

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

TANGA DISTRICT REGISTRY

AT TANGA

MISC. LAND APPLICATION NO. 29 OF 2023

ASAM OIL COMPANY LIMITED.....APPLICANT

VERSUS

ABDALLAH RASHID MZIRAY.....1st RESPONDENT

RASHID NASSOR MOHAMED.....2nd RESPONDENT

(Arising from Civil Case No. 7 of 2023 of the High Court, Tanga.)

RULING

09/11/2023 and 27/11/ 2023

NDESAMBURO, J.:

This is an application filed under a certificate of urgency for an order of Temporary Injunction made under Order XXXVII Rule 1(a), (b), Section 68(c), (e) and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019. In support of the application is the affidavit of James Fidelis Rutahoile, principal officer of the Applicant. On the 18th of September, the applicant was granted leave to amend the chamber summons to accommodate the second respondent following a court ruling in Misc. Civil

Application No. 37 of 2023 where the second respondent was made a party to this application and the main civil case.

The background of this matter as it can be gleaned from the affidavit of the applicant is as follows: sometimes in November 2021, the applicant entered a 15-year lease agreement with the first respondent for a landed property with title No. 58257, Plot No. 01 Block A in Maforoni, Mkinga District, Tanga Region which hosts a petrol station. The agreement stipulated that the first respondent must reimburse the remaining months' rent if the property is sold before contract expiration. Subsequently, the applicant conducted renovations at the petrol station.

As per their agreement, the affidavit further deposed that, in April 2023, the first respondent offered to sell the property to the applicant but subsequently disappeared and the plan was aborted. The property was then sold to the second respondent, who is about to transfer the title. Additionally, the first respondent issued a notice terminating the lease and demanding vacant possession. The applicant will suffer irreparable loss if the transfer is completed in favour of the second respondent. To safeguard

her interests, the applicant prays that, the respondents and their agents be restrained from disposing of the demised property pending hearing and determination of the main suit.

The first respondent, in a counter affidavit opposing the application, affirmed that he did sell the petrol station to the second respondent. He asserted that he honoured his commitment by offering the applicant the first opportunity to purchase, but the applicant declined the offer, prompting him to find an alternative buyer. The counter affidavit emphasised that the renovation expenses were borne by the applicant, as specified in clause three of their contract. The first respondent contended that the applicant has no valid claim against him since he is no longer the owner of the petrol station, having sold it to the second respondent. He concluded by stating that the application lacks merit due to the change in ownership.

The second respondent on his side, acknowledged purchasing the petrol station from the first respondent and paid full payment of the purchase price and associated government dues. Subsequently, he has completed the land transfer process, obtaining a certificate of title (Registration No. 58257, L.O No.

560554, Plot No. 1, Block A, Mafoloni area, Mkinga District). He stated that the lease agreement between the applicant and the first respondent is already terminated and hence he will suffer more loss than the applicant if the application is granted.

During the hearing of the application, Mr. Switbert Rwegasira, a learned counsel represented the applicant, Mr. S. L. Sangawe, also a learned counsel represented the first respondent, and Mr. Peter Bana, a learned counsel represented the second respondent. The hearing was conducted viva voce. However, for the reasons which will be apparent shortly, I do not deem it appropriate to reproduce the submission in support and against the application.

Following the submissions, the court probed the parties to address the issue of the application's tenability, considering that both counter affidavits indicated the completion of the title transfer from the first respondent to the second respondent.

As mentioned earlier, the applicant seeks an injunctive order from this court to restrain the respondents and their agents from disposing of the petrol station until the main suit is heard and determined. Mr. Switbert argued that at the time of filing the

application on the 29th of June 2023, the title transfer from the first to the second respondent had not yet been effected. He asserted that the transfer took place on the 24th July of 2023. In the alternative, he pleaded with the court to issue an order maintaining the status quo until the main civil suit is resolved.

On his part, Mr. Sangawe opposed the submissions, contending that Mr. Switbert was well aware that the disposition of the petrol station had been completed. He argued that Mr. Switbert had the opportunity to amend his first prayer but failed to do so, rendering his first prayer untenable as events had overtaken it.

Mr. Bana supported Mr. Sangawe's stance, asserting that the applicant, at the time of filing the amended application, was aware of the completed disposition. Consequently, he argued that the application is incompetent, having been overtaken by events, and the only appropriate remedy is to strike it out.

Upon reviewing the court record, it is established that the initial application was filed on the 29th June of 2023. On the 18th of September 2023, the second respondent became a party to the application through Misc. Civil Application No. 37 of 2023.

Consequently, the applicant filed an amended application on the 18th October of 2023. The counter-affidavits from the respondents indicate that the plot housing the petrol station had already been transferred from the first respondent to the second respondent and that is not disputed by the applicant. The counter affidavits are substantiated by a sales agreement dated 15th of April 2023, and a corresponding bank pay-in slip dated 17th of April 2023. Significantly, the Tanga land registry, empowered by section 103(1) of the Land Registration Act, Cap 334 R.E 2019, carried out the transfer process on 24th July 2023. Eventually, the land where the petrol station is situated with No. 58257, Plot No. 01 Block A in Maforoni, Mkinga District was de-registered in the name of the second respondent who is the current owner of the said plot.

The certificate of title is the conclusive ownership of land. My stance is supported by the excerpt from the book titled "Conveyancing and Disposition of Land in Tanzania" by Dr. R. W Tenga and Dr. S. J Mramba, Law Africa, Dar es Salaam, 2017 page 330 which was cited with approval by the Court of Appeal in the case of **Leopold Mutembei v Principal Assistant**

Registrar of Titles, Ministry of Lands, Housing and Urban Development and Another, Civil Appeal No. 57 of 2017

(unreported). The excerpt from the book states as follows:

"...the registration under a land titles system is more than mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms a transaction that confers, affects or terminates that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title."

The crucial question arises: Does the applicant's prayer for restraining the respondents from transferring the title remain valid given the presented circumstances? It appears not. I agree with the learned counsel for the respondents, that the application has been overtaken by events and is no longer tenable. Further, the applicant was cognizant of the application's evolving situation but persisted with the application. Consequently, the relief prayed as elaborated above has been overtaken by events.

As to the consequences of the application, I align myself with the holding set in **Ladslaus Danford Shasha v Kasulu**

District Council and another, Misc. Land Application No. 24 of 2022, where my brother Hon. Manyanda, a judge, dismissed an application overtaken by events. In this context, this court is compelled to dismiss the current application. Additionally, the plea for maintaining the status quo is denied. The respondents shall have their costs.

It is so ordered.

DATED at **TANGA** this 27th day of November 2023.




H. P. NDESAMBURO
JUDGE