IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISC. LAND APPLICATION NO. 92 OF 2021

(Originating from the High Court of Tanzania at Musoma in Land Case No. 10 of 2021)

Between

BHOKE SELEMAN.....1ST APPLICANT

MICHAEL CHACHA MWIT.....2ND APPLICANT

ELIAS CHACHA.....3RD APPLICANT

SAMWEL MERENGO.....4TH APPLICANT

MARTIN MARWA KIARO.....5TH APPLICANT

MAGARIA MWITA CHACHA MANKO..... 6TH APPLICANT

IRANDA MWITA.....7TH APPLICANT

NASHON NYANGWE.....8TH APPLICANT

HAMIS RAJABU..... 9TH APPLICANT

MWITA MARWA MURONI @ DAVID MWITA MURONI ..... 10TH APPLICANT

STEPHEN MAKENGE..... 11TH APPLICANT

KIRUTU MRIMI..... 12TH APPLICANT

ELIZABETH MANKO.....13TH APPLICANT

ZAKARIA ANTONIA COMPANY LTD..... 14TH APPLICANT

ESTER MATINDE KEHONGWE ..... 15TH APPLICANT

OTAIGO THOBIAS..... 16TH APPLICANT

ROBERT MWITA WANGWE.....17TH APPLICANT

WILBERT NYAMWIHURA.....18TH APPLICANT

ZAKARIA SIKI SAGARA ..... 19TH APPLICANT

DANIEL M. BINAGI..... 20TH APPLICANT

JEREMIAH ROBERT..... 21ST APPLICANT

SIMION MKONI..... 22ND APPLICANT

VERSUS

TANZANIA NATIONAL ROADS AGENCY (TANROADS)..... 1ST RESPONDENT

ATTORNEY GENERAL .....2ND RESPONDENT

RULING

A.A. MBAGWA, J.

This is an application for temporary injunction orders. The applicants, by way of chamber summons supported by an affidavit, brought this application praying this court to issue an order restraining the respondents in particular 1st respondent, their agents or anyone acting on their behalf from demolishing the suit premises pending hearing and determination of the main suit to wit, Land Case No. 10 of 2021 (before Hon. Mahimbali, J.). The application is made under section 8 and Order XXXVII Rule (1)(a) of the Civil Procedure Code.

In the supporting affidavit, the applicants state that, by virtue of granted rights of occupancy (certificate of title), they are lawful owners of the suit premises which are located along Tarime-Natta Road within Tarime Urban. The applicants further contend that the first respondent issued them with a

thirty (30) day notice to demolish their structures and vacate the premises to allow the 1st respondent to proceed with the road development activities. The applicants continually aver that demolition of their buildings would cause them irreparable damage as the suit premises are used for commercial and residential purposes.

On the contrary, the respondents opposed the application by filing a counter affidavit sworn by Deogratius C. Makori, the Regional Manager of Tanzania National Roads Agency (TANROADS) for Mara region. They state that the disputed land is within the road reserve area. The respondents further contend that the suit premises were declared a Public Highway in 1962 and classed as Local Main Road with a width of thirty-three (33) feet from the centre of the road on each side before the same was widened to seventy five (75) feet in 1967. The respondents firmly stated that the applicants have encroached the 1st respondent's premises. Further, the respondents contended that the applicants would not suffer irreparable loss as their properties which are about to be demolished are capable of monetary compensation.

When the application was ready for hearing, both parties unanimously agreed to dispose of the matter by way of written submissions. I thus

commend counsel for both parties for their compliance with the filing schedule and enriching submissions.

Submitting in support of the application, the applicants' counsel, Mr. Edson Kilatu said that the application is meritorious in that it has met the basic requirements for issuance of temporary injunction as enunciated in the famous case of **Atilio vs Mbowe** (1969) HCD No. 284. Mr. Kilatu submitted that the above-mentioned case laid down three principles governing the grant of injunction namely,

1. There must be serious question to be tried on the facts alleged and a probability that the plaintiff will be entitled to the reliefs prayed
2. That 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;
3. That on the balance there will be greater hardship and mischief suffered by the plaintiff from withholding of any injunction that will be suffered by the defendant from granting of it.

On the first ground, the applicant's counsel strongly submitted that the suit premises are in a danger of being demolished by the 1st respondent

whilst there is a pending case in this court namely, Land Case No. 10 of 2021 before Hon Mahimbali, J. The counsel continued that the applicants are prima facie lawful owners of the suit premises by virtue of their certificates of occupancy hence there is a serious triable issue with regard to the ownership of the disputed land.

With regard to the second ground, Mr. Kilatu elaborated that the applicants are currently using the suit premises for residential and commercial purposes hence their sudden demolition would subject the appellants to gross inconveniences which cannot be atoned in monetary form.

In respect of the third ground or test, the applicants' counsel told the court that the applicants stand to suffer greater hardship and mischiefs if the application is not granted than the respondents would suffer in case the application is granted. The counsel expounded that the 1st respondent can still proceed with the project on the other part of the road and stay for sometimes the construction in the suit premises for the suit land is very small compared to the uncontested part of the project. The counsel stressed that the 1st respondent has just only advertised the tender hence she can still stop the process.

Finally, the applicants' counsel concluded that the present application is in all fours of the tests established in **Atilio's case** hence he prayed the court to find merits in the application and consequently grant the sought temporary injunction.

In rebuttal, the respondents vehemently resisted the application. It was the respondents' contention that the applicants' certificates of occupancy were issued in respect of the road reserve area as such, the applicants have no legal ownership over the disputed land. The respondents' counsel reiterated that the suit premises were declared a Public Highway in 1962 via G.N. 471 of 1962 and in 1967 through Rule 2 of the Highway Rules, the road reserve was widened from thirty-three (33) feet to seventy-five (75) feet on each side from the centre of such highway.

The respondents' counsel submitted that the suit premises are undeniably within the stipulated distance of the highway. The counsel further submitted that whereas the area was declared a public highway since 1962 and in 1967 its width widened to seventy-five (75) feet from the centre, the applicants were allocated the said land from 1985 onwards. As such, there is no possibility of the applicants succeeding in the main suit, the respondents' counsel argued. Connotatively, the respondents'

position is that there are no serious triable issues. In fine, the counsel concluded that the application fails the first test in that the area in dispute is a reserved land which is under exclusive management of the 1st respondent as per the Highways Act.

Responding on the second ground, the respondents' counsel submitted that the applicants do not meet the test for their alleged damage is capable of monetary compensation. It was the counsel's contention that should the applicants succeed in the main suit they would still be compensated and therefore they cannot claim that they would suffer irreparable injury.

Further, the counsel for respondents submitted that granting an injunction order would cause more inconveniences to the respondents than it would do to the applicants. The counsel elaborated that the 1st respondent has already invited tenders for upgrading of Tarime-Mugumu road to Bitumen Standard (87.14 KM), Lot 1: Tarime – Nyamwaga section (25 KM) through General Procurement Notice. The counsel therefore submitted that should constructions be stayed, the 1st respondent would be sued for costs that the bidders would have incurred. The counsel further lamented that injunction order may cause the donors to pull out

their funds. The respondent's counsel concluded that granting an injunction would subject the 1st respondent to gross inconveniences than the applicants in that the applicants can be adequately compensated in monetary terms.

In addition, the counsel for the respondents referred to the case of **Hamad M. Hamad and 94 other vs Tanzania National Roads Agency (TANROADS) and others,** Land Case No. 191 of 2011, HC at Dar es Salaam and submitted that the applicants must meet all the three tests enunciated in **Atilio's case** in order to obtain an injunction order. The counsel submitted that the applicants failed to establish all the three tests. In fine, the counsel for respondents prayed the court to dismiss the application with costs.

I have had an occasion to carefully scan the submissions made by the parties along with depositions filed in court. I agree with counsel for both parties that the case of **Atilio (supra)** is still a good law in determining applications for temporary injunctions. I will therefore deliberate this matter in line with the principles developed in **Atilio's** case.

To start with the first test that there must be serious question to be tried on the facts alleged and a probability that the plaintiff will be entitled to the reliefs prayed. On the one hand, there is no gainsaying that the applicants are holders of certificates of occupancy in respect of the suit premises. This, prima facie, tells it all that they are lawful owners of the disputed land. On the other hand, the respondents have referred to G.N. 471 of 1962 and Rule 2 of the Highway Rules which designated the suit premises a public highway and later on in 1967 widened its width from 33 feet to 75 feet. Whereas the disputed land was declared public highway by the government (Minister for Communication and Works), it is the same government (Ministry of Lands) which granted certificates of occupancy to the applicants. Owing to the rival averments by the parties, it is my considered view that the matter involves a serious triable issue. As such, the first test, in my view, is met.

Coming to the second test that the court's interference is necessary to protect the plaintiffs from the kind of injury which may be irreparable before their legal rights are established, it is undisputed that the suit premises are currently used by the applicants for commercial and residential purposes. Further, it is also uncontested that no valuation has

been carried out to ascertain the value of the applicants' pieces of land. This explains that in case the applicants are removed and their structures demolished it would be cumbersome to measure the compensation. As such, If the applicants win the main suit, they stand to suffer irreparable damage for there will be no valuation to assess compensation. Moreso, the applicants are likely to suffer irreparable injury in particular those who are using the premises for residential purposes. This is because they have no sufficient time to look for alternative residence given that they have all along been owning the land under certificates of occupancy which is believed to be the safest mode of ownership.

On the last test that on the balance there will be greater hardship and mischief suffered by the plaintiff from withholding of any injunction than that will be suffered by the defendant from granting of it, the respondents have submitted that granting injunction would stop constructions and may trigger the bidders to sue the 1st respondent for costs incurred in that it has already advertised the tenders. Further, they contended that the donors may pull out their funds. Whereas I agree that granting injunction will, in a way, inconvenience the 1st respondent, its inconveniences would not be as hard as the applicants would encounter

in case demolition proceeds. Residential and commercial hardships to someone who is holding a certificate of occupancy is not the same as the 1st respondent would experience by postponing temporarily the construction in the suit premises.

I have also read the case of **Hamid** cited by the respondents' counsel. Indeed, as rightly rejoined by the applicants' counsel, the case is somehow distinguishable. In that case, the first respondent had already conducted valuation of the respondents' structures hence even in case the applicants won in the main suit, it would be easy to compensate them. Also, the suit premises in **Hamid case** were not surveyed and the applicants had no certificates of occupancy unlike in the present application.

On the above deliberations, I find that the present application squarely falls with the all fours of the tests established in **Atilio's case**. As such, I grant the application. The 1st respondent, her agents or anyone acting on her behalf are restrained from demolishing the suit premises pending hearing and determination of the main suit namely, Land Case No. 10 of 2021. Costs to follow the event.

It is so ordered.

A.A. Mbagwa

JUDGE

17/10/2022

Court: Ruling has been delivered in the presence of Neema Mwaipyana (SA) for the respondents and in the absence of the applicants this 17th day of October, 2022

A.A. Mbagwa

JUDGE

17/10/2022