

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**MISC. LAND APPLICATION NO. 92 OF 2022**

*(Originated from Land Case No. 29 of 2022 of the High Court of  
Tanzania Dodoma District Registry)*

**SHAFII HUSSEIN MNDEME.....APPLICANT**

**VERSUS**

**WATUMISHI HOUSING COMPANY..... 1<sup>st</sup> RESPONDENT**

**DODOMA CITY COUNCIL.....2<sup>nd</sup> RESPONDENT**

**THW HOUNARBE ATTORNEY GENERAL.....3<sup>rd</sup> RESPONDENT**

**RULING**

*Date of Last Order : 02/12/2022*

*Date of Last Order : 08/12/2022*

**Mambi, J.**

The applicant **SHAFII HUSSEIN MNDEME** in this matter has filled his application under Order XXXVII Rule 1(a) and section 68(c) of the Civil Procedure Code Cap 33 [R.E.2019]. The applicant in this application prayed for an interim order/temporary injunction to restrain the 1<sup>st</sup> respondent

from continuing constructing on unregistered land pending determination of the main suit.

During hearing, the applicant was represented by the learned Counsel Mr Robert Owino while the respondents appeared under the service of the learned Senior State Attorney Mr Camilius. The applicant counsel briefly submitted that the applicant is seeking for an order of this court to restrain the respondents from continuing construction over the disputed land pending the main suit that is in this Court.

In response, the respondents contented that the application has no merit since there is no any description on the area upon which the applicant is intending in his application. The learned State Attorney argued that the first respondent is developing an area that is in Ndejengwa and the applicant has not indicated the location of the area for his application.

I have considerably gone through the submission including affidavits by both parties on the application by the applicant and other records. The key issue to be determined is whether the applicant deserves an order for temporary injunction or not. The guiding principles on determining application of this kind are well enshrined under the Civil Procedure Code Cap 33 [R.E.2019]. One of the factor that is found in various case studies and the law is that for an application of injunction to sustain, there must be the matter pending at the court. I have no doubt whatsoever that there is a matter that is land Case No.29 of 2022. However, the applicant in his application has not properly indicated whether the alleged land that is being developed by the first respondent is the same land in dispute. Assuming that the land in dispute could be the land under which the

applicant is seeking for an interim injunction, still such order is not automatic. In other words, the presence of the matter in the court is not the only determining factor of granting injunction but there are factors that need to be also considered. The question is, if interim injunction is granted or not granted who will suffer more between the applicant and respondents?.

I wish to re-emphasize that, over the years the Court has developed a number of factors which will be taken into account when considering an application of this nature (interim injunction). The following are some of the factors:-

- (1) Whether the appeal has, **prima facie**, a likelihood of success;
- (2) Whether the refusal of staying execution is likely to cause substantial and irreparable injury to the applicant; and
- (3) Balance of Convenience. [Emphasis Added]

Worth also borrowing a leaf from one of the persuasive decision in ***Dalpat Kumar V/s Pralhad Singh, AIR 1993 SC 276***, where the court highlighted three factors to be met before an order for interim injunction is granted namely:

- a) **There is a serious disputed question to be tried in the court** and that an act, on the facts before the court, "there is probability of his being entitled to the relief asked for by the plaintiff/defendant
- b) The Court's interference is necessary to protect the party from the species of injury.

- c) That the comparative hardship on mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to occur from granting it”

There is no doubt that the records show that the applicant has filed his main suit in this court. However under the affidavit by the applicant and his submission, I have not seen any reasons advanced by the applicant to indicate how he is going to suffer if this application is not granted. Indeed as rightly submitted by the learned State Attorney, the applicant has not clearly indicated if the land in dispute is the same with the land that is undergoing construction by the respondent. Indeed, the applicant affidavit does not prove if there is any property in dispute in a suit that is in danger of being wasted, damaged as per Order XXXVII of the Civil Procedure Code Cap 33 [R.E.2019]. The applicant has not indicated if the refusal of granting an interim order is likely to cause substantial and irreparable injury to him. Additionally, the applicant has failed to show on how or if his application has **prima facie**, a likelihood of success and if the **balance of convenience** tilts on it.

It is well settled that for the court to grant temporary injunction order, the pre-conditions under the law must be satisfied. Some of these conditions as I highlighted above include existence of pending suit/appeal, balance of convenience and irreparable loss on the party. Looking on the balance of convenience, it is clear that in the matter at hand, there is no existence of any likelihood of inconvenience and irreparable loss on the part of the applicant if temporary injunction order is not granted.

I wish to state at this juncture that in my considered view the claim by the applicant that the applicant will suffer more than the respondent has no merit basing on my findings from the applicant submission. Basing on my findings and reasoning above, I am of the settled view that if this court will not grant the intended order, there is no prove to show that the applicant will be inconvenienced greatly. In other words, there no any looming danger of irreparable injury to the applicant if injunction is not granted.

There is no doubt basing on the circumstances of this matter, the balance of convenience does not tilts in favor of the applicant. Reference can be made to the decision of the curt in **TANZANIA FISHING PROCESSORS LTD. VERSUS CHRISTOPHER LUHANYILA, CIVIL APPLICATION NO. 13 OF 2003 (UNREPORTED)** where the Court of Appeal observed that:-

*"A balance of convenience to me, is struck when this Court gives an order that would not put either party in jeopardy. **The applicant would not be allowed to be in a position of flourishing in his business, as if there is no court order against him. On the other hand the respondent should not be the one denied to start afresh because of a stay of execution. There is also a need to protect him (respondent) from undue anxiety when he will carve his pound of flesh.** There has to be a way of making the applicant serious in prosecuting the appeal and should not be allowed to play cat and mouse with the respondent."* (emphasis supplied with)

Similarly, the principles of granting temporary order or injunction was established by the court in ***Atilio Vs Mbowe (1969) HCD 284***. In this case the court observed that it is an established principle that, what is basic in granting the temporary injunction is that:

- "a) There should be in existence a serious triable issue between the parties.*
- b) A looming danger of irreparable injury to the plaintiff and*
- c) On the balance of convenience, the existence of more sufferings by the plaintiff if the injunction is refused than would be the case with the defendant if granted".*

In a persuasive decision, Lord Diplock in ***Hardmore Productions Ltd. And Others v. Hammilton And Another, (1983) 1 A.C 191*** at page 220 made the following remarks:

*"An interlocutory injunction is a discretionary relief and the creation whether or not to grant it is vested in the High Court judge by whom the application for it is heard"*

More specifically, Order XXXVII of the Civil Procedure Code Cap 33 [R.E.2019] is very clear as to when temporary order or injunction can be granted. This order which deals with Cases in which temporary injunction may be granted or declaratory order, it provides that:

*"Where in any suit it is **proved by affidavit** or otherwise—  
(a) that any **property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit of or suffering loss of value by reason of its continued use***



*by any party to the suit, or wrongly sold in execution of a decree; or*

*(b) that the defendant threatens, or **intends to remove or dispose of his property** with a view to defraud his creditors, **the court may by order grant a temporary injunction to restrain** such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders”*

I have carefully considered all points and reasons advanced by the applicant in line with the submission made by the respondents' Counsel and I don't see the reason as to why the applicant should be granted temporary injunction for the reasons I have stated above. That said and in the circumstance, I am persuaded that the application by the applicant is non-meritorious and is accordingly dismissed. No orders as to costs.

Order accordingly.



**A. J. MAMBI**

**JUDGE**

**08/12/2022**

Ruling delivered this day of 8<sup>th</sup> of December, 2022 before the all parties.



**A. J. MAMBI**

**JUDGE**

**08/12/2022**