

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB REGISTRY OF MANYARA  
AT BABATI  
MISC. CIVIL APPLICATION NO. 31 OF 2023**

**JOSEPH WILRICK MARIMOTO.....APPLICANT**

**VERSUS**

**BOAY VILLAGE COUNCIL.....1<sup>ST</sup> RESPONDENT**

**BABATI DISTRICT COUNCIL.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

*31<sup>th</sup> October & 13<sup>th</sup> November 2023*

***Kahyoza, J.:***

Joseph Wilrick Marimoto, the applicant, sought an order to restrain Boay Village Council, Babati District Council, and the Attorney General (the respondents), along with their agents, from entering the applicant's land (the suit land) until the expiration of the 90 days' statutory notice of intention to sue the government. The respondents filed a joint counter affidavit to oppose the application.

**Joseph Wilrick Marimoto**, the Applicant, in his affidavit in support of the application, deponed that:-

*"2. That, the applicant is a legal owner of the land located at Boay Village, within Babati district in Manyara region, an area with the size of twenty-six (26) acres which used for farming.*

*7. That, the local government officials who are in power currently called a meeting of the village and gave the false statement to the villagers, that the applicant's land is an area of open space, and hence by that statement of the government leader approved the villagers to enter into the applicant land and cutting down trees, and distributed the land to among the Boay villagers without making communication with the applicant who is the owner of the said land.*

*8. That, this application is very essential for the purpose of determining the legality of 1<sup>st</sup> Respondent who allowed the villagers of Boay village to enter into the Applicant's land by announcing that the area is an open space, and hence caused loss to the Applicant due to the conduct of villagers cutting down trees which was planted by the Applicant for economic purpose and for preservation of the environment.*

*11. That, there are triable issue which is already initiated by 90 days' statutory notice to the Respondents where this application as per an urgency situation cannot afford a chance for 90 days of notice to lapse, this application is necessary to rescue the situation because the applicant land is in danger due to the villagers continuing cutting down trees which was planted by the Applicant."*

The respondents filed a joint counter affidavit, and, in it, they deponed that: -

*"4. That, the contents of paragraphs 2 and 6 of the affidavit are strongly disputed. The Respondents states that the 1<sup>st</sup> Respondent is a lawful owner of the disputed land since 1977 and that the Applicant has never owned, possessed and occupied the suit land.*

5. That, in addition to what is stated in paragraph 4 hereinabove is that the suit land is reserved as public forest.

8. That, the contents of paragraph 7 and 8 of the affidavit are noted to the extent that the 1<sup>st</sup> Respondent conducted a meeting on 13/07/2023 and the rest of the facts are disputed. The respondents state that the purpose of the meeting conducted on 13/07/2023 conducted for two purposes one being clearing the village shamba to prevent trespassers with aim of protecting the environmental and ecological system and the other was allocate part of the village land to nearby villagers for only agricultural purposes.

9. That, in addition to what is stated in paragraph 8 herein above, on 02/08/2023, District Administrative Secretary of Babati District blessed the process of clearing the village shamba by granting permission to the 1<sup>st</sup> Respondent.

Copies of the minutes of villagers' assembly held 13/07/2023 and permit from District Administrative Secretary of Babati District dated 2/8/2023, are hereby attached and collectively marked BVC – 1 and the leave of this court is craved for it to be a part of this counter affidavit.

10. That, the contents of paragraph 10 and 11 of the affidavit are strongly disputed. The Respondents state that, the applicant will not suffer any loss and it is the Respondents that will suffer irreparable loss since the suit land is a village forest reserve and the acts of the trespassers unto the suit land will led to serious deforestation that will have serious environmental impact and the ecological system.”

Mr. Maige, the Applicant's advocate, requested the court to consider adopting the applicant's affidavit. He argued that the court possesses

jurisdiction to entertain the application, despite the absence of a pending suit. Mr. Maige emphasized that the applicant is unable to initiate a suit due to a legal impediment—the yet-to-expire 90 days’ notice of intention to sue the Respondents. He pointed out that the applicant had duly issued a statutory notice lasting 90 days, a copy of which was appended to the applicant’s affidavit.

Citing the celebrated cases of **Atilio vrs. Mbowe** (1969) HCD 284 and **Christopher P. Charles vrs. Commercial Bank of Africa**, Misc. Civil Application No. 635 of 2017 (HC at Dar-es-salaam, D/Registry unreported), Mr. Maige, submitted that there are conditions to be fulfilled before an injunctive order is given. He stated them as follows-

- (a) Existence of serious question to be tried on the fact alleged with probability of success in the suit.
- (b) Demonstration that the applicant stands to suffer an irreparable loss. Requiring the court’s intervention before the applicant’s legal right is established.
- (c) Proof of greater hardship to be suffered by the applicant if the injunction is not granted.

Regarding the first condition, Mr. Maige asserted that a dispute of ownership exists between the applicant and the respondents. He pointed out that paragraphs 3 through 6 of the affidavit establish the applicant’s claim to the suit land, acquired through a gift inter vivos from his late father, Wilrick Marimoto Shayo, who purchased it from Marki Kingu in

1963. The applicant has been in occupation since 2010 and has developed the land accordingly. Mr. Maige further contended that the 1st respondent invaded the suit land and allocated pieces of it to villagers under the instructions of the second respondent, without any legal basis or right.

Regarding the second condition, Mr. Maige argued that the applicant would incur irreparable loss if the order is not granted, distinguishing this from the respondents' position. He highlighted that the applicant has been developing the suit land since 2000, and the extent of this development cannot be adequately compensated in monetary terms. The applicant is an employee living in Dodoma, the time he spent to develop the land cannot be compensated. To support his contention, he cited the case of **Atilio vrs. Mbowe** and **Christopher P. Charles vrs. Commercial Bank of Africa** (supra).

As for the third condition, concerning the balance of conveniences, Mr. Maige asserted that the applicant would experience greater harm compared to the respondents if the order is not issued in their favor.

Mr. Maige fervently requested the court to grant the application and issue an order against the respondents, to enable the applicant to present his case and restraining any further action on the land. He emphasized that without the issuance of the order, the resolution of the land dispute would remain elusive.

Mr. Mkama, the State Attorney, opposed the application and requested permission to adopt the joint counter affidavit. He argued that applications similar to the one before the court are typically granted at the discretion of the court. Referring to the precedent set in **T. A. Kahale vrs. General Manager Mara Cooperative Union (1984) (Ltd)**, [1987] TLR 17, he emphasized that while the court's powers to grant such orders are discretionary, they must be exercised judiciously. Mr. Mkama acknowledged that the conditions outlined in **Atilio vrs. Mbowe** (supra) must be met, and he also asserted that public interest must be considered, as extended by courts of law.

In his argument on the first condition, Mr. Mkama expressed the view that no *prima facie* case has been established. He asserted that the applicant is obligated to produce a title deed if the suit land is registered. If unregistered, the applicant should provide a detailed description of the land's identity in terms of boundaries and location. Mr. Mkama pointed out the applicant's failure to state the boundaries of the disputed land, contending that this lack of clarity leaves no substantive issue to decide. He referenced the rule in **Tarlito Alaraha & 13 Others vrs. Assistant Commissioner for Lands Manyara Region & 3 Others**, Land Case No. 1 of 2022 at page 8.

Moreover, Mr. Mkama argued that there is no evidence demonstrating how title to the disputed land passed to the applicant. In support of this assertion, he cited the case of **Iqbal G. Sulemanji (the legal representative of the late Abbashbai Gulamhussein Mulla Sulemanji) & 2 Others vrs. NHC**, Land Case No. 18 of 2008.

On the second condition, Mr. Mkama contended that if the applicant can be adequately compensated in monetary terms, then the court should not grant an injunction. He argued that the first respondent stands to suffer, as he allocated the disputed land to villagers as a preventive measure against trespassers. In support of this position, he referred to the precedent set in the case of **Ms. Best Sellers Retail (India) Pvt Ltd vrs. Ms. Aditya Birla Maro Ltd & 8 Others**, Civil Appeal No. 4313-43M/2012.

Regarding the third condition, Mr. Mkama asserted that the first respondent would experience more significant harm than the applicant if, the injunction is not granted. He explained that the applicant has already allocated the disputed land to villagers, and granting the order would disrupt the existing arrangement, causing disturbance to the first respondent.

On the fourth condition, Mr. Mkama argued that the disputed land is reserved as a forest, and the entire community stands to benefit from it.

If the application is granted, it will cause disturbance to society. The forest serves as a source of water, benefiting the community at large. Citing the case of **Afriscam Group (T) Ltd vrs. TANROADS & Attorney General**, Misc. Land Application No. 41 of 2022, he underscored that public policy is of paramount consideration, emphasizing that orders should not be issued if they serve as instruments causing harm to the society. Therefore, he urged the Court to dismiss the application with costs.

In his rejoinder, Mr. Maige maintained that all conditions established in **Atilio vrs. Mbowe** (supra) have been proven in this application. He argued that the respondents have failed to demonstrate any loss if the application is not allowed. Mr. Maige contended that issues related to a *prima facie* case are irrelevant, asserting that the applicant is not required to prove ownership. He also reckoned the cited authorities as irrelevant, as they pertain to a main suit and temporary injunction, not *mareva* injunction. Mr. Maige prayed for the issuance of orders to prevent the imminent loss that the applicant would suffer, emphasizing that such loss cannot be adequately compensated.

### **Are there circumstances to issue *mareva* injunction?**

It is evident that the issue for determination is whether the applicant have demonstrated sufficient grounds to warrant the issuance of



injunctive orders under the realm of *mareva* injunction. Mareva injunction is an injunctive order, typically issued in specific circumstances to prevent a party from dissipating or disposing of its assets. The primary purpose of a *Mareva* injunction is to ensure that the assets remain available to satisfy a judgment if, the applicant succeeds in his suit to be filed.

It is beyond dispute that in a fit case, this court would issue an injunction to preserve a matter subject to the intended suit as this Court held in **Ugumba Igembe Another vrs. Trustees of Tanzania National Parks Another** (Misc Civil Application 1 of 2021) 2021 TZHC 2043 (18 January 2021) (*Hon. Utamwa, J, as he then was*) that-

*"Our law is now settled that, this court can grant interim orders under section 2 (3) of the JALA in appropriate situations. It can do so under circumstances that are not specifically covered by the CPC. Such circumstances include where there is no suit pending in court. The practice is based on the common law principle of Mareva injunctions as submitted earlier by the learned counsel for the applicants. This position of the law was underlined in the Abdallah Case (supra) that followed a decision of the CAT in the case of **Tanzania Electric Supply Company (TANESCO) vs. Independent Power Tanzania Ltd (IPL) and 2 others** [2002] TLR. 324. The same position was underscored by this court (Galeba, J.) in **Daud Mkwya Mwita v. Butiama District Commissioner and the Attorney General**, Misc. Land Application No. 69 of 2020, HCT, at Musoma (unreported)."*

In **Daud Makwava Mwita Vs. Butiama District Commissioner and Another**, Misc. Land Application No. 69 of 2020, High Court of Tanzania at Musoma (unreported) wherein at page 3 the court observed:

*"...a Mareva Injunction cannot be applied or be granted pending a suit. It is an application pending obtaining a legal standing to institute a suit. A Mareva Injunction may be applied where an applicant cannot institute a law suit because of an existing legal impediment for instance where law requires that a statutory notice be issued before a potential plaintiff can institute a suit.."*

Given, the litany of authorities, an application for *mareva* injunction, may be granted upon an applicant establishing the following-

- 1) That, there exist a legal impediment, the applicant is barred by legal requirements from instituting a suit, for instance, the issuance of 90' days statutory notice intention to sue the respondent.
- 2) That there is a real and imminent risk to the subject matter or that the respondent will dispose of or dissipate their assets to frustrate the enforcement of a potential judgment;
- 3) That, existence of an intended arguable case, a *prima facie* case. The applicant should demonstrate that he is a likely to succeed in his potential suit.
- 4) That, the applicant is likely to suffer irreparable loss, that cannot be compensated in monetary terms.
- 5) That, the balance of convenience is to the detriment of the applicant where the sought orders will not be issued against the harm to the respondent if it is.

**Is there any risk to the subject matter?**

I wish to state at the outset that, *Mareva* injunction is considered an extraordinary remedy and is granted in exceptional circumstances. The applicant bears the burden of proving a real and imminent risk to the subject matter or that the respondents intends to dispose of or dissipate assets to frustrate the enforcement of a potential judgment. The applicant affidavit supported by the applicant's advocate's submission established that, the applicant is prohibited by the legal requirement to issue a 90 days' notice to the respondents. However, the applicant did not demonstrate any real and imminent risk to the subject matter of the intended suit. The subject matter of the intended suit is a dispute over land ownership. The applicant asserts that, acting upon instructions from the second respondent, the first respondent encroached upon the land in question and allocated portions to villagers. It is important to note that there is no immediate risk, as the potential threat sought to be prevented has already transpired. Thus, there is no imminent risk to warrant this Court's interference to prevent it from happening by granting the *mareva* injunction.

I would have stopped at that, but let me consider other sine quo conditions for *mareva* injunction. Mr. Maige, the applicant advocate submitted that, there is a triable issue between the parties, since the applicant is claiming to be the lawful owner of the disputed land, that he

acquired it as a gift *inter-vivos* from his father and that he entered possession from 2000 and developed it. The first respondent countered the assertion the disputed land belongs to the plaintiff. The first averred that the land, the subject matter belongs to her. Thus, there are arguable issues worthy to be determined by the court.

As to the risk of irreparable harm, the applicant averred that the development he had done to the land cannot be compensated. The respondent countered. I am of the settled mind that, since the only development that the applicant has deposed to have undertaken inside the disputed land, is planting of varieties of trees for business purposes, the same can be compensated by monetary terms. Not only that but also, the applicant stated that the first respondent has already allocated land to villagers, if I grant the *mavera* injunction will have the impact of prohibiting further allocation but will not bar the villagers to develop land allocated to them or evict them. The applicant did not state, whether there is a portion of his land, which the first respondent has not yet invaded and allocated to villagers.

As to the balance of convenience, I am of the view that, if the applicant had proved other conditions, the applicant stood to suffer more harm if the injunction was not granted than the first respondent would, if it is granted. If the first respondent had not allocated, no harm he would

have suffered for not allocating land to villagers. She would have allocated portions of land after the suit is concluded. As to the contention that the public interest, ought to be considered, I have no doubt that it ought to be considered but what is that public interest. Is the allocation of land to villagers a public interest? There is no evidence that first respondent's act of allocating land to villagers will preserve the forest and prevent invaders to the disputed land.

In the end, I find that the applicant had failed to establish all conditions for grant of *mareva* injunction, especially, the condition that, there exists real and imminent risk to the subject matter. I dismiss the application for want of merit. Costs will follow the event in the intended suit, and if the applicant fails to initiate the suit within 20 days after the expiry of the 90-day notice, the respondents will be entitled to costs.

I ordered accordingly.

Dated at **Babati** this **13<sup>th</sup> day** of November, 2023.



**J. R. Kahyoza, J.**

**Court:** Ruling delivered in the presence of Mr. Philemon Maige, the applicant's advocate, Mr. Heribahati Zabron, State Attorney for the Respondents, Mr. Amos Nada, the village chairperson and Mr. A. Hando, the village executive officer. B/C Ms. Fatina (RMA) present.



**J. R. Kahyoza**

**Judge**

**13/11/2023**