

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO. 107 OF 2021

(Arising from Land Case No. 12 of 2021)

BETWEEN

JULIUS MUGETA 1ST APPLICANT
MANKO JUMA 2ND APPLICANT
MAYALA LUBEJA 3RD APPLICANT
MAGOBO KOMANYA..... 4TH APPLICANT
SALU NZUMBI 5TH APPLICANT
MASALU MATANGO..... 6TH APPLICANT
NYAMHANGA CHANGWA.....7TH APPLICANT
PETER MARWA.....8TH APPLICANT
KULWA MAGUKU.....9TH APPLICANT

VERSUS

JOHN WAMBURA BINA.....1ST RESPONDENT
TITUS CHARLES KABUO.....2ND RESPONDENT

RULING

31st October & 7th November 2022

M. L. Komba, J.:

The applicants has filed this application seeking for temporary injunction order restraining respondents from evicting, damaging, wasting, alienating, disposing or selling in any how the applicants' piece of land situated at Musoma within Mara region pending hearing and determination of the main

suit. The application has been brought by way of chamber summons made under Order XXXVII Rule 1 (a) and 2(1) and Section 95 of Cap, 33 RE 2002.

Gist of this application is that, respondents applied and were granted mining rights over the piece of land by the Commissioner of the Minerals. Following that grant, respondents started mining activities while the applicants were not compensated and were not vacated from the area. Being dissatisfied by respondents activities over the disputed piece of land, applicants filed Land case No. 12 of 2021 claiming for damages caused by respondents' action of trespassing into applicants' land.

During the hearing of this application, the applicants were represented by Mr. Bernard Msalaba, advocate while the respondents were enjoying the service of Mr. Julius Kiligiti assisted by Victor Kisaka both learned advocates.

The issue for determination before this court is whether the application meets the conditions for granting of temporary injunction.

Arguing in support of the application, Mr. Msalaba, adopted joint affidavit of the applicants filed on 24 December 2021 to form part of his submission. Taken in its totality, the applicants pray for issuance of temporary injunction as there is a pending suit which may be defeated if the temporary injunction

is not granted. He further argued that, the area in dispute is residential, applicants and their families are living there and conduct some economic activities and that there is a pending suit No. 12 of 2021 which is waiting to be determined.

He referred this court to the case of **Atilio vs Mbowe** (1969) HCD at 284 which laid down three principles to be trailed before issuing temporary injunction. According to Mr. Msalaba, **one of them** is the presence of pending suit, in this application he mentioned Land case No. 12/2021 which is scheduled for hearing on February 2022, **the second** condition is balance of convenience that granting of the injunction will calm the situation rather than when the application is denied as the pending case will be nugatory and **last** is their belief that granting of injunction will not affect respondents because the applicants are lawful owner of the disputed land which is yet to be acquired under the law. Important condition is presence of irreparable loss on the side of applicant, he argued that the area is used for residential and that applicants have been there for years and they are using the area to generate their income. Under these grounds Mr. Msalaba pray for the application to be granted pending determination of Land case No. 12 of 2021.

In reply thereto, Mr. Kiligiti had no objection to this application notifying the court that if the prayer is granted it will not affect any party as respondents and his agent will not interfere the land and is currently occupied by the applicants.

I have keenly followed the submissions advanced by both parties in this application.

A temporary injunction is a court order that is valid for the duration of the legal proceedings where the court orders a party to do or not to do something until the parties are heard in a trial when there is an emergency of some kind. For the court to issue a temporary injunction, the moving party must show that without the injunction irreparable loss will be caused and there are no other proper legal remedies available to deal with the issue.

As the application before the court is for a temporary injunction, I join hand with Mr. Msalaba that it is well established that, there are guiding principles as for which the applicants have to meet for an order of temporary injunction to be granted. I will start by stating the said principles which were established in a number of cases. Just to mention the few. The cases of **Atilio V. Mbowe 1969 HCD 284, Giela Vs. Cassman Brown & Co. LTD (1973) E.A 358, and Gazelle Trucker Ltd Vs. Tanzania Petroleum**

Development Corporation, Civil Application No, 15 of 2006. The said principles are:

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

It is the position of the law that all the above principles must be met by the applicant for an order of temporary injunction to be granted.

With regards to the application before this Court for the first principle that, on the facts alleged **there must be a serious question to be tried by the Court** and a probability that the plaintiff/applicant will be entitled to the relief prayed for in the main suit, the applicants has through paragraphs 2, 3, 5 and 8 of jointly sworn affidavit they deponed that they have been occupying the disputed land, they have permanent houses and they resides within the area, respondents and their agents without consent of the applicants have endlessly encroaching the disputed land. Under oath, the

applicants said they instituted the suit (Land case No. 12 of 2021) which is pending before this court. It is from the contents of the said paragraphs that it suffices to say the applicants have raised a series of issues in the entire affidavit that establishes a prima facie case for determination. I find that the first principle as to the order sought by the respondents has been met.

For the second principle that, the temporary injunction sought is necessary in order to prevent some irreparable injury be falling to plaintiff /applicant while the main case is still pending; the applicants claimed that, there is a danger to suffer irreparable loss if the prayer sought is not granted. The danger is found at paragraph 10 and 6 of the joint affidavits where the applicants states that if the application is not granted, irreparable loss will be suffered since respondents still trespassing to their land claiming to have mining right. Taking into account the circumstances for the applicants' status as demonstrated above, that they have permanent houses and they reside in the disputed land, it is obvious that, if the application is denied, the applicants will suffer irreparable loss. From the above explanation, it is my finding from the given circumstances that the second principle also succeeds.

Referring to the third principle that, on the balance, greater hardship and mischief is likely to be suffered by the applicants if temporary injunction is

withheld than maybe suffered by the respondents if the order is granted, the balance of convenience herein has been demonstrated at paragraph 3 and 10 of the applicants' joint affidavit that they reside in the disputed land. In answering the question as who is likely to suffer greater hardship and mischief between the parties herein it goes without say that, in a given circumstances, the applicants will suffer greater hardship if the application is not granted. This principle has been succeeded.

Regardless that respondents did not object this application, court has to weighed the facts stated in the application before making decision. I am of the firm view that this application is fit for an order of temporary injunction to be granted for all the three principles for granting temporary injunction have been met. In the event therefore, the application for temporary injunction is granted pending determination of the land case No. 12 of 2021.

I make no order as to costs.

It is so ordered.



Nkombe
M. L. KOMBA

JUDGE

07 November, 2022