

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

MISC. LAND APPLICATION NO. 135 OF 2021

DEBORA MARTINE MBURAMAJU & 31

OTHERS.....APPLICANTS

VERSUS

KARAGWE DISTRICT COUNCIL.....1ST RESPONDENT

REGIONAL COMMISSIONER KARAGWE REGION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

RULING

16th February & 25th February 2022

Kilekamajenga, J.

The 32nd applicants in this application approached this court seeking the following orders:

- 1. An interim injunction order against the 1st and 2nd respondents from ordering the applicants to vacate from their land pending the institution of a suit after the expiry of period of demand notice issued to the respondents and the same to cover even the period after filing the main suit until determining of the same;*
- 2. Any other and further relief this court may deem, just to grant.*

The application was made under **Section 2(3) of the Judicature and Application of Laws, Cap 358 RE 2019**. The same was brought under certificate of urgency and supported with an affidavit deposed by the applicants' advocate, Mr. Alli Chamani. The applicants' affidavit states that, the applicants occupy pieces of land situated at Kashanda village within Nyakahanga Ward in

Karagwe District with Kagera Region. In November 2021, the 1st and 2nd respondent issued an order to evict the applicants from their pieces of land. As the respondents cannot be sued in court until the expiry of the statutory period of 90 days, the applicants preferred the instant application.

The case was finally scheduled for hearing, the applicants were represented by the learned advocate, Mr. Alli Chamani whereas the respondents enjoyed the legal services of the learned State Attorney, Mr. Lameck Butuntu. In his oral submission, Mr. Chamani argued that, the instant application was preferred pending the institution of the suit before the expiry of the notice to sue the respondents. He argued further that the same procedure was applied in the case of **Tanzania Electric Supply Company (TANESCO) v. Independent Power Tanzania Limited and two others [2000] TLR 324**. Also, the same stance was taken in the case of **Igunga Igembe and another v. The Trustees of the Tanzania National Parks and another Misc. Civil Application No. 1 of the 2021**, High Court at Mbeya. According to Mr. Chamani's submission, the interim injunction will not prejudice the respondents. If the injunction is not granted, the applicants will have no reparable damages because they are likely to lose their properties.

In response, the learned State Attorney, Mr. Butuntu objected the application because the Mareva injunction is always granted where there is no alternative

way for the applicants to pursue their rights or where there is a lacuna in the law. It may also be invoked where the property is in the threat of being shifted from the jurisdiction of the court or where the order of eviction is given by the person who has no such an authority. He cemented the argument with the case of **Tenende Budotela and another v. AG, Civil Appeal No. 27 of 2011**. In this application, the applicants cannot stop the responsible authorities to exercise its powers. He further referred the court to the case of the **Board of the Registered Trustees of Lawate Fuka Water Supply Trust v. RUWASA Siha District and two others, Misc. Civil Application No. 27 of 2021**. The counsel further argued that the order of interim injunction may cause breach of peace.

When rejoining, the counsel for the applicants had no substantial submission.

Having considered the applicants' affidavit, the submission from the parties and circumstances of the case, it is pertinent now to address the issue at hand. The major issue is whether the applicants are entitled to an interim injunction against the respondents during the period when the notice of 90 days is still waiting maturity. The counsel for the applicants invited the court to invoke the mareva injunction to restrain the 1st and 2nd respondent from evicting the applicants from their land. I am well alive on the principle behind the mareva injunction that, this court may issue an interim order even where the applicants are waiting maturity

of the 90 days notice. See the case of **Igumba Igembe** (supra). Also, according to the case of **Atilio v. Mbowe (1969) HCD 284**, the court may issue an interim order where the applicant is likely to file an arguable case; or where the applicant is likely to suffer irreparable damages in case the interim order is not granted.

However, the principle under Mareva injunction must be carefully applied because there is a danger of imposing an interim injunction anticipation the filing of the main suit. But, the applicants may not institute the anticipated suit after securing the injunction of the court. Also, the court must see the damager ahead of imposing such an injunction while there is no suit pending before the court. In the case at hand, the applicants issued notice of suing the respondents on 21 November 2021, the same notice was received by the office of the Attorney General on 24/11/2021. Therefore, the 90 days notice expired on 24/02/2022 but there is no evidence suggesting that the applicants filed the main suit. In my view, they are not serious about this matter.

Furthermore, the instant application is accompanied with documents suggesting that the applicants have encroached into a village which was specifically dedicated for pastoralists. The applicants, being farmers have been in perennial disputes with the pastoralists leading to breach of peace. This fact, which is evident on record, cannot be jettisoned by this court without a word. While

mareva injunction may be applied in a case of this nature, however every case must be treated according to its facts and merit. Furthermore, the court is not well informed about the conflict that pushed the 1st and 2nd respondents to order the eviction. An interim order should not be used to shield unlawful acts of the applicants rather than protecting the rights. Based on the reason stated above, I find no merit in the application. I hereby dismiss the same with costs. It is so ordered.

DATED at **BUKOB** this 25th day of February, 2022.


Ntemi N. Kilekamajenga
JUDGE
25/02/2022


Court:

Ruling delivered this 25/02/2022 in the presence of the learned state attorney, Mr. Gerald Njoka (SA) and some of the appellants. Right of appeal explained.


Ntemi N. Kilekamajenga
JUDGE
25/02/2022
