

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB A DISTRICT REGISTRY

AT BUKOBA

MISCELLANEOUS LAND APPLICATION NO. 112 OF 2022

MUJIBU ISLAM MUTANDA 1ST APPLICANT

BASHIRU ISLAM MUTANDA 2ND APPLICANT

VERSUS

WILSON CHRISTIAN SEKULO 1ST RESPONDENT

WAZIRI KHACHI KOMBO 2ND RESPONDENT

MISSENYI DISTRICT COUNCIL 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

29th November and 2nd December, 2022

BANZI, J.:

The Applicants filed this Application under the certificate of urgency pursuant to the provisions of section 2 (3) of the Judicature and Application of Laws Act [Cap. 358 R.E. 2019] ("the JALA") seeking the following orders pending the institution and determination of the intended suit after expiration of statutory notice; thus;

- 1. Mareva injunction order against the 1st, 2nd and 3rd respondents from demolishing the houses built at Mutukula ward within Missenyi district pending the institution of a suit after the expiry of period of demand notice issued to*

the respondents and the same to cover the period after filing the main suit until determination of the same;

2. Any other and further relief(s) this court may deem just to grant.

The Application is supported by an affidavit of Mr. Alli Chamani, learned counsel for the Applicants. The 3rd and 4th Respondents, objected to the prayers in the Application through a joint counter affidavit of Seraphina Rwegasira and Gerald Njoka, learned State Attorneys.

At the hearing, the Applicants enjoyed the services of Mr. Alli Chamani, learned Advocate, whereas the 3rd and 4th Respondents were represented by Mr. Lameck Buntuntu and Seraphina Rwegasira, learned State Attorneys. The first and second Respondents did not appear despite duly served. The Application was argued orally.

Mr. Chamani, began his submission with a request to adopt the affidavit as part of his submission. He stated that, the Applicants are seeking restraining order against the unlawful acts of the Respondents of demolishing the Applicants' structures to wit; five residential houses, shops and toilet located at Mutukula Centre pending expiration of 90 days statutory notice and if possible until final determination of the intended main suit. He further submitted that, the matter at hand has met all conditions for Mareva

injunction to be granted as set out in the case of **Leonila Kishebuka v. Dunstan Novat Rutageruka and Two Others**, Land Application No. 70 of 2022 HC Bukoba Registry (unreported). According to him, through paragraphs 10, 11 and 12 of the affidavit, the Applicants have demonstrated a strong prima facie case as they are claiming better title than the 3rd Respondent and there is legal impediment because the 3rd and 4th Respondents cannot be sued until the expiration of 90 days' notice which was received on 7th November, 2022. In that regard, he prayed for Application to be granted.

In reply, Mr. Buntuntu also requested the Court to adopt the counter affidavit on behalf of the 3rd and 4th Respondents as part of their submission. Furthermore, he submitted that, *Mareva* injunction is invoked where there is a lacuna in the law, the property in question is in threat of being shifted from the jurisdiction of the court or where the order of eviction is given by the person who has no authority. Expounding his point, he submitted that, in the matter at hand, the property in question is land which is immovable and if demolished, the Applicants can be compensated after proving their ownership. In other words, there is no irreparable loss to be suffered by the Applicants. He distinguished the cited case of **Leonila Kishebuka** claiming that, it has different material facts with the instant case. Besides, no arguable case has been established. He cemented his last point by citing the case of

Lukonge Gambunala Mhandagani v. Azania Bank Limited and Two Others, Misc. Land Application No. 519 of 2021 HC Land Division (unreported).

He added that, the issue of ownership as claimed by the Applicants cannot be established at this juncture. Apart from that, the 3rd Respondent is executing his legal duty under section 113 of the Local Government District Authorities Act [Cap. 287 R.E. 2002] and thus, he cannot be restrained as it was stated in the case of **The Board of the Registered Trustee of Lawate Fuka Water Supply Trust v. RUWASA Siha District and Two Others**, Misc. Civil Application No. 27 of 2021 HC Moshi Registry (unreported). It was further his submission that, the disputed land is surveyed since 1969 as per annexure A. The Applicants could have produced a building permit and business licence of the demolished toilet which they claimed to be used for business. But there was no such evidence and therefore, the sought injunction should not be used to shield their illegal activities. To support his argument, he cited the case of **Debora Martine Mburamaju and 31 Others v. Karagwe District Council and Two Others**, Misc. Land Application No. 135 of 2021 HC Bukoba Registry (unreported).

In his rejoinder, Mr. Chamani challenged the conditions mentioned by learned State Attorney for not being supported by any case law. He further submitted that, according to paragraph 12 of the affidavit, the Applicants will be homeless if the Application is not granted and such irreparable loss is not replaced by any compensation. It was added that, the facts in our case are similar with the facts in the cited case of **Leonila Kishebuka**. Moreover, the cited cases of **Lukonge Gambunala Mhandagani, The Board of the Registered Trustee of Lawate Fuka Water Supply Trust** and **Debora Martine Mburamaju and 31 Others** are distinguishable because the first one is about interim injunction, the one second concerns seeking orders which contravene the law and in the last one the Applicant failed to file the suit after expiration of notice which is not the case here. Furthermore, it is not correct that the Respondents were executing legal duty as demolishing houses is not within their statutory powers. Besides, the issue of building permit is irrelevant as the area in question has never been declared as planning area and gazetted via Government Notice as required by law. He finally contended that, this Application is uncontested because the Respondents did not state if they will be prejudiced when the orders sought are granted.

Having examined the affidavit, counter affidavit along with the annexures, as well as the rival arguments of counsel for both sides, the main

issue for determination is *whether the Applicants have established the required grounds for granting the orders sought.*

Generally, before the court can grant interim orders in the nature of injunction, there are certain conditions to be observed. These conditions were set out in the case of **Attilio v. Mbowe** [1968] HCD 284 as hereunder:

"(i) There must be serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed;

(ii) 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

(iii) That on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it."

These conditions must be satisfied conjunctively, that is all of them must be satisfied. On this, see also the case of **Godlove Lokila v. Aminiel Mafie and Another**, Misc. Civil Application No. 5 of 1999 HC Tanga Registry (unreported).

However, as stated herein above, in this Application, the Applicants are seeking interim orders pending institution of a main suit. In other words, the orders upon which the Applicants are seeking are commonly known as *Mareva Injunction*. *Mareva Injunction* traces from common law, particularly in the case of **Mareva Compania Naviera SA v. International Bulkcarriers SA** [1980] 1 All ER 213. What I gathered from that case is that, whenever there is a danger that the Respondent may dispose of the assets of the Applicant so as to defeat the ends of justice before the institution of the suit, the court has jurisdiction to issue an interim order to prevent the former from disposing of such assets.

The Supreme Court of Canada through the case of **Aetna Financial Services v. Feigelman** [1985] 1 SCR 2 emphasised that *Mareva* injunction should be issued only where a strong case has been made out that, it is necessary to do so to prevent an imminent injustice. This Court though the case of **Leonila Kishebuka v. Dunstan Novat Rutageruka and Two Others** (*supra*) issued *Mareva* injunction in land matters after considering the following conditions that; first, existence of prima facie case or triable issues; second, granting the injunction is just and justifiable and third, the applicant cannot institute a case because of existing legal impediment.

In the present Application, the Applicants claim to be the owners of disputed land which has residential and business structures. It is evident under paragraph 5 of the affidavit that, the 1st and 2nd Respondents demolished some of the structures and dug deep pit therein. This fact is also featured in the counter affidavit of the 3rd and 4th Respondents under paragraph 6. Both the Applicants and 3rd Respondent through the affidavit and submission by counsel for both sides claim to have better title on the disputed land. This is a clear indication that, there is triable issue or arguable case which cannot be determined at this point.

It is undisputed that, the Applicants have issued a statutory notice to the 3rd and 4th Respondents which was duly served and received on 7th November, 2022 as evidence in annexure "A". It is common knowledge that, the Applicants cannot institute a case against the 3rd and 4th Respondents before expiration of the notice in question. Thus, it is apparent that, there is 90 days' notice which impedes the Applicants from instituting the suit against the Respondents. With such impediment, anything can happen to the disputed land which may cause irreparable loss to the Applicants. It is therefore my settled view that, the Applicants have met the conditions of the law in *Mareva* injunction.

For the foregoing reasons, the 1st, 2nd and 3rd Respondents are hereby restrained from demolishing any structure within the disputed land located at Mutukula Ward in Missenyi District before expiration of 90 days' notice issued to the Respondents on 5th November, 2022. Considering the nature of injunction *i.e., Mareva* injunction, this order will not cover the period after filing the main suit until final determination of the same as prayed by the Applicants. Thus, the Application is granted to the extent mentioned above and each party to bear its own costs.

It is accordingly ordered.



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I. K. BANZI
JUDGE
02/12/2022

Delivered this 2nd December, 2022 in the presence of Mr. Lameck Buntuntu, learned State Attorney for 3rd and 4th Respondents, Mr. Alli Chamani, learned Advocate for the Applicants and the Applicants in person.



A handwritten signature in blue ink, appearing to be "I. K. Banzi".

I. K. BANZI
JUDGE
02/12/2022