

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

**AT MUSOMA**

**MISCELLANEOUS LAND APPLICATION NO. 107 OF 2021**

**(Arising from Land Case No. 12 of 2021)**

**BETWEEN**

**JULIUS MGETA ..... 1<sup>ST</sup> APPLICANT**  
**MANKO JUMA ..... 2<sup>ND</sup> APPLICANT**  
**MAYALA LUBEJA ..... 3<sup>RD</sup> APPLICANT**  
**MAGOBO KOMANYA ..... 4<sup>TH</sup> APPLICANT**  
**SALU NZUMBI ..... 5<sup>TH</sup> APPLICANT**  
**MASALU MATANGO ..... 6<sup>TH</sup> APPLICANT**  
**NYAMHANGA CHANGWA ..... 7<sup>TH</sup> APPLICANT**  
**PETER MARWA ..... 8<sup>TH</sup> APPLICANT**  
**KURWA MAGUKU ..... 9<sup>TH</sup> APPLICANT**

***VERSUS***

**JOHN WAMBURA BINA ..... 1<sup>ST</sup> RESPONDENT**  
**TITUS CHARLES KABUO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A.A. MBAGWA, J.**

This ruling is in respect of the preliminary objection raised by the respondents' counsel.

The applicants filed this application seeking the court to issue temporary injunction order restraining the respondents and their agents from

evicting, damaging, wasting, alienating, disposing or selling in any how the applicant's piece of land situated at Musoma within Mara region pending the hearing and determination of the main suit.

Upon being served with the chamber summons and supporting joint affidavit, the respondents filed their counter affidavit along with a notice of preliminary objection on point of law to the effect that:

*The orders prayed for in the instant application cannot be granted by this Honourable Court since they are sub judice under the Commissioner of Minerals.*

When the matter was called on for hearing of the preliminary objection, the respondents were represented by Victor Kisaka, learned advocate whilst the applicants had the services of Bernad Msalaba, learned advocate.

Submitting in supporting of preliminary objection, Mr. Kisaka argued that the matter is purely on mining issue and that the law governing it is the Mining Act [Cap 123 R.E 2019]. He added that under section 119 (2) of the Act, the Commissioner may issue an order sought by the applicants. Mr. Kisasa further proceeded that through this provision, the Commissioner issued a notice dated 20<sup>th</sup> April, 2022 stating that the Mining Commission issued an injunction on 16<sup>th</sup> February, 2022.

Mr. Kisaka further submitted that Mining Commission is quasi-judicial vested with mandate to impose any order according to the dispute that may arise. He contended that, in the circumstances, the present application is devoid of merits because what the applicants are seeking is already granted by the Commission via injunction dated 16<sup>th</sup> February, 2022. Thus, according to Mr. Kisaka, the matter is subjudice as per section 8 of the Civil Procedure Code. He therefore, prayed the application to be struck out with costs.

Responding, Mr. Msalaba, learned counsel for the applicants argued that the application at hand was filed in this court since December, 2021 before the alleged notice was issued. Besides, he clarified that the alleged notice or order of the Mining Commission was issued on 20<sup>th</sup> April, 2022 and that it does not relate to the application at hand. He contended that the application is purely on land dispute and nowhere the applicants mentioned mining issues in their application.

Mr. Msalaba submitted further that, the law governing acquisition of land has not been amended as such, it is only the government which can compulsorily take away someone's land and for the public interest. He stressed that what the applicants are seeking is not yet granted. The

applicant's counsel thus, concluded that the objection is devoid of merits and prayed to be dismissed with costs.

In rejoinder, Mr. Kisaka was of the view that mining matters are closely related to land issues, that is why the miner who is issued with a mining license cannot proceed with mining operations unless he is in agreement with land owners. The counsel reiterated that what the applicants are seeking is already granted.

I have carefully gone through submissions advanced by counsel for both parties. The core issue for determination of this preliminary objection is whether the orders prayed for in this application are *sub judice* before the Mining Commission.

In this application, the applicants prayed for this court to issue temporary injunction order restraining the respondents and their agents from evicting, damaging, wasting, alienating, disposing or selling in any how the applicant's piece of land situated in Musoma within Mara region pending the hearing and determination of the main suit. The main suit which the applicants referred to is Land Case No. 12 of 2021 in which the applicants claim against the respondents the payment of two hundred twenty million Tanzanian shillings (220,000,000/=) as a specific damages

resulting from respondents' actions of encroaching their pieces of land and sufferings they incurred due to the acts of the respondents.

The respondents' counsel told this court that the dispute between the applicants and respondents has been resolved by the Mining Commission by virtue of powers vested in it under section 119 (2) of the Mining Act. The counsel said that the Commission issued a letter dated 16<sup>th</sup> February 2022 ordering the respondents to stay the mining operations on the disputed land until further notice from the government. According to Mr. Kisaka, this is tantamount to the reliefs sought by the applicants.

In rebuttal, the applicants' counsel contended that the applicants filed their application in court prior to the issuance of the alleged order i.e, December, 2021. He added further that their application has nothing to do with minerals rather it is purely on land dispute. Hence, he was of the opinion that the matter is not *sub judice*.

It was stated in the case of **Karori Chogoro vs Waitihache Merengo**, Civil Appeal No. 164 of 2018 CAT at Mwanza, that the doctrine of *sub judice* prevents a court or tribunal from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it.

I have glanced at the letter/order issued by the Commission. Indeed, it contains nothing about the dispute between the applicants and respondents. Further, the said notice does not talk about ownership or disposal of the land in dispute. It only restrains people from carrying on mining operations. In addition, as rightly argued by the applicants' counsel, this application was filed prior to the issuance of order by the Commission hence it cannot be said to be, *sub judice*.

Having canvassed the application documents and submissions by the counsel, I am at one with the applicants' counsel that the matter before this court is purely land dispute. Looking at the reliefs sought in this application and the nature of claim in the main suit (Land Case No. 12 of 2021), it is common cause that the matter is not about mining dispute rather it is on ownership of land. The powers of the Mining Commission in deciding disputes vested under section 119 (2) of the Mining Act should be in conformity with the disputes stipulated under section 119 (1) of the Act. The section reads;

***119.-(1) The Commission may inquire into and decide all disputes between persons engaged in prospecting or mining operations, either among themselves or in relation to themselves and third***

*parties other than the Government not so engaged, in connection with-*

- (a) the boundaries of any area subject to a mineral right;*
- (b) the claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes, or to have priority of water taken, diverted, used or delivered, as against any other person claiming the same;*
- (c) the assessment and payment of compensation pursuant to this Act; or*
- (d) any other matter which may be prescribed.*

From the above provision, it is clear that issues of ownership of land are not among the disputes which fall within the powers of the Commission to decide. Thus, the applicants were right to refer the dispute before this Court.

In view of the foregoing deliberations, I find the preliminary objection devoid of merits. Consequently, I dismiss it with costs. The application should proceed to be heard on merits.

It is so ordered.



  
**A.A. Mbagwa**

**Judge**

**27/09/2022**