

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 32 OF 2022

(Arising from Misc. Civil Application No. 26 of 2022)

ANGELA IVO MAYEKAAPPLICANT

VERSUS

NORGAITTY MAYEKA.....RESPONDENT

RULING

MRUMA,J.

The Applicant has lodged an application for temporary injunction requesting this court to make an order restraining the Respondents, their agents, servants or whomsoever will be acting under their instructions from any act of removing, and/or evicting the Applicant from property at Plot. No. 284 Block G. Mbezi Medium density, Dar es Salaam.

The Application is pegged under the provisions of Order XXXVII Rule 1(a), Section 68 (c) (e) and Section 95 of the Civil Procedure Code (Cap 33 R.E. 2019).

Upon being served with the chamber summons together with the supporting affidavit, the Respondent filed a counter affidavit opposing the Application. Together with the counter affidavit, the Respondent also filed a notice of preliminary objection containing two points of objection namely:-

1. That the Application is devoid of merits as it does not meet the requirement of Order XXXVIII(1) of the Civil Procedure Code, and;
2. That the Application is unmaintainable for being brought under wrong provision of law.

Rule 1(a) of Order XXXVII of the Civil Procedure Code under which this application is pegged provide that;

" Where in any suit it is proved by affidavit by otherwise that any property in a suit is in danger of being wasted, damaged or alienated by any party to the suit or suffering continued use by any party to the suit, or by wrongly sold in execution of a decree.

"The court may be order grant a temporary injunction to restrain such act or make such other

order for 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”.

It has been contended by the Respondent’s counsel that the Application does not meet requirement of Order XXXVII Rule 1(a) of the Civil Procedure Code. I have carefully gone through the affidavit of Angela Ivo Mayeka in support of this application. I do agree with the learned counsel for the Respondent that the application does not meet the requirement of Order XXXVIII Rule 1 (a).

A temporary injunction order is an order prohibiting an action by a party in suit until there has been a trial or other court action. It is an interim remedy that is raised to reserve the subject matter or the suit.

In the present case the Applicant seeks an order to be issued to restrain the Respondent from removing or evicting her from the property on plot No. 284 Block G. Mbezi Medium Density area. The Applicant did not show that there is any pending suit between her and the Respondent or until when should the requested temporary injunction order last. Granting temporary injunction in such a situation will amount to permanently

determining any question that would be in issue between the parties in favour of the Applicant.

Secondly, in my view and as the issue between the parties arises from an execution order, the right thing to do for the Applicant was to apply for stay of execution and not to apply for temporary injunction.

These two points alone are sufficient to dispose of the matter by upholding the first preliminary objection raised and dismiss the Applicant's application for temporary injunction. As the matter traces its origin in a probate cause, I will make no orders as to the costs.



A handwritten signature in blue ink, consisting of a large, stylized 'M' followed by a horizontal line.

A.R.MRUMA

JUDGE

26/10/2022