

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISCELLANEOUS LAND APPLICATION NO. 45 OF 2021

EMMANUEL MADUHU MBITIAPPLICANT

VERSUS

THE VILLAGE COUNCIL OF

MWANTIMBA VILLAGE & 7 OTHERS

RESPONDENTS

RULING

22 March, 2022

A. MATUMA, J.

The applicant is applying for unknown order in this Court;

*"Interim restraining the respondents, their servants and or agents from distribution or alienating or disposing off the disputed land **pending hearing of the main application inter parties.**"*

When this application came for hearing I asked M/s Zena Anthony learned advocate for the Applicant, what is the prayer of her client therein. She explained that the prayer is not well drafted and prayed for an order to amend the same. On the face of record, the interim order is sought for nothing intended in future days. It is the law that, an interim order is sought and granted pending a future action. It is not sought and granted on air for nothing.

Even though, the applicant has not effected service to the 2nd to 7th respondents without any reason. In the case of ***Matias Luhana versus Mupizi Mpuzu, Miscellaneous Land Case no. 2 of 2019*** High Court at Kigoma, it was held.

"Any failure by the appellant to effect service would amount to failure to prosecute his appeal as prosecution of the appeal includes effective service of not only the appeal documents, but also the notice of the date of hearing or mention for necessary orders as the case may be"

In the like manner the applicant here has failed to effect service to the 2nd to the 7th respondents without any explanation and prays for another summons to be issued. We cannot issue summons over summonses which have not been worked upon.

It is clearly that the applicant after having obtained an ex parte interim order on 26/10/2021 before my learned brother Mdemu Judge, has relaxed completely to prosecute this application inter-parties.

I therefore as do hereby dismiss this application for want of prosecution. As the 1st respondent and 8th respondents have yet filed their respective counter affidavits, I order no costs to either party.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. MATUMA", is written over a horizontal line.

A. MATUMA
Judge
22/03/2022