

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**THE SUB REGISTRY OF TABORA**  
**MISC. LAND APPLICATION NO. 31 OF 2023**

PETRO JOHN MAGANGA -----	1 <sup>ST</sup> APPLICANT
SALUM SAMSONG NZALI -----	2 <sup>ND</sup> APPLICANT
KULWA KITEBI SHOKOLO -----	3 <sup>RD</sup> APPLICANT
AZIZI SAID MUNZA -----	4 <sup>TH</sup> APPLICANT
PASKALI YUDA -----	5 <sup>TH</sup> APPLICANT
EDMUND MBALAMWEZI -----	6 <sup>TH</sup> A PPLICANT
FANUEL M. MSUYA -----	7 <sup>TH</sup> APPLICANT
LAURENT LUCAS KAZIGE -----	8 <sup>TH</sup> APPLICANT
GERSON YONA CHOMPA -----	9 <sup>TH</sup> A PPLICANT
DICKSON ZAKAYO KAWEMBA -----	10 <sup>TH</sup> APPLICANT
HAMIS HASSAN MASOLI -----	11 <sup>TH</sup> APPLICANT
VIGEJE RASHID KAPENU -----	12 <sup>TH</sup> APPLICANT
MAVAZI KAZINA LUSIMO -----	13 <sup>TH</sup> APPLICANT
AZIZI SAID -----	14 <sup>TH</sup> APPLICANT
JONAS MICHAEL -----	15 <sup>TH</sup> APPLICANT
JOSEPH WANGAO -----	16 <sup>TH</sup> APPLICANT
ROZARIA M. NGELELA -----	17 <sup>TH</sup> APPLICANT
EMMANUEL LUCAS KAZIGE -----	18 <sup>TH</sup> APPLICANT
SALUM BAKARI -----	19 <sup>TH</sup> APPLICANT
PETER SIMONI MASUNGA -----	20 <sup>TH</sup> APPLICANT
MUSTAFA SAID SEFU -----	21 <sup>ST</sup> APPLICANT
YAHYA SIZYA -----	22 <sup>ND</sup> APPLICANT
JOHN PETER YAMLEMYE -----	23 <sup>RD</sup> APPLICANT
HAMISI ALI MALISELI -----	24 <sup>TH</sup> APPLICANT
HAMISI SAID YONA -----	25 <sup>TH</sup> APPLICANT
JEREMIA CHOMPA -----	26 <sup>TH</sup> APPLICANT

**VERSUS**

KALEMELA "A" VILLAGE COUNCIL -----	1 <sup>ST</sup> RESPONDENT
RUWASA URAMBO DISTRICT -----	2 <sup>ND</sup> RESPONDENT
URAMBO DISTRICT COUNCIL -----	3 <sup>RD</sup> RESPONDENT
<b>PERMANENT SECRETARY MINISTRY FOR LANDS,</b>	
HOUSING AND HUMAN SETTLEMENT DEVELOPMENT -----	4 <sup>TH</sup> RESPONDENT
PERMANENT SECRETARY (MINISTRY OF WATER) -----	5 <sup>TH</sup> RESPONDENT
THE ATTORNEY GENERAL -----	6 <sup>TH</sup> RESPONDENT

## **RULING**

*Date :02/08/2023 & 18/08/2023*

### **BAHATI SALEMA, J.:**

Before me is an application for temporary injunction lodged by twenty-five applicants seeking an order of this Court restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents from continuing with the Dam Construction Project on the Land situated at Mashariki "B" Hamlet within Kalemela A village, Urambo District.

Further, the applicants seek an order restraining the 1<sup>st</sup>, 2<sup>nd</sup> respondents and their agents from unlawfully evicting the applicants from the suit property, an order to evict the 1<sup>st</sup> and 2<sup>nd</sup> respondents or any other party illegally occupying the suit land, an order letting the applicants use the disputed premises until the determination of the intended suit and costs incidental thereto be granted.

The application was brought by way of chamber summons under a Certificate of Urgency accompanied by an affidavit sworn by Mr. Kashindye Lucas, counsel for applicants and resisted by the respondent's joint counter affidavit sworn by Mr. Samwel Mahuma learned State Attorney.

Brief facts leading to this application as can be obtained from the record are that, the applicants are owners of parcels of land situated at Kalemela A Village within Urambo District. They allege that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have trespassed into their land and started construction of the dam without the issuance of legal notice to the applicants manifesting the government's intention to acquire the land for public use, that is why the applicants have approached this Court seeking a temporary injunction restraining the activities of the 1<sup>st</sup> and 2<sup>nd</sup> respondents pending the determination of the intended suit.

When the Application was called on for hearing on 02/08/2023, Mr. Kashindye Lucas, learned counsel represented the Applicants whilst Mr. Samwel Mahuma and Mr. Edwin Bantulaki State Attorneys represented the respondents arguing orally before this Court.

Supporting the application, Mr Kashindye laid his submission in the principles propounded by this Court in the case of ***Atilio vs Mbowe [199] HCD 284*** wherein the Court listed the principles guiding the issue of *Mareva* injunction that there must be the existence of *prima facie* case, Proof of Irreparable loss and Balance of convenience.

Mr. Kashindye averred that paragraphs 1 to 14 and 17 of his affidavit prove that the applicants have a *prima facie* case that they can institute against the defendants.

As to the issue of suffering irreparable loss, Mr. Kashindye submitted that following the activities that are underway, the applicants will suffer irreparable loss and regarding the issue of balance of convenience, Mr. Kashindye submitted that grant of the injunction will not cause any potential harm to the respondents.

In reply Mr. Mahuma resisted the application by stating that, the second respondent Ruwasa Urambo District as named by the applicant in the chamber summons has no legal personality, he referred this Court to Section 42 of the **Water Supply and Sanitation Act**, No. 5 of 2019 which establishes Rural Water Supply Authority (RUWASA) that;

*(1) "There is hereby established an Agency to be known as the "Rural Water Supply and Sanitation Agency with its acronym "RUWASA".*

*(2) The RUWASA shall be a body corporate with perpetual succession and a common seal and shall be capable of-*

*(a) suing and being sued in its corporate name;*

Mr. Mahuma contends that the applicant's application is incompetent for suing a non-existent person.

Mr. Mahuma further added that the 6<sup>th</sup> applicant whose land was acquired for the water project has already been compensated by an alternative plot. Challenging the allegations raised by the applicants, Mr. Mahuma submitted that the applicants have failed to prove that there is a *prima facie* case taking into account that there is a village meeting minutes which shows how all villagers accepted the project and the means they are to be compensated.

Regarding suffering irreparable loss, Mr. Mahuma stated that if any injury occurs; it can be compensated by being given an alternative area. As to the balance of convenience, Mr. Mahuma submitted that there is a project which has been initiated so the public will suffer more hardship if the injunction is issued.

To beef up the respondent's submission, Mr. Bantulaki submitted against the application that in the verification clause of the affidavit accompanying the application the deponent states that he has obtained information from 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants only while it is not a representative suit. He prayed the Court to dismiss the application with costs.

In a short rejoinder, Mr. Kashindye reiterated that no injustice has been caused by instituting an application against RUWASA Urambo District. Mr. Kashindye further stated that this Court has jurisdiction to issue a Mareva injunction since the same is governed by the Judicature and Application of Laws Act, Cap. 358 [R.E 2019].

Before embarking on the applicant's prayers I find it pertinent to make it clear to the parties that the High Court has jurisdiction to grant an interim injunction pending the institution of a suit. Mareva injunction is not covered by **the Civil Procedure Code**, Cap.33 the applicants have only this niche to attain it by invoking the provision of sections 2(1) and 3 of the **Judicature and Application of Laws Act**, Cap. 358 [R.E 2019]. Moreover, under section 2(3) (supra) this Court has powers to grant the sought orders by the applicant.

Also as rightly submitted by the learned State Attorney, Section 42 (2) of the Water Supply and Sanitation Act No. 05 of 2019 states clearly that a body corporate capable of suing and being sued in its corporate name is RUWASA, the name of the 2<sup>nd</sup> respondent appended to the application as RUWASA Urambo District is a proper name as the law provide so the 2<sup>nd</sup> respondent is a non-existent person incapable of being a respondent in this application so I hereby struck out the name of the 2<sup>nd</sup> respondent from the record of this application.

Back to the issue of whether the application may be granted or not, in the case of ***Barclay-Johnson v. Yuill [1980] 3 All E.R 190*** Lord Denning suggested that Mareva injunction would be available if;

1. *There was a danger of the defendant absconding or;*
2. *There was a danger of the assets being removed out of the jurisdiction; or*
3. *If there was a danger of assets being disposed of within the jurisdiction*

Further, the Master of Rolls suggested that the injunction should be issued whenever there was a danger that a defendant would deal with his asset to frustrate any potential judgment.

Frankly speaking and in line with the submissions made by the parties, it is a common practice in English law that in issuing Mareva injunction Courts must consider the following;

1. The party seeking an injunction must show that they will suffer irreparable harm if the action they are seeking to prevent is not stopped.
2. The applicants must provide full and frank disclosure of all material facts including any potential defences the respondent might have to ensure transparency and fairness.
3. The Court must consider the balance of convenience between the parties, if granting the injunction would cause more harm than good, the Court might not grant it.
4. Courts should also consider the public interest in granting or denying an injunction especially when the injunction could impact the general public.
5. The Court must balance the risk of injustice to the applicant if the injunction is not granted against the risk of injustice to the respondent if it is granted.

In the application at hand, the facts narrated during submission and the record reveal that there is an ongoing project being constructed on the land previously owned by the applicants, and there have been prior village meetings and understanding between the Kalemela Village Council and the respondents over dam construction and compensation to those who will be affected by the project.

The respondent's Attorneys have revealed that it is true the dam is being constructed on the applicant's land and there are plans of compensating all who will be affected as they agreed in the Village meeting, he further informed that the 6<sup>th</sup> applicant has already been compensated. Initiating reasoning from these facts it goes without saying that the applicants have intentionally concealed that information contrary to principles guiding injunctions to make this Court believe that the respondents really trespassed the applicant's land without any notice to the applicants.

Also, the applicant's allegation that if the project continues, they will suffer irreparable damage is unproved because the submission made by the applicant's counsel reveals that the land is undeveloped so there is no proof if there are valuable structures or any property incapable of being compensated. For that reason, I see no injustice that will occur if the application is denied, the laws of this country are very clear that whenever the government needs any land for public interest the owners of the same may be compensated as it was denied that the 6<sup>th</sup> applicant has already received compensation.

As I stated herein above, there is no doubt that dam construction is for public use and since the applicants are capable of being compensated as the applicant's counsel submitted I see no reason to issue a Mareva injunction because there is a risk of causing injustice on the part of the respondent if the same is granted and it will negatively impact the general public.

Having highlighted that, I find this application lacking merits, consequently, I hereby dismiss it. No orders as to costs. Right of appeal explained.

Order accordingly.

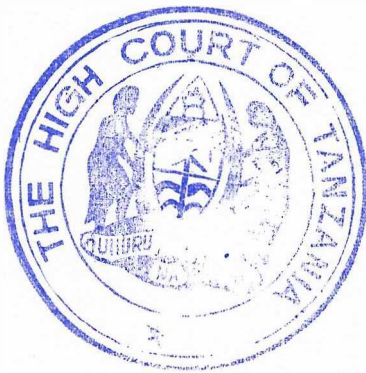


**A. BAHATI SALEMA**

**JUDGE**

**18/08/2023**

**Court:** Ruling delivered in presence of both parties.



**A. BAHATI SALEMA**

**JUDGE**

**18/08/2023**