. She prayed the application to be struck out. I have considered both the preliminary objection ground and the State Attorney's submissions. I agree that the provisions of section 2(3) of the JALA provides for jurisdiction of this Court to be exercised in conformity with the laws in force in Tanzania and the substance of the common law doctrine of equity and the statutes of general application in



force in England as of 22/07/1920; provided that the circumstances of Tanzania and its inhabitants permit.

Mareva injunction been one of the remedies under the doctrine of equity allows grant of temporary injunction for maintenance of **status quo** to parties where there is no filed suit in court due to some impediments.

In the English case of **Mareva Compania Naviera SA vs. International Bulk Carrier SA** [1980] AU ER 213 his Lordship Denning accorded a broader interpretation to section 25 of the Judicature Act of 1873 which provided for grant of temporary injunctions pending suits filed in courts to cover grant of interim injunctions in anticipatory suits.

In our jurisdiction the reasoning in the Mareva's case has been followed in plethora of authorities including the cases of **Nicholas Nere Lekule vs. Independent Power (T) Limited vs. the Attorney General**, Miscellaneous Civil Cause No. 117 of 1996 and **Tanganyika game Fishing and Photographic Limited vs. Director of Wildlife and Two others**, Miscellaneous Civil Cause No. 48 of 1998, (both unreported) to mention a few. In these cases, Honourable Judges Kaji and Katiti, as they then were, held that a court has jurisdiction to issue a temporary order where there is no pending suit under the provisions of section 2(3)



of the Judicature and Application of Laws Act and Section 95 of the Civil Procedure Code.

On this position of the law see also the cases of **Tanzania Sugar Producers Association vs. The Ministry of Finance of the United Republic of Tanzania and Another**, Miscellaneous Civil Case No. 25 of 2003 (unreported), **Issa Selemani Nalikila and 23 Others vs. Tanzania National Roads Agency and Another**, Miscellaneous Land Application No. 12 of 2016 (unreported), **Abdallah M. Maliki and 545 Others vs. Attorney General**, Miscellaneous Land Application No. 119 of 2017 (unreported) **Jetish Ladwa vs. Yono Auction Mart and Company Limited**, Miscellaneous Land Application No. 26 of 2017 (unreported) and **Ugumba Igembe and Another vs. The Trustees of the Tanzania National Parks and Another**, Miscellaneous Civil Application No. 01 of 2021 (unreported) and **Daudi Mkwya Mwita vs. Butiama Municipal Council and Another**, Miscellaneous Land Application No. 69 of 2020 to mention a few.

In the latter case, it was held that Mareva Injunction cannot be granted where there is a pending suit in court because it is an application obtaining a legal standing to institute a suit where institution of the same is prevented by some legal impediments.



It follows therefore that, where there is no legal impediment no mareva injunction can be granted.

In this matter, it has been argued that the legal impediment is the requirement of expiry of the 90 days statutory notice. Now that the said 90 days have elapsed, then there is no longer any legal impediment, the application is overtaken by events.

I have inspected the affidavit by the Applicant and found the averments in paragraphs 8 and 9 are clear, the same read as follows:-

"8. That, on 28/3/2022 I issued a statutory notice of intention to commence legal action against the Respondents after lapse of 90 days of the said notice as per Annexure (sic) "D" hereto which form party (sic) of this affidavit.

9. That, the said notice is expected to be natured on 28/06/2022 but any time the Respondents can revoke the said building permit and demolish my residential house hereto unlawful (sic)"

As it can be gleaned, the Applicant deponed in her affidavit clearly that the notice expired on 28/06/2022. This application was filed in this Court on 24/06/2022 under certificate of urgency.

The same was mentioned on 29/06/2022 for the first time before a Deputy Registrar who fixed it for mention on 04/07/2022 before a judge.

However, on 04/07/2022 the matter came before the same Deputy Registrar who rescheduled for hearing on 13/07/2022. When the application came for hearing on 13/07/2022 both parties appeared, the Applicant did signify an intention of hearing of the application. I gave opportunity to the Respondents to file a counter affidavit. The same was filed with this preliminary objection.

I find that had the Applicant acted diligently on 13/07/2022, she, and her counsel, Mr. Sogomba, could have learnt that their application had been overtaken by events because there was no longer any legal impediment.

It is on this reasons that I find the application as overtaken by events. Consequently, I do hereby dismiss this application for been overtaken by events. Costs of the application to be borne by the Applicant.

It is so ordered.

Dated at Kigoma this 19th day of August 2022.




MANYANDA,

JUDGE