

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**MISCELLNEOUS LAND APPLICATION NO. 08 OF 2022**

**YAHAYA HAMIS MBONEYE .....APPLICANT**

**VERSUS**

**1. TANZANIA NATIONAL ROADS AGENCY**

**(TANROADS).....1<sup>ST</sup>RESPONDENT**

**2. ZHEJIANG COMMUNICATIONS CONSTRUCTIONS**

**GROUP COMPANY LIMITED (ZCCC).....2<sup>ND</sup>RESPONDENT**

**3. THE ATTORNEY GENERAL.....3<sup>RD</sup>RESPONDENT**

**RULING**

6/5/2022 & 10/5/2022

**F. K. MANYANDA, J.**

Under section 2(3) of the Judicature and Application of Laws Act, [Cap. 358 R. E. 2019] and Section 95 of the Civil Procedure Code, [Cap. 33 R. E. 2019], the Applicant is moving this Court to grant orders for temporary injunction and maintenance of *status quo* of the parties. The orders are sought to restrain the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent and/or her agents, privies or whomsoever acting on their behalf from



digging rubbles or doing anything in respect of the area owned by the Applicant located at Hwazi Area, Kigondo Ward within Kasulu Town Council, Kigoma Region. The said orders are sought pending expiration of the 90 days' statutory notice with an intention to sue served to the 1<sup>st</sup> Respondent, 3<sup>rd</sup> Respondent, that is the Honourable Attorney General and the Honourable Solicitor General.

The application is made under certificate of urgency supported by an affidavit sworn by the Applicant, Yahaya Hamis Mboneye, it is countered by the 1<sup>st</sup> Respondent, in a counter affidavit sworn by Eng. Ngoko Manyi Mirumbe.

Both the affidavit and counter affidavit together with other records give the background of this matter as follows. That the Applicant, Yahaya Hamis Mboneye, is a lawful owner of the land in dispute which he developed by planting trees commonly known as the cypress. In 2021, the 2<sup>nd</sup> Respondent been authorized by the 1<sup>st</sup> Respondent earmarked the land in dispute for digging rubbles for road construction. According to the Applicant, while discussion with the Applicant were under way, the 2<sup>nd</sup> Respondent invaded the land in dispute and started extracting rubbles thereby destroying it. He issued a 90 days' notice.

The Respondent contention is that they did not invade into the disputed area but evaluated the same along with the land of his neighbours and established the amount for compensation to each of them but the Applicant is dissatisfied by the compensation amount.

Fearing continued wanton destruction of the land in dispute, the Applicant has come with this application pending an intended suit to be filed in this Court after expiration of the notice if no amicable agreement is reached. Such an application is known under common law as **"Mareva Injunction"**.

At the oral hearing of this application, the Applicant was represented by Mr. Abdulkher Ahmad, learned Advocate. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents enjoyed the representation services of Mr. Anold Simeo, learned State Attorney, and Mr. Paul Charles Simba, a Principal Officer of the 2<sup>nd</sup> Respondent appeared in person unrepresented.

Submitting in support of the application, Mr. Abdulkher adopted the chamber summons and its supporting affidavit and argued that the Applicant is applying for injunction order pending expiry of the 90 days' notice on grounds that the 2<sup>nd</sup> Respondent, with authorization from the 1<sup>st</sup> Respondent, has invaded the land in dispute and is continuing to dig

rubbles, therefore, permanently destroying it. Hence an order for status quo is required. He stated further that in this matter there is no dispute over ownership of the land in dispute that it belongs to the Applicant and this application is made under special circumstances that there is an impediment to filing of a suit due to requirement of the 90 days' statutory notice. Mr. Abdulkher argued that the nature of this application is also known as mareva injunction.

The Counsel submitted further that the application meets the realms of mareva injunction because the land in dispute belongs to the Applicant. That he will suffer irreparable loss if digging of rubbles is continued. Moreover, the Counsel stated that the land in dispute is not in a road reserve, hence an injunctive order cannot affect the road construction because the Respondents may either wait or find an alternative area.

As to conditions for grant of temporary injunction, Mr. Abdulkher submitted that mareva injunction been one of the temporary injunctions, is subject to the tests set out in the case of **Atilio vs. Mbowe** [1969] HCD n. 284. In that case three conditions were set for grant of temporary injunction namely: -

- i. That the applicant must demonstrate a *prima facie case* by showing that there is a serious question to be tried on the alleged facts and probability
- ii. That the applicant will be entitled to the relief prayed; he must demonstrate that the courts interference is necessary to protect the applicant from any kind of injury which may be irreparable before his legal rights are established; and
- iii. The balance of convenience whether there will be greater hardship or mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from granting it.

As regard to the first test, Mr. Abdulkher argued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents invaded the Applicant's land an act which raises serious question of law likely to entitle the Applicant to the reliefs asked for in the application. He argued further that the second test is met because the Applicant's efforts to stop the Respondents by amicable discussions has proved futile, hence interference of this Court is necessary in order to prevent further destructions. The Counsel argued also that the third test of balance of convenience is also met because it is the Applicant who will suffer the most, he is the owner of the plot and the 1<sup>st</sup> and 2<sup>nd</sup>



Respondents have nothing to lose. He prayed for the application to be granted with costs.

On his side, Mr. Simeo for the Respondents adopted the counter affidavit by the 1<sup>st</sup> Respondent and submitted opposing the application arguing that the application falls short of meeting the conditions for grant of mareva injunction.

The State Attorney submitted that on 22/05/2021, a meeting of persons owning plots of land at the place earmarked for digging rubbles for road construction, including the Applicant, was convened by the District Commissioner. All the land owners surrounding the Applicant's land agreed to surrender their lands subject to compensation after evaluation. Hence, there followed evaluation which was conducted establishing the value of each plot including that of the Applicant which was evaluated on 01/05/2021 and his valuation form signed on his behalf by the Village Chairman because he was absent. Each of the land owners accepted the valuation and received compensation except the Applicant.

According to the State Attorney, the Applicant is not refusing to surrender his plot but he is dissatisfied by the compensation amount

which was established according to the valuation standards used in the country. He added that the Government has started construction of the road and that refusal by the Applicant is a hindrance

Then, the State Attorney argued supporting the position of the law on the conditions for grant of temporary injunctions as spelt in **Atilio vs. Mbowe (supra)** cited by the Counsel for the Applicant. He also cited the case of **Registered Trustees of Anglican Church of Western Tanganyika vs. Bulimanyi Village Council and 2 Others**, Misc. Civil Application No. 01 of 2022 (unreported) which referred to the said conditions. The State Attorney argued that the Applicant has not managed to demonstrate that he will suffer irreparable loss because the land valuer recognized the owners of the affected plots, the Applicant is one of them. Moreover, the Applicant is not refusing to surrender his plot but rather dissatisfied with the compensation amount, an issue which is negotiable, therefore, there is no serious legal issue.

As regard to the second condition, Mr. Simeo submitted that the probability of success of the reliefs is minimal because the land has been already evaluated to Tshs. 3,918,000/=. On the condition of necessary interference by the Court, the State Attorney was of the views that it is the Respondents who stand to suffer harder than the Applicant if the



injunction order is granted. He gave the reason that since implementation of the contract has started, a contract involving a huge amount of money about Tanzanian Shillings 72 billion will be halted, the consequences of halting the same will result into breach of the said contract and irreparable loss due to variations or damages.

The State Attorney paraded other cases without elaborations namely; **Tanzania Sugar Producers Association vs. Ministry of Finance of the United Republic of Tanzania and Another**, Misc. Civil Case No. 25 of 2003, **Jetish Ladwa vs. Yono Auction Mart Company Limited**, Misc. Land Application No. 26 of 2017 and **Daudi Mkwaya Mwita vs. Butiama Municipal Council and Another**, Misc. Land Application No. 19 of 2020 (both unreported). He prayed the application to be dismissed with costs.

In rejoinder, Mr. Abdulkher reiterated his submissions in chief and added that the Applicant did not attend the meeting convened by the District Commissioner and that he did not refuse to sign the valuation form but was not present at the evaluation exercise and his form was signed by the Village Chairman. Equally, the Applicant did not refuse to be paid compensation but it was due to his absence. The Counsel also submitted





that there is no evidence showing that the Applicant is ready to surrender his plot.

He insisted that it is not proper to base the balance of convenience on amount of money for compensation because the issue is on the rights of the Applicant to his land. Then, the Counsel distinguished the case of the **Board of Trustees of Church of Anglican (supra)** arguing that in that case there was dispute over ownership as opposed to the instant case where ownership of the disputed land is that of the Applicant.

Those were the submissions by the Counsel for both parties. From their equally urging submissions, I find the issue for determination is whether this application is meritorious.

As it can be seen from the record of this matter, the application is a specie of temporary injunction orders which are exceptional to the general rule on temporary injunction orders that are granted pending determination of an already filed suit in court. Such temporary injunction orders are granted without a pending suit in court.

Under common law, such temporary orders are known as "Mareva Injunctions" having roots in the famous case of **Mareva Compania Naviera SA vs. International Bulk Carriers SA** [1980]1 All ER 213



where his Lordship Denning accorded a broader interpretation to section 25 of the Judicature Act of 1873 which provided for grant of temporary injunctions pending suits filed in courts to cover grant of interim injunctions in anticipatory suits.

In our jurisdiction the reasoning in the Mareva's case has been followed in plethora of authorities including the cases of **Nicholas Nere Lekule vs. Independent Power (T) Limited and The Attorney General**, Miscellaneous Civil Cause No. 117 of 1996 and **Tanganyika Game Fishing and Photographic Limited vs. Director of Wildlife and Two Others**, Miscellaneous Civil Cause No. 48 of 1998, (both unreported) to mention a few.

In these cases, Honourable Judges Kaji and Katiti, as they then were, held that a court has jurisdiction to issue a temporary order where there is no pending suit under the provisions of section 2(3) of the Judicature and Application of Laws Act and Section 95 of the Civil Procedure Code.

On this position of the law see also the cases of **Tanzania Sugar Producers Association vs. The Ministry of Finance of the United Republic of Tanzania and Another**, Miscellaneous Civil Case No. 25 of 2003 (unreported), **Issa Selemani Nalikila and 23 Others vs.**

**Tanzania National Roads Agency and Another**, Miscellaneous Land Application No. 12 of 2016 (unreported), **Abdallah M. Malik and 545 Others vs. Attorney General**, Miscellaneous Land Application No. 119 of 2017 (unreported) **Jetish Ladwa vs. Yono Auction Mart and Company Limited**, Miscellaneous Land Application No. 26 of 2017 (unreported) and **Ugumba Igembe and Another vs. The Trustees of the Tanzania National Parks and Another**, Miscellaneous Civil Application No. 01 of 2021 (unreported) and **Daudi Mkwaya Mwita vs. Butiama Municipal Council and Another**, Miscellaneous Land Application No. 69 of 2020, to mention a few.

In the latter case, it was held that Mareva Injunction cannot be granted where there is a pending suit in court because it is an application obtaining a legal standing to institute a suit where institution of the same is prevented by some legal impediments.

In this application, it has been demonstrated enough that the suit cannot be brought in court until the period of the statutory 90 days' notice elapses. The application is, therefore, in the right track and this Court has jurisdiction to grant the same.

However, as rightly submitted by the Counsel for both sides, Mareva Injunctions been a specie of temporary injunction orders, is subject to tests applied to other kind of temporary injunctions. The tests for temporary injunctions were expounded in the famous case cited by both Counsel of **Atilio vs. Mbowe** (supra). In that case the three conditions submitted by both counsels were expounded, it is a requirement of the law that the same must be cumulatively established prior to grant of temporary injunctions;

The next question is whether the application meets the test for grant of temporary injunction.

As regard to the first test that the applicant must demonstration a *prima facie case* by showing that there is a serious question to be tried on the alleged facts and probability that the applicant will be entitled to the relief prayed, the Counsel for the Applicant submitted that the application meets this condition because there is no dispute over ownership of the land in dispute. The State Attorney on the other hand conceded that it is true that the land in dispute belongs to the Applicant. It follows, therefore, that in case a suit is filed, there is issue to be determined on ownership, is the same positions are maintained by the

parties. If such a suit is filed, the Applicant has high probability of been declared as lawful owner of the land in dispute.

Regarding the irreparable loss and the balance of convenience on hardships for either party likely to suffer if the temporary orders are granted, the Counsel for the Applicant submitted that it is the Applicant who is likely to suffer most if the temporary orders for maintenance of status quo are not granted than the Respondents if the same are granted.

He argued further that the second test is met because the Applicant's efforts to stop the Respondents by amicable discussions has proved futile, hence interference of this Court is necessary in order to prevent further destructions.

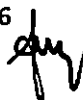
The State Attorney argued that the Applicant has not managed to demonstrate that he will suffer irreparable loss because the land valuer recognized the owners of the affected plots.

In rejoinder the Applicant's Counsel conceded that in fact the land in dispute was evaluated. However, he contends that the Applicant was absent when the said evaluation was carried out.

In the circumstances, I find that it is not disputed that land in dispute was evaluated and its value was established. My perusal of the valuation report attached to the counter affidavit shows that the land in dispute was evaluated at Tanzanian Shillings 5, 987,677.20 only. The Counsel for the Applicant argues that if the injunctive orders prayed for are not granted, then the Applicant stands to lose because the land will be destroyed permanently. On the other hand, the State Attorney says the valuation report will take care of the loss. In rejoinder, the Applicant's Counsel was of the views that monetary value cannot be used to atone the Applicant rights to own the land.

In my views, the State Attorney is right. I say so because the purpose of valuation of the land was to establish its value and preserve its value as of the evaluation date. Such value is to be used for purposes of conveyance, compensation or mortgaging. A value is deemed to be the actual land in monetary form. It is my firm views that after evaluation, the value of the land in dispute was established as it stood on the evaluation date. The said value is equalized to the land in issue:

Can in such circumstances be said that the Applicant will suffer irreparable loss in case the injunctive orders are not granted? The answer, in my opinion, is in the negative. I say so because, the



Applicant will recover his property in monetary form established by the valuation report. The Counsel for Applicant contended that the Applicant was not involved during valuation process, I think this does not prevent him from obtaining his rights by way of compensation which he has the right to challenge the amount in case he is dissatisfied. The valuation report preserves the value of the land in dispute. In the result I find that the second condition for grant of injunctive order is not met.

As regard to the third condition, if placed on a weighing machine, it was argued by the Counsel for the Applicant that his client will suffer more than the Respondents if the injunctive orders are not granted. On the other hand, the State Attorney intimated that it is the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who will be hit with the suffering most because there is a contract which is under implementation and that stopping of construction may lead to damages due to breach of contract.

I agree with the State Attorney that it is the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who will suffer the most if the injunctive orders are granted. The reasons is as explained above that after evaluation of the land in dispute, its value is preserved. In case a suit is filed by the Applicant and is decided in his favour, then he can recover its value in monetary form without difficulties. But in case the contract is breached or delayed the



same may lead to damages or variations which may lead to more costs to them.

In the result, it is the findings of this Court that this application fails to meet the second and third conditions for grant of Mareva Injunction.

Having found that this application fails to meet the conditions for grant of Mareva Injunction, I do hereby dismiss the same for want of merit with costs. It is so ordered.



  
**F. K. MANYANDA**

**JUDGE**

**10/5/2022**