

IN THE HIGH COURT OF TANZANIA

[DODOMA DISTRICT REGISTRY]

AT DODOMA

MISC. LAND APPLICATION NO. 19 OF 2021

[Originating from Land Case No. 3 of 2021 High Court of Tanzania at Dodoma]

CHRISTINA FRANCIS MDENGEDE APPLICANT

VERSUS

PHILIPO JOSEPH LUKONDE 1ST RESPONDENT

FARAJI ALLY SAID 2ND RESPONDENT

RULING

28 September, 2021 & 8th March, 2022

M.M. SIYANI, J.

The applicant herein is seeking injunctive orders against the respondents, their agent, workers, servant, successors in title and any other person legal or natural acting under the instruction of the respondents from making disposition of any kind whatsoever or meddling with the ownership of the landed property located at PLOT NO.60 BLOCK 14 WEST CHINANGALI area in Dodoma, pending the hearing and disposal of land case No. 3 of 2021 of this court.

The application is supported by an affidavit of the applicant herself one Christina Francis Mdengede. The deposed facts indicates that the 1st respondent herein is her husband and has disposed of the matrimonial property on the said plot to the 2nd respondent without her consent. That the 2nd respondent has already obtained eviction orders from this court after she unsuccessfully instituted objection proceedings against execution order in respect of Land Case No.14 of 2016 where the 2nd respondent successfully sued the 1st respondent claiming for, among the orders, vacant possession of the suit property. The 2nd respondent's counter affidavit is to the effect that the disputed property is not a matrimonial property as it is registered in the name of the 1st respondent and is for commercial not residential use as claimed in the affidavit.

The application was disposed of by oral hearing. The applicant was presented by Mr. Kidumage, learned Advocate. The 1st respondent was represented by Ms. Calorine Lyimo and the 2nd respondent was represented by Mr. Godfrey Wasonga, learned advocate. In the nutshell the Counsel for the applicant reiterated the content of the affidavit and explained her fear that if not restrained, by the execution proceedings that are ongoing, the 2nd respondent might change the ownership of the dispute property. The learned counsel cited the case of **Atilio vs Mbowe (1969) HCD 284** which gave the criteria for grant of temporary injunction and argued that this application has met the same. These are existence of triable issues, the possibility of the applicant suffering irreparable loss if the orders are not granted and the balance of convenience tilting in favour of the applicant. The learned counsel is of the view that whether the dispute property is matrimonial property is a

triable issue and since the applicant and the respondent live in the dispute house, their eviction shall cause their family to suffer irreparable loss. He argued further that on balance of convenience the applicant and family will be more inconvenienced than the 2nd respondent if the orders sought are not made.

On her part, counsel for the 1st respondent supported the application and they did not even file counter affidavit. Counsel for the 2nd respondent argued that the issue involved in this case has reached to the Court of Appeal and was disposed of in favour of the 2nd respondent. That the dispute property is not matrimonial asset as it is registered in the name of the 1st respondent alone and it is for commercial not residential use.

Having heard both parties, the issue for my determination is whether this application meets the conditions for grant of the sought orders as outlined in the case of **Atilio vs Mbowe** (supra). On the first criterion, it is my view that the issue whether the dispute property is a matrimonial property raises triable issues worth consideration of the court. Therefore, the first criterion has been met.

The second precondition is proof of the applicant likely hood to suffer irreparable loss. The loss envisaged by the applicant is deprivation of family residence. However, according to the title deed of the dispute land, the plot use is solely for commercial purpose. This means it is not expected that the applicant and her family reside on that plot. I hold that

in the circumstances, no loss shall be suffered in terms of family shelter. Another set of loss stated in the affidavit is denial of income generated from the tenancy leases which is used for family up keeps. I find that loss of this nature capable of being atoned by compensation and cannot be categorized as irreparable. It follows, therefore, that the second criterion has not been met.

With regard to the third condition, it is my view that the 2nd respondent purchased the land with a purpose. He has the right to utilized it unless it is proved that the contract was fraudulent which is not the case here. Therefore, the balance of convenience tilts in favour of the 2nd respondent. The third criterion has not been met too.

It follows, therefore, that the applicant has failed to meet all the prerequisite conditions for grant of injunctive orders. I dismiss the application forthwith with cost.

It is so ordered.

DATED at DODOMA this 8th day of March, 2022



M. M. SIYANI
JUDGE