

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

(LAND DIVISION)

AT TABORA.

LAND CASE REVISION NO. 1 OF 2023

(Originating from the ruling of the District Land and Housing Tribunal for Tabora in Misc. Application No. 9 of 2023 and Misc. Application No. 238 of 2021 before Hon. Waziri M.H.)

ACCESS MICROFINANCE BANK

TANZANIA LIMITED1ST APPLICANT

JOSINA COMPANY LIMITED2ND APPLICANT

WILFRED FRANCIS TETI3RD APPLICANT

VERSUS

KITUMBO SECURITY GUARDS

COMPANY LIMITED1ST RESPONDENT

YUSUPH KHAMISI KITUMBO2ND RESPONDENT

GISELLA PHILIP KWAY3RD RESPONDENT

RULING

Date of Last Order: 29/09/2023

Date of Ruling: 13/10/2023

MATUMA, J

In this application, the applicants are seeking this court to exercise its Revisionary and Supervisory powers to check on the propriety, legality and

correctness of the Rulings and orders issued by the District Land and Housing Tribunal for Tabora in Misc. Land Application no. 9 of 2023 and 238 of 2021 which were delivered on 10th March and 22nd March, 2023 respectively.

The brief facts leading to this application is that the parties herein are litigating vide Land Application no. 35 of 2021 in the herein above named Land Tribunal over a Landed property on Plot no. 35 Block "K" at Kanyenye area within Tabora Municipal, a landed property with title no. 35375 at Cheyo area and a landed property with title no. 3019 at Tabora Municipal.

Subsequent to the institution of the herein above named suit, the respondents instituted Misc. Land Application no. 238 of 2021 seeking for temporary injunction against the applicants from evicting or alienating or disposing the herein above named properties pending determination of the main suit.

Within such Miscellaneous application, the respondents on 11/8/2021 obtained an exparte injunction order which was granted against the applicants pending hearing of the application inter parties.

The parties seeming to understand that the life span of temporary injunction orders is only six months and subject to extension in aggregate period not exceeding one year under Order XXXVII Rule 3 of the Civil Procedure Code, litigated at the trial tribunal for and several other applications for extension of the life span of such injunction order.

As such on the 16th March, 2022 the respondents obtained extension of the exparte order issued on 11/8/2021. They then filed Misc. Land Application no. 9 of 2023 for further extension which after being heard inter parties, on the 10th March, 2023, the trial tribunal delivered its ruling in

respect of Misc. Land Application no. 238 of 2021 which was heard by way of Written Submissions. The applicants are very much aggrieved with such extensions arguing that they were unlawful and illegal as no extension could be granted after an aggregate period of one year hence this application.

At the hearing of this application, Mr. Patrick Suluba learned advocate represented the applicants while Mr. Kilingo Hassan learned advocate represented the respondents.

Mr. Patrick Suluba submitted two grounds of complaint upon which he pressed for this court to allow this application. The grounds are;

- i) That the rulings issued on the 10th and 22nd March, 2023 were against the due process of the law and the applicants were condemned unheard hence an abuse of court process.
- ii) That the two rulings supra were unlawful for restraining the applicants to evict the respondents from Plot no. 35 Block "K" Kanyenye while the 3rd applicant is the lawful owner of the said property.

The learned advocate arguing the two grounds supra submitted that in terms of Order XXXVII rule 3 of the CPC, temporary injunction order lasts for only six months and upon any extension it cannot exceed a period of one year. He argued therefore that the ex parte interim order issued on 11/8/2021 upon extension could not exceed its life span then on the 11th August, 2022. In that respect the learned advocate agreed that the rulings delivered on the 10th and 22nd March extending further the temporary injunction order were invalid even if it were being issued under the phrase "*Pending determination of the main application*" because all temporary

injunction are subject to renewal and upon renewal they cannot survive on the period exceeding one year.

To fortify his argument the learned advocate cited the case of ***Mary Mehi Masong versus National Microfinance Bank PLC & 8 Others***, Misc. Land Application no. 277 of 2021 (HC).

He also cited the case of ***African Trophy Hunting Ltd versus The Hon. Attorney General & Others***, Civil Appeal no.25 of 1997 (CAT) to the effect that the order for temporary injunction cannot remain to indefinite period but valid for only a specific period.

In the second ground, the learned advocate for the applicants argued that the respondents having defaulted the payment of the loan to the 1st Applicant and after the due process having been taken to sale the suit property and subsequently bought by the 3rd applicant who became the new owner of the property, the two rulings and their subsequent orders were unlawful and the respondents had no locus standi to institute Misc. Land Application no. 9 of 2023.

On his part Mr. Hassan Kilingo learned advocate for the respondents submitted that the impugned rulings delivered on the 10th and 22nd March, 2023 emanated from Misc. Land Applications no. 9/2023 and no. 238/2021 which were all arising from the pending main suit which is Land Application no. 35 of 2021.

He argued that the parties were heard and none was condemned unheard. He further argued that their several applications for extension of time for the life span of the temporary order was due to fear that the

applicants were in moves to dispose not only Plot no. 35 Block "K" supra but also several other properties named in the temporary injunction order.

In respect of the life span of the temporary injunction order, the learned advocate for the respondent argued that in terms of Order XXX VII rule 1 (a) & (b) of the CPC may stand valid at all period pending the main suit. He distinguished the cited cases on the reason that they dealt with temporary order issued under Order XXX VII Rule 3 of the CPC where there is no any pending suit.

On the second ground, the learned advocate argued that the trial tribunal properly issued the orders because in the pending main suit the auction of the suit property to the 3rd applicant is being challenged.

Having heard the parties and taken my time to revisit the records before me, I start with the second ground of complaint herein. The applicants are contending that since the 3rd applicant bought the suit property on a public auction and initiated the process for change of ownership, the respondents had no Locus standi to institute applications restraining the 3rd applicant to take possession of his lawful property.

On the other hand, the respondents are contending that such sale is the central issue in the pending suit Land Application no. 35 of 2021 which is pending determination. From submissions of both parties, it is obvious that there is a dispute between them on whether the sale of the suit property by the 1st and 2nd applicants to the 3rd applicant was lawful.

In that respect, it is premature for this court to determine the legality of the 3rd applicant to own the suit property and or the legality of the whole process towards the stated sale and subsequently the alleged transfer of

ownership thereof. This is because such issue is yet determined by the trial tribunal and both parties admitted before me that the suit in that respect is still pending.

I therefore dismiss the second ground of complaint because by entertaining it, would automatically pre-empt the trial tribunal to determine ownership of the suit property which is the main issue thereat.

Back to the first ground of complaint, I find it better to start with the submission made by Mr. Patrick Suluba learned advocate on the role of advocates as officers of the court. He argued that an advocate as officer of the court has a paramount duty to the court for proper administration of justice and thus ought to advise his client even if his advice would come into conflict with the interests of the client. To fortify this argument, he cited the case of ***Jolly Investment Ltd versus Tanzania Ports Authority***, Misc. Land Application no. 533 of 2018 (HC).

I entirely agree with the learned advocate on his submission and the authority he cited. Although such submission was made to blast his brethren advocate Hassan Kilingo for what Mr. Suluba thought that the respondents were not properly advised on the life span of temporary injunction orders and the aggregate period which is not further extendable, I find that both advocates Mr. Patrick Suluba himself and advocate Hassan Kilingo did not properly advise their respective clients on the matter. Or else, they did not properly direct their minds to the applicability of Order XXXVII generally and different types of temporary injunction orders which can be given under such Order XXXVII.

The law thereof is very clear. When the temporary order is given under Rule 1 (a) or Rule 1 (b) of order XXXVII supra, such order shall remain intact and valid until final disposal of the suit. That is a clear wording of the provision which states that when it is proved by affidavit or otherwise that the 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 or where the defendant threatens or intends to remove or dispose the court may grant a temporary injunction to restrain such act ***"until the disposal of the suit or until further orders."***

In the circumstances, when the temporary order is issued under such provision, the question of six months life span and extension of further period not exceeding the aggregate of one year does not arise. The temporary order shall remain intact until final disposal of the suit irrespective the period the suit shall stand undetermined.

When temporary injunction order is issued under Order XXXVII Rule 2 to restrain repetition or continuance of breach, and there is any disobedience or of breach of any such terms, the court granting the injunction may order the property of the person guilty of such disobedience or breach to be attached but such order shall remain in force for only one year, at the end of which the property may be sold.

But when the temporary injunction order is issued under Order XXXVII Rule 3, the life span is six months and upon further extension the aggregate period shall not exceed one year. But the orders to be given under this provision are clearly stated under the marginal note to be resulting from suits adjourned generally.

Now, in the instant matter, when the respondents instituted the main suit Land Application no. 35 of 2021, the subsequently lodged Misc. Land Application no. 238 of 2021 which was made under Order XXXVII Rule 1 (a) (b) of the CPC. The application had prayers *exparte* and *inter parties*. The *exparte* prayer was for temporary injunction pending hearing *inter parties*. Such prayer was granted on 11/8/2021 although wrongly stated that it was issued pending final disposal of the main suit in Land Application no. 35 of 2021.

I take it as a mere mistake in wordings because at the end of the order the trial chairman made it clear that; "*Kusikiliza pande zote mbili tarehe 31/8/2021*" in the meaning that the order was issued pending hearing *inter parties*. Up to this juncture in terms of order XXXVII rule 1 (a) & (b) *supra*, the temporary injunction order which was issued *exparte* had to survive until when both parties are heard and the ruling thereof is given.

Therefore, it was wrong for the respondents to make an oral prayer on 16th March, 2022 for extension of the temporary *exparte* order which was in fact intact and in force and the trial tribunal wrongly entertained such prayer and wrongly granted it.

It was as well wrong for the respondents to lodge Misc. Land Application no. 9 of 2023 seeking further extension of the existing order which was still valid until when both parties are heard *inter parties* and the ruling thereof given.

Both parties did not discharge their duties to the tribunal by subjecting it in unwarranted litigations on the already settled matter. In that respect it

was not only the respondent's advocate to blame, but also the applicant's advocate too.

They ought to have assisted the trial tribunal not to adjudicate on the matter which has already been determined and pending to further orders after hearing the parties inter parties.

In that respect the extension given on 16th March, 2023 and the ruling delivered on 10th March, 2023 resulting from Misc. Land Application no. 9 of 2023 are all quashed and the proceedings thereof nullified.

On the other hand, the exparte temporary order which was issued on 11/8/2021 expired on 22/03/2023 when the ruling in respect of Misc. Land Application no. 238 of 2021 was finally delivered. In such ruling the trial tribunal ordered;

". . . natoa amri dhidi ya wajibu maombi Access Microfinance Bank Tanzania Limited, Josina Company Limited na Wilfred Teti pamoja na washirika wao au mtu mwingine yeyote anayefanya kazi kwa maelekezo ya wajibu maombi, wanazuuliwa kwa muda kuuza kwa njia ya mnada wa hadhara, kupangisha, kuwatoa kwa nguvu waombaji na au washirika wao na au kufanya shughuli nyingine yoyote itakayoathiri matumizi au umiliki wa kiwanja Na. 35 kilichopo Kitalu "K" Eneo la Kanyenye manispaa ya Tabora na Nyumba mbili zilizosajiliwa kwa Hati Na. 35375 na 3019 zilizopo eneo la Cheyo Manispaa ya Tabora mpaka pale kesi ya msingi (Maombi na. 35 ya 2021) itakapofika tamati."

Such order is valid and shall remain in force until when the main suit Land Application no. 35 of 2021 shall be determined. I therefore do not

agree with Mr. Patrick Suluba learned advocate who contended that this order was invalid because the life span for the exparte order could not have exceeded a period of one year. That was a misinterpretation of the Law. The temporary injunction order expired on 22/3/2023 when the Ruling inter parties was issued.

The applicants should not be in hurry to dispose the respondents' properties in the presence of the order restraining them to do so. Mr. Patrick Suluba learned advocate should therefore advise them accordingly as he himself has submitted before me to the effect that the due advice should be given by on advocate to his client even if such would come into conflict with the client's interests.

In the circumstances this application is partly allowed and partly rejected. It is allowed to the extent that the order dated 16th March, 2022 extending the exparte interim order of 11/8/2021, Misc. Land Application no. 9/2023 and its subsequent ruling dated 10th March, 2023 were all null and void ab initio. They are accordingly quashed and set aside respectively.

It is denied to the effect that the exparte temporary order dated 11th August, 2021 was valid and remained in force until when the parties were heard inter parties and subsequently the ruling delivered on 22/03/2023, and that the Ruling delivered on such date 22/03/2023 was lawful and in accordance to the law.

Since the invalid proceedings as stated hereinabove resulted from the pressure and hurry of the applicants to dispose the dispute properties purporting that the injunction order was to expire within six months. And upon any extension for a period not exceeding one year, thereby forcing the

respondents to seek illegal extensions, this application save for what has been allowed supra, is hereby dismissed with costs.

It is so ordered.



MATUMA
JUDGE
13/10/2023

Order: Ruling delivered in chambers in the presence of Mr. Akram Magoti learned advocate holding brief of Messrs. Patrick Suluba and Hassan Kilingo, learned advocates for the applicants and the respondents respectively.



MATUMA
JUDGE
13/10/2023