IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 61 OF 2023

GILEAD NDETURA LEMBAI..... APPLICANT

VERSUS

BABATI TOWN COUNCIL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

18/9/2023 & 10/10/2023

BARTHY, J.

The applicant preferred the instant application under section 2(3) of the Judicature and Application of Laws Act [CAP 358 RE 2019], (hereinafter referred to as the Act) seeking for the following reliefs namely;

1. *That this honourable court be pleased to grant an interim injunction order, restraining the 1st respondent, her agent or workmen from evicting the applicant from the landed property Plot No. 412 Block BB situated at Negamsi area within Manyara Region formerly identified as Plot No. 241 Block V situated at Negamsi area within Manyara Region pending the maturity of the 90 days' notice issued to the respondents of an intention to institute a suit.*
2. *Any other order(s) that this honourable court may deem fit and just to grant in this circumstance.*

The application is supported by an affidavit sworn by the applicant himself. On the other hand, the respondents lodged joint counter affidavit to contest the application.

By parties' consensus, the application was disposed of by way of written submissions. The applicant's submission was prepared by Mr. Asubuhi John Yoyo learned advocate while for the respondents it was prepared by Mr. Hance Henry Mmbando learned state attorney.

In his submission in support of the application, Mr. Yoyo urged the court to grant the reliefs sought in the application as there is a legal impediment of filing 90 days' notice as deposed on paragraph 10 of the applicant's affidavit. He further submitted that, the law allows the applicant to file a suit or application and seek for an interlocutory order under section 2(3) of the Act.

He went on arguing that, the applicant has demonstrated on paragraphs 3, 4, 5, 6, 7 and 8 of the affidavit supporting the application and supporting documents to have interests over the disputed property. He was firm there is a prima facie case and overwhelming chance of success.

He further submitted that the applicant has demonstrated irreparable injuries under paragraph 10 of the affidavit.

Mr. Yoyo demonstrated that, this court has powers under section 2(3) of the Act to grant the injunction where there is a legal impediment. To this argument he referred to the case of **Mareva Companiea Naviera SA v. International Bulk Carreier SA** 1980 AU ER 213, which has been embraced in our jurisdiction.

He also referred to the cases of **Thadeus Joakimu Lyamuya & another v. Jonas Aquiline Swai**, Misc. Land Case Application No. 169 of 2022 and **Daud Mkwaya Mwita v. Butiama District Commissioner & another,** Misc. Land Application No. 69 of 2020 (both unreported).

On further submission Mr. Yoyo maintained that, the respondents have not seriously challenged the application in their counter affidavit as there was signature by land officer which implied the full consent to the ownership of landed property.

He further pointed out on the electronic payment done by the applicant indicating the registration of the title deed on the right of occupancy was on final stage. He was firm that, the applicant would not be pre-empted to be the lawful owner by first respondent claiming vacant possession of the said land.

On reply submission Mr. Mmbando contended that, in granting the application, the court has to consider whether the elements for temporary injunction stipulated in the case of **Atillio v. Mbowe** (1969) HCD 284 have been proved. According to him, the applicant was required to prove;

i. There must be prima facie case.

ii. Whether the applicant will suffer irreparable loss if temporary injunction is not granted.

iii. Whether there is balance of convenience in his favour.

With regard to the first element, Mr. Mmbando contended that, the applicant is a trespasser on the plot which is the lawful owned by the first respondent who sent a letter to the applicant dated 20th July 2023 requiring him to furnish proof of ownership over the land in dispute, after seeing the applicant has raised a claim over the said property.

He further countered that, the applicant claimed to be the lawful owner of the land in dispute, but he has not attached any proof of ownership apart from land form No. 35 which has to registered and by itself is not a proof of ownership.

To buttress his arguments, he referred to the case of **Iqbal Sulemanji, the Legal Representative of the late Abbshbai Gulamhussein Mulla Sulemanji & 2 others v. National Housing Corporation,** Land Case No. 18 of 2008 (unreported) in which the court observed that, the ownership of land is proved by title deed and documentary evidence is the only water tight proof of ownership in that regard.

On the second principle, in which the applicant has to prove he will suffer irreparable loss, Mr. Mmbando argued; the applicant on paragraph 10 of the affidavit has deposed to the effect that, the landed property has a house used as living premises. He went on pointing out that, the applicant does not reside on the suit land, but he lives in Arusha. He further recounted that, the building in the disputed land was used as village office and the applicant had closed it with his own pad locks.

Mr. Mmbando pointed further that; the applicant will not suffer irreparably loss which cannot be atoned by award of damages.

As to the last principle, Mr. Mmbando maintained that, the applicant has failed to explain what great mischief will occur on his side if the injunction will not be granted; considering the fact that the property in dispute is not in the danger of being disposed of or destroyed. Therefore, the applicant will suffer nothing.

He added that, since the applicant does not reside on the suit land with his family or conduct business on the premises, Mr. Mmbando therefore urged the court to dismiss the application with costs.

The applicant opted not to file any rejoinder submission.

Having gone through the parties' rival submission, the sole issue for my determination is whether the application at hand has merits.

This being the application for mareva injunction, it is always preferred when there is legal impediment and the applicant is seeking to maintain status quo pending filing of future matter. In matters involving government, legal impediment is on mandatory requirement to issue 90 days' notice before the suit the government. Therefore, the application of this nature can be filed even when there is no pending suit.

The practice has been underscored by several decisions such as **Magreth Nuhu Halimeshi v. Kigoma Ujiji Municipal Council & others** (supra), **Tanzania Sugar Producers Association v. The Ministry of Finance of the United Republic of Tanzania and another**, Miscellaneous Civil Case No. 25 of 2003 (unreported), **Issa Selemani Nalikila and 23 Others v. Tanzania National Roads Agency and Another**, Miscellaneous Land Application No. 12 of 2016 (unreported), **Abdallah M. Maliki and 545 Others v. Attorney General**, Miscellaneous Land Application No. 119 of 2017 (unreported) to mention but few.

In the instant matter, the applicant claimed to have issued 90 days' notice to the respondents as deposed under paragraph 9 of the applicant's affidavit. This fact has never been contested by the respondents in their joint counter affidavit.

In making his case, Mr. Yoyo has relied on an illustration from the famous English case of **Mareva Compania Naviera Sa v. International Bulkcarriers Sa** (supra) in seeking injunctive order against the first respondent.

In principle, mareva injunctions or asset preservation orders are freezing orders, intended to freeze the subject matter by the order of the court pending determination of the main suit.

The powers of the court to issue restraining order can only be exercised upon the applicant establishing three principles as stated in the case of **Atillio v. Mbowe** (supra) cited by Mr. Mmbando in his submission.

It is the requirement of the law that, those conditions must be cumulatively established. Among the conditions to be considered before granting the application is whether a prima facie case has been established. That is to say whether there is the serious question to be tried by this court.

I have carefully gone through the affidavit in support of the application, the applicant has claimed that there is the prima facie case established as the applicant was on final stages to acquire title of the land in issue. He went on stating the applicant had paid all necessary fees to the first respondent to get title over the land; then suddenly the first respondent claimed for its vacant position.

It was also added that, the endorsement made by land officer indicate the transfer was authorized and his payment was electronically accepted by the first respondent.

The claim which was vehemently challenged by Mr. Mmbando stating that a mere presence of the form seeking to transfer the land does not make the applicant the lawful owner and therefore the applicant has not established there is prima facie case to warrant this court grant the relief sought.

On the other hand, the applicant has claimed that he was issued with a letter by the first respondent for vacant possession of the suit land without any proof. He also claimed the house in question to be used as living premises without specifically stating who is living in the said premises.

Gathering from arguments made in submission and the opposing affidavits, I must agree with the respondents that the applicant was not able to establish the prima facie case as the applicant has failed to demonstrate to the standards required that there is arguable case without having a good title as stated in the case of **Iqbal G. Sulemanji and 2 others v. National Housing Corporation** (supra) cited by Mr. Mmbando.

Going through the applicant's affidavit and Mr. Yoyo submission when expounding the grounds for this application, despite the fact that there is no proof supplied over the suit premises being in danger of being disposed of by the first respondent before further rights are determined: Equally the applicant was challenged not to live in the disputed land as there was village building as stated by Mr. Mmbando.

It is therefore clear that the first condition of existence of serious question to be tried on the facts alleged by the applicant has not been established and I will now proceed to tackle the second condition the applicant will suffer hardship than the respondents if the application will not be granted.

It is now the settled law that, an interim order for injunction will only be granted upon evidence that the party will suffer irreparable loss which cannot be adequately atoned by award of general damages and where the particulars of such irreparable loss are demonstrated. This was so held in the case of **Christopher P. Chale Vs. Commercial Bank of Africa** (Misc. Civil Application No. 136 of 2017) [2018] TZHC 11 which I also subscribe to this position.

With respect to the circumstances of this case, it was not clearly stated what loss the applicant would suffer that it cannot be adequately atoned by damages.

Lastly, the balance of convenience in this matter do not favor granting injunctive relief to the applicant as there is no proof the applicant is likely to suffer more harm than the respondents should the court not grant the application.

Consequently, I therefore find that the applicant has not met the conditions required for this court to consider granting injunction pending filing and determination of future matter. Thus, the application is lacking in merits and same is accordingly dismissed with costs.

It is so ordered.

Dated at **Dar es salaams** this 10th October 2023.

G. N. BARTHY.

JUDGE

Ruling delivered in the presence of the applicant and Mr. Green Mwambage State Attorney for respondents.