

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

**(SHINYANGA DISTRICT REGISTRY)**

**AT SHINYANGA**

**MISC. CIVIL APPLICATION NO. 26 OF 2022**

**FRANSIS BULUGU BUNDU AND 82 OTHERS....APPLICANTS**

**VERSUS**

**OXFAM ..... 1<sup>st</sup> RESPONDENT**

**CASEC ..... 2<sup>nd</sup> RESPONDENT**

**SUDI DAUDI..... 3<sup>rd</sup> RESPONDENT**

**ABAJAJA COMPANY LIMITED..... 4<sup>th</sup> RESPONDENT**

**SHINYANGA MUNICIPAL COUNCIL..... 5<sup>th</sup> RESPONDENT**

**ATTORNEY GENERAL..... 6<sup>th</sup> RESPONDENT**

**RULING**

*14<sup>th</sup> & 20<sup>th</sup> February, 2023*

**S.M. KULITA, J.**

The Applicants herein through their Advocate, Mr. Paul Kaunda filed this application seeking for two prayers; first, *mareva*



injunction, that the Respondents be restrained from evicting the Applicants from Block "SS" (LD) (Formally Farm No. 12) located at Butengwa area within Shinyanga Municipality pending maturity of the 90 (ninety) days' Statutory Notice to sue the Government (5<sup>th</sup> Respondent). Secondly, the Applicant sought for injunction pending determination of the main suit against the Respondents.

On the 14<sup>th</sup> day of February, 2023 the matter was scheduled for hearing the Preliminary Objection raised by the Mr. Solomon Lwenge, State Attorney, for the 5<sup>th</sup> and 6<sup>th</sup> Respondents.

Before hearing the said Preliminary Objection Advocate for the Applicants, Mr. Kaunda raised a concern that it should not be heard as the 3<sup>rd</sup> Respondent does not appear and has not yet filed a Counter Affidavit. He proposed the hearing to be adjourned till the time that the 3<sup>rd</sup> Respondent will be properly summoned and file the Counter Affidavit.

On the other hand the State Attorney and Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents, Mr. Geoffrey Tuli, Advocate submitted that the fact that the court had already fixed the matter for hearing, it means it had already considered that scenario. They added that, the said 3<sup>rd</sup> Respondent has nothing to do in this Preliminary Objection. The Counsels further stated that, the fact that the



prescribed period of 90 (ninety) days' Statutory Notice for the Applicant to sue the Government is due, there is no need to proceed with arguing this matter as it has already been overtaken by event.

Mr. Kaunda further submitted that the expiry of the 90 (ninety) days' Statutory Notice to sue the Government does not make this application overtaken by event as the Applicants have two prayers in this application. He mentioned them being; first, *mareva* injunction which is subject to the said 90 days' notice; secondly, injunction pending determination of the main suit.

It is undisputable that *mareva* injunction is used to be lodged and determined before filing of the main suit. It is an interim injunction order preceding the institution of a suit. Therefore, before entertaining it, the court must be satisfied that there is no pending suit. This was also pointed out in **Daudi Mkwana Mwita v Butiama Municipal Council & AG, Misc. Land Application No. 69 of 2020, HC Musoma (unreported)**.

It is an application pending obtaining a legal standing to institute a suit. It may be issued where, the applicant cannot institute a law suit because of an existing legal impediment. Since the instant application was lodged pending the expiry of the 90 days' notice to



sue the Government which impends the institution of a suit by the applicant, there is no doubt that the application falls within the realm of *mareva* injunction.

As for the matter at hand the application for *mareva* injunction was for this court to make an order for restraining Respondents from evicting the Applicants from Block "SS" (LD) (Formally Farm No. 12) located at Butengwa area within Shinyanga Municipality pending maturity of the 90 (ninety) days' Statutory Notice for them to sue the Government particularly the 5<sup>th</sup> Respondent. However, while this matter was still in progress, the said prescribed period for the Applicants to sue the Government had already matured since October, 2022.

As averred by the Counsel for the 5<sup>th</sup> and 6<sup>th</sup> Respondents, Mr. Solomon Lwenge, State Attorney and Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent, Mr. Geoffrey Tuli, Advocate that, the fact that the prescribed period of the 90 (ninety) days' Statutory Notice for the Applicant to sue the Government is due, there is no need to proceed with arguing this matter as it has already been overtaken by event.



Fortunately, there is no dispute on this from Mr. Kaunda, Advocate for the Applicants. Thus, as for now, the application for *mareva* injunction has no legs to stand, hence dismissed.

As for the application for injunction which is the 2<sup>nd</sup> prayer by the Applicants, I have this to say; though the Respondents' counsels said nothing about it, my concern is that, it was wrong for the Applicants to seek for the remedy of injunction pending determination of the main suit while there is no suit which is pending in court. It is a principle of law that there should be no application for injunction if there is no main suit prior filed.

The law on temporary injunctions is spelt out under **Order XXXVII, Rule 1 of the Civil Procedure Code** provides;

*"Where in any suit it is proved by affidavit or otherwise-*

*(a) that any **property in dispute in a suit is in danger** of being wasted, damaged, or alienated by any party to the suit or suffering loss of value by reason of its continued use by any party to the suit or wrongly sold in execution of a decree or;*

*(b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors;*



*the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of 5 the property as the court may deem fit, **until the disposal of the suit or until further orders**". (emphasis is mine)*

From the above quoted provisions of the law, it can be deduced that **the purpose of the temporary injunction order is to preserve the status quo of the suit property until the parties' rights in the subject matter are determined in the main suit.** The conditions to be satisfied by a party seeking for the said temporary injunction order have been discussed in several cases including the famous case of **Atilio Vs. Mbowe (1969) TLR 17** which laid down the conditions for a grant of an order of a temporary injunction, one of them being the presence of a **prima facie case** with a probability of success. See also **OVERSEAS INFRASTRUCTURE ALLIANCE (INDIA) PVT LTD AND PRATIBHA INDUSTRIES LTD CONSORTIUM V. DAR ES SALAAM WATER AND SEWERAGE AUTHORITY (DAWASA), Misc. Civil Application No. 237 of 2020, High Court, DSM District Registry**, at page 4 last paragraph in which it was held



that application for the interim order of injunction should be lodged subsequent to the filing of the main suit.

Therefore, the fact that the Applicants herein seeks for an interim order of injunction while they have no main case before this court, the application at hand cannot stand.

In fact the Applicants were not supposed to combine the applications for *mareva* injunction and that of temporary injunction pending determination of the main suit in one case (application). The later one was supposed to be filed separately, subsequent to the filing of the main suit. Thus, as the later prayer for injunction has been pre-maturely sought by the Applicants, it cannot be determined.

In upshot this matter is accordingly **dismissed** in its entirety for the above said reasons. No order as to costs.



  
**S.M. KULITA**  
**JUDGE**  
**20/02/2023**



