

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 13 OF 2023

(Originating from Land Case No. 15 f 2021)

LONG'IDARE NYANGUSI..... APPLICANT

VERSUS

MLANGARINI VILLAGE COUNCIL.....1ST RESPONDENT

ARUSHA DISTRICT COUNCIL.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

RASTA LONGOINE.....4TH RESPONDENT

ELIA PALLANGYO.....5TH RESPONDENT

MEMINAKI NGUVUMALI.....6TH RESPONDENT

REUBEN MILLIA.....7TH RESPONDENT

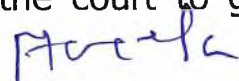
PETRO MILLIA.....8TH RESPONDENT

RULING

27/02/2023 & 27/03/2023

MWASEBA, J.

This is uncontested application which was brought under certificate of urgency. The applicant is seeking for an order of the court to grant



temporary injunction to restraint the Respondents and their agents, workmen and representative from entering, cultivating and or conducting anything that affects the Applicant's use of the land, pending hearing and final determination of the main case.

The application was brought under **Order XXXVII Rule 1 (a) and Section 68 (c) of the Civil Procedure Code**, Cap 33 R.E 2019. It was supported by a sworn affidavit of the applicant himself. The respondents did not file any counter affidavit.

When the application was called for Mention on 27/2/2023, Mr Bashir Ibrahim Mallya, learned counsel represented the applicant whereas Mr Mkama Msalama, learned counsel represented the 1st to 3rd respondents and Mr Joseph O. Shangay represented the 4th to 8th respondents.

On behalf of the 1st to 3rd respondents, Mr Mkama stated that he is alerted that the 4th to 8th defendants have been mentioned to build permanent structures at the disputed land. Being an officer of the court, he advised for the same to be stopped so that they can concentrate to the main case. Thus, he did not object the application.

On his side, Mr Shangay learned counsel replied that they partly admit to the application. He stated further that, they will stop constructing permanent structures at the disputed land that will change the structure

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of the disputed land. However, he prayed to be allowed to proceed with cultivation pending the determination of the main case.

Submitting on behalf of the applicant, Mr Mallya conceded to the proposed position of the counsel for the 4th to 8th respondents. As for the disputed land he agreed for the same to be used for agricultural activities but parties should respect boundaries.

It should be noted that temporary injunction is an equitable relief issued before or during trial for the sole aim of preventing an irreparable loss or injury from occurring before the court decides the case. This was well stated in the case of **Abdi Ally Salehe vs Asac Unit and 2 Others**, Civil Revision No. 3 of 2012 (unreported) that:

"The object of this equitable remedy is to preserve the pre-dispute state until the trial or until a named day or further order."

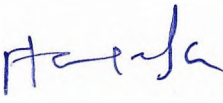
Having gone through the submission of the parties via their counsels, I join hands with them that cultivation activities will not cause irreparable loss or injury to either party herein. Thus, it is wise to allow the parties to keep on using the disputed land on agriculture activities pending determination of the main case. Further, it has not disputed by parties that the 4th to 8th defendants should stop building permanent structures

to the disputed land. Indeed, this will cause loss or injury to the parties depending on the final verdict of the main suit. That being the case, *status quo* should be maintained in terms of building permanent structures pending the determination of the main case.

Ordered accordingly.

DATED at ARUSHA this 27th day of February 2023.




N.R. MWASEBA
JUDGE
27/02/2023