

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 47 OF 2023

TANGA GRANITE & SAND SOLUTION LIMITED.....	APPLICANT
VERSUS	
ELISHA JOHN SEMTI	1 ST RESPONDENT
HARUNA SAID MAGHEMBE	2 ND RESPONDENT
HASHIM PAULA GAO	3 RD RESPONDENT
IDRISA YUSUPH	4 TH RESPONDENT
SHANDONG LUQIAO GROUP LIMITED	5 TH RESPONDENT

RULING

K. T. Mteule, J

25 August 2023 & 25 August 2023

The Applicant filed this Application seeking for temporary injunction to restrain the Respondents from continuing with extraction of stones from the land disputed in **Land Case No 8 of 2023**. The Application was filed under certificate of urgency. On the first day of appearance, due to that urgency, the Applicant's counsel prayed for ex parte orders to avoid rendering the application nugatory due to the continued Respondent's action which was affecting the rights of the applicant. Since the Respondents were yet to file their Counter Affidavit, the court granted

temporary injunction pending filing of counter affidavit and hearing of the matter inter parties. The Application was called for hearing today on 25th Day of August 2023.

During hearing, the Applicant was represented by Advocate Linda Lugano while the Respondent is represented by Advocate Mpandangongo Augustino.

In her submissions Ms. Lugano submitted on the grounds advanced in the Applicant's affidavit to explain the grounds which justifies the granting of the temporary injunction. She referred to the case of **Atilio versus Mbowe** (1969) HCD 284 which developed preconditions to guide the granting of temporary injunctions. She enumerated the said principles to be:

1. If there is a serious question to be tried and the probability of the plaintiff to be entitled to the relief claimed.
2. The applicant stands to suffer irreparable loss requiring the court's intervention before the Applicant's legal right is established.
3. That on the balance, there will be a great hardship and mischief suffered by the plaintiff from withholding the injunction than will be suffered by the defendant from granting of it.

In her view, the Applicant has managed to meet the above preconditions to justify granting of temporary injunction due the reasons brought in the affidavit which shows how the applicant will be affected if the temporary injunction is withheld. Among such reasons include the ground that the Applicant has an agreement with the 1st and 4th Respondents concerning the disputed land. Another ground is that the Respondents has trespassed in the Applicant's land causing serious damage and that the Applicant is the lawful owner of the license annexed to the plaint as Annexure TG2 which shows the applicant's ownership to the land.

Ms. Linda submitted that the above grounds are in line with the principle in **Atilio versus Mbowe** since the applicant will be more affected than the Respondents if the injunction is not granted since she is the legal owner of the suit land.

In reply submissions, Mpadangongo Advocate started starting that the 1st, 2nd, 3rd and 4th Respondents are lawful owners of the disputed land which has 4.6 hectares and they are owners of a mining licence No. PML0264TNG which is being used by the 5th Respondent to extract stones in the disputed land. He submitted that the 5th Respondent is just a contractor who is constructing Pangani Road who got the contract

from the government as stated in the counter affidavit which he prayed to adopt as part of his submission.

Mr. Mpandangongo is in the same position as Ms. Linda regarding the application of the principle in **Atilio versus Mbowe** supra which set the three preconditions listed by the Applicant's counsel under which granting of temporary injunction is guided.

He however prayed for the Court to expunge the paragraphs No. 1,2 which are repeated in the affidavit of the Applicant since they are not verified.

He continued to state that whether the 5th Respondent has trespassed in his land, ownership must be proved. In his view, in the instant case, no indication that the Applicant owns the land apart from the claimed mining license. He added that having a mining licence doesn't mean that someone is the owner of the land. This being the case, in his view, the first principle is not met.

Regarding irreparable loss, Mr. Mpandangongo referred to the the plaint in the **Land Case No. 8 of 2023** which is attached to show irreparable loss where the Applicant is claiming specific damages which he shall recover if the 5th Respondent continues to work on the land. According to Mr. Mpandangongo, since the Applicant quantified the amounts likely

to suffer if the 5th Respondent continues to extract the stones from the site, the the issue of irreparable loss is untenable because the Respondent will be able to be compensated if he succeeds in the case.

He challenged the Applicant's failure to indicate how he shall suffer the loss. In his view, it is the Respondents who will suffer more loss because he has already engaged in a construction contract with the Government which has specific time limitation for construction of Pangani Road.

Concerning the 3rd principle on the hardship likely to be met by the Respondent, Mpandangongo has submitted that, as well, such hardship is not demonstrated. He stated that no type of hardship mentioned, neither any consultation made with the Respondents apart from coming to the court.

It is the submissions of Mr. Mpandangongo that, the Applicant has not demonstrated sufficient reasons consonant with **Atilio versus Mbowe** principles to justify granting of temporary injunction. He therefore prayed for the court not to grant temporary injunction and to withdraw the one granted ex parte and allow the 5th Respondent to proceed with his business in the disputed land and shall the 5th Respondent cause any loss, such a loss will be compensated in terms of money since it is already identified.

In rejoinder Ms. Lyinda Lugano stated that the repeated paragraphs are typo errors which can be corrected and expunging them from the Affidavit will deny justice to the Applicant.

Concerning the applicant's ownership to the licence, he rejoined that the counsel has failed to identify which procedures makes the applicant not to be seen as the lawful owner of the land and that he was invaded by the respondent. On specific damages, she stated that the applicant who is the plaintiff in the plaint had reasons to estimate specific damages. He supported the said damages by the documents attached in the affidavit.

The fact that the 5th Respondent will suffer more, she maintained that it is the applicant who will suffer more if the injunction is not granted.

Having heard the parties submissions, and their sworn statements in the affidavit and counter affidavits, the issue for determination is whether there are sufficient grounds advanced to justify granting of the temporary injunction.

This court is moved to grant temporary injunction under Order XXXVII Rule (1) and (2) of the CPC. This provision empowers this court to grant such injunction if there is a danger of waste, damage and alienation of a property in dispute. Case laws have interpreted this provision and some principles are laid out in order to guide balancing the situation of

the parties to have a more balanced position while granting such injunction. I agree with the parties on the application of the preconditions set out in **Atilio versus Mbowe** cited supra and the three preconditions enumerated by the parties.

The first condition on the existence of prima facie case or a serious question to be tried, I am guided by the need to take precaution to avoid udjudging the case at the preliminary stage. (See **Abdi Ally Salelhe versus Asac Care Unit Limited and Two Others**, Civil Revision No. 3 of 2012, CAT at Dar es Salaam.) In this matter it is not disputed that there is a serious question of determination in Civil Case No. 8 of 2023 since parties appear to have a serious dispute on the ownership of the suit land which is apparently reflected in their submissions. This means the first condition is clearly met.

In Abdi's case cited supra, it was stated that having found there to have a prima facie case, then the court get enjoined to investigate as to whether the applicant stands to suffer irreparable loss. According to Mpandangongo, there is no irreparable loss because the damages claimed by the applicant in the plaint is already quantified in monetary terms and therefore capable to be compensated by money. I agree with Mr. Mpandangongo because from the principle in Abdi's case supra,

irreparable loss is the one which cannot be compensated by money. Since the Applicant already knows the value of the damages, one cannot say that the loss about to occur is irreparable. The second ground is not met.

With regards to the third condition, by a normal assessment, the 5th Respondent is operating under a deadline of implementing a construction project failure of which may not be easy to quantify as submitted by Mr. Mpandangongo. In my view, the 5th Respondent may suffer more loss if the injunction is granted than the Applicant if the injunction is not granted.

From the above analysis, it is my finding that the Applicant has not managed to establish sufficient grounds to warrant granting of temporary injunction. As such, the application is dismissed for want of merit. The injunction order already granted ex-parte collapses with the dismissal of this application. It is so ordered.

Dated at Tanga this 25th Day of August 2023.



KATARINA REVOCATI MTEULE

JUDGE

25/08/2023

Court:

Ruling delivered this 25th Day of August 2023 in the presence of Linda Lugano Advocate for the Applicant and Mr. Mpandangongo Augustino Advocate for the Respondent.



KATARINA REVOCATI MTEULE

JUDGE

25/08/2023