

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. CIVIL APPLICATION NO. 12 OF 2023

PETRO POTINI PETER.....APPLICANT

VERSUS

THE DISTRICT DIRECTOR

MBULU TOWN DISTRICT COUNCIL.....1ST RESPONDENT

M/S CHINA SICHUA INTERNATIONAL.....2^N RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

21/9/2023

BARTHY, J.

The applicant in this matter had moved this court with the application made under section 2(3) of the Judicature and Application of Law Act Cap 358 R.E. 2019 seeking for the following orders;

- 1. That, this honourable court be pleased to restrain the respondents and any other person acting on their behalf from entering and damaging the applicant's crops and interfering with the applicant use of the house pending the hearing and determination of the main suit and application for temporary injunction to*



be filed after expiry of 90 days statutory notice of the intention to sue the government notice of the application inter-parties.

2. Any other order that the Honourable High Court deem necessary to grant.

The application was made under the certificate of urgency, supported with the amended affidavit of the applicant. The respondents filed their counter affidavit to contest the application.

In the course of hearing of this matter, the court learned that 90 days has lapsed pending determination of this application. Thus, the court invited the parties to address the court on competence of this matter before this court.

At the hearing of the issue raised by this court, Mr. Kalori Chami learned advocate appeared for the applicant and for the first and third respondent appeared Mr. Hans Mmbando learned state attorney. The second respondent did not enter appearance.

Mr. Chami on his arguments he stated that, since this is mareva injunction due to 90 days impediment to sue the government. Therefore, for 90 days have lapsed, then the application is overtaken by events.



He went on arguing that, despite the fact that the second respondent was absent, should the court find that she will not be prejudiced, then it may proceed to make orders without costs as the matter was overtaken by events.

Mr. Mmbando on his argument he argued the court should proceed to give its ruling if it finds that the second respondent will not be prejudiced since the matter is overtaken by events.

The court having heard the arguments of both sides with respect to the issue raised, has the following to say;

Generally, the application of this nature intends to seek an interim order of the court to prevent or restrain the disposal of assets by the other party which form part of the subject matter of the suit to be filed against the government.

Mareva application is the common law remedies emanating from famous case of **Mareva Compania Naviera SA v. International Bulkcarriers SA** [1980]1All ER 213, where the court cautiously considered the order of freezing an asset subject to the anticipatory case.

Its inception in Tanzania was through section 2(3) of Judicature and application of laws Act Cap 358 R.E. 2019. Also, in the case of **Daud**



Makwava Mwita v. Butiama District Commissioner and another, Misc. Land

Application No. 69 of 2020, High Court at Musoma held that;

Mareva Injunction may be applied where an applicant cannot institute a law suit because of an existing legal impediment for instance where the law requires that a statutory notice be issued before a potential plaintiff can institute a suit.

It is the requirement of the law under section 6(2) of the Government Proceedings Act, Cap 5 R.E. 2019 that, before instituting any suit against the government, there must be 90 days' notice issued.

However, mareva application is not among the matters covered with the requirement of section 6(2) of the Government Proceedings Act, rather it intends to grant an interim order pending filing of the suit after the lapse of 90 days impediment to the applicant. See the case of **Daniel Zakayo Sule and 2362 others v. Hon. Attorney General and 3 others**, Land Application No. 71 of 2022, High Court at Tanga.

Going through the affidavit in support of the application, it states that the applicant has served the third respondent with the 90 days' notice and he has attached the said notice to prove its existence.



The importance of granting interim order in mareva application is to place parties in the same position pending filing of the main suit. As decided in the case of **Trustees of Anglican Church Diocese of Western Tanganyika v. Bulimanyi Village Council and others** Misc. Civil Application No. 1 of 2022, high court at Kigoma, where my brother Manyanda J held that;

The principles in temporary injunction applications are applicable to Mareva Injunctions because both have the same purpose of holding the parties to the same position before the suit is filed.

With respect to this matter, the applicant had issued 90 days' notice to the third respondent on 13/3/2023 as stated on paragraph 8 of the amended affidavit supporting the application and the said notice annexed to the affidavit as the proof.

In essence the notice had expired on or before 12/6/2023. Being mindful that the period of 90 days has lapsed, then the impediment against the applicant do not exist anymore. This has been the position of the court as stated in the case of **Magreth Nuhu Halimeshi v. Kigoma Ujiji Municipal Council & others**, Misc. Land Application No. 17 of 2021 where




it was held that, legal impediment is on 90 days' notice, upon its expiry the application is then overtaken by events.

For the foregoing reasons, I proceed to strike out the application having considered that the second respondent will not be prejudiced with this decision of the court. I give no order as to costs since the issue was raised by court suo mottu.

It is so ordered.

Dated at Babati this 20th September 2023.




G. N. BARTHY
JUDGE

Delivered in the presence of the applicant in person, Mr. Kalori Chami the advocate for the applicant and Mr. Hans Mmbando learned state attorney for the first and third respondent and in absence of the second respondent.