IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISCELLANOUS LAND APPLICATION NO. 5074 OF 2024

1. **NOA MATINDA .....**
2. **LOMNYAKI MIKA.....**
3. **NARAMATISHO NAPI.....**
4. **BURAURARI BARIYE.....**
5. **KARINGI NAPI.....**
6. **KIPAMBA ALAIBAI.....**
7. **KUNYAE MOKOYO.....**
8. **SALIMU WILLIAM.....**
9. **KIONDOI NGOSIYE.....**
10. **LEMBURIS LORENGEI.....**
11. **LEMALI ROMET.....**

} **APPLICANTS**

VERSUS

1. **THE TRUSTEE OF TANZANIA NATIONAL PARKS.....**
2. **THE ATTORNEY GENERAL .....**

} **RESPONDENTS**

RULING

28th March and 5th April 2024

MIRINDO, J.:

On 14th December 2023, the first respondent, Tanzania National Parks Authority (TANAPA) issued separate 21-days' notices to the following eleven applicants to vacate Kimotorok Village in Simanjiro District for the reason that it was part of the Tarangire National Park: Noa Matinda, Lomnyaki Mika, Naramatisho Napi, Buraurari Bariye, Karingi Napi, Kipamba Alaibai, Kunyae

Mokoyo, Salimu William, Kiondoi Ngosiye, Lemburis Lorengei, and Lemali Romet. The notices directed the applicants to leave from Kimotorok area by 5th January 2024 and if they failed to do so, they would be removed by force. Subsequent to those notices, the applicants issued, on 12th February 2024, a statutory 90-days' notice of intention to sue the first respondent and the Attorney General, the second respondent. On 18th March 2024, they brought an application for Mareva injunction pending the institution of the main case after the expiry of the 90-days' notice. In their separate affidavits, applicants claim to have acquired ownership of the disputed land through inheritance, or inheritance and subsequent allocation by Kimotorok Village Council. The applicants pray that the respondents and persons affiliated to them should be prevented from evicting them from the disputed land; demolishing their bomas, trespassing, encroaching upon or entering into the disputed land or conducting any activities in the disputed land. The respondents be also restrained or stopped from arresting the applicants and detaining their livestock in relation to the disputed land. In their joint counter-affidavit, the respondents refute the applicants' ownership of the disputed land and claims that the disputed land forms part of Tarangire National Park in conformity with the Government Notice No 160 of 1970 issued on 19th June 1970.

The learned Advocates, Mr Joseph Melau Alais and Mr John Lairumbe, represented the applicants at the hearing of the application. The respondents were represented by Mr Hance Mmbando and Mr George Dalali, learned State

Attorneys. The learned Advocate, Mr Lairumbe, adopting the applicants' affidavits and their annexures as part of the applicants' arguments, pointed out that before granting a Mareva injunction there must be no pending suit because of a legal impediment. He argued that the present application has satisfied the conditions precedent for bringing this application for Mareva Injunction because the applicants cannot bring the main case against the respondents without compliance with the statutory requirement of 90-days' notice. The applicants have issued the statutory notice on 16th February 2024 and in the meantime, this Court can issue the Mareva injunction. Mr Mmbando, learned State Attorney, conceded that that there is a legal impediment to institute the suit by the applicants.

The learned Advocate, Mr Lairumbe, argued that the applicants have also met the three conditions, set out in *Attilio v Mbowe* (1969) HCD No 284 for issuing an interlocutory injunction including the Mareva Injunction. The first condition is the requirement of establishing a prima facie case. Mr Lairumbe argued that the applicants' affidavits have demonstrated that there are triable issues between the applicants and the respondents which will be determined in the main case to be instituted after the expiry of the statutory notice of 90-days. The triable issues involve the ownership of the suit land at Kimotorok area. On the contrary, the learned State Attorney, Mr Mmbando argued that the applicants have not established a prima facie case because they have not proved that they are owners of the suit land. The disputed land is part of Tarangire National Park.

The second condition is in respect of irreparable loss. It was the applicants' argument that they will suffer irreparable loss should the Mareva injunction be denied. The learned Advocate, Mr Lairumbe, contended that the disputed land was used by the applicants prior to the issuing of the 21-days' notice for family settlement, cultivation, cattle grazing and for spiritual rites and beliefs. The applicants are at the risk of losing their family settlements, land for cultivation, cattle grazing, and spiritual sites and beliefs. The respondents have denied them entry into the disputed land to continue with cultivation and cattle grazing, and they are arresting them and holding their cattle. In support of the claim of irreparable injury, the learned Advocate made reference to the decision of this Court in *TA Kaare v General Manager, Mara Cooperation Union* [1987] TLR 17 for the proposition that irreparable injury does not simply mean physical injury but injury that cannot be compensated. It was the respondents' argument that the applicants stand to lose the disputed land used for cultivation, human settlement and cattle grazing, spiritual sites and beliefs, and spiritual issues cannot be adequately compensated in monetary terms.

Arguing in relation of the balance of convenience, Mr Lairumbe, learned Advocate, emphasized that the applicants will suffer greater loss if the injunction is not granted and the respondents have the opportunity to defend the main case when it is instituted. There is no harm that the respondents will suffer taking into account that the respondents were not in possession of the suit land until they issued the notice directing the applicants to leave. The applicants stand to be

more affected by this action than the respondents because they are the ones who were using the disputed land. In response, the respondents argued that the disputed land forms part of Tarangire National Park and it is a resource for the benefit of all Tanzanians. Therefore, if the injunctive order is issued, the entire Tanzanians will suffer more than the applicants.

Although the three conditions for granting temporary injunctions have been applied in many cases, it is also clear that their application have varied according to the sub-matter in dispute. Specifically, in cases of conflicts over trademarks and business names, temporary injunctions are rare because of the difficulty of establishing a prima facie case with probability of success as either party has the likelihood of sucess. This is evident in *Glaxo Group Limited vs Agri–Vet Limited*, (HC) Commercial Case No 73 of 2002, High Court of Tanzania, Commercial Division at Dar es Salaam; *Tanzania Cigarette Co Ltd v Iringa Tobacco Ltd*, Commercial Case No 12 of 2005, High Court of Tanzania, Commercial Division at Dar es Salaam; and *Agro Processing and Allied Products Ltd v Said Salim Bahkresa and Co Ltd*, Commercial Case No 31 of 2004, High Court of Tanzania, Commercial Division at Dar es Salaam.

Reformulated in *Kaisha v Karageorgis* [1975] 1 WLR 1093 and *Mareva Compania Naviera SA v International Bulk Carriers SA* [1980] 1 All ER 213, the Mareva injunction is principally an order to prevent the defendant from removing his or her assets before the judgment or award is satisfied. From its

application to commercial cases, the Mareva injunction has been extended to different cases. The Mareva injunction is not simply an alternative for temporary injunction where there is no pending suit. While the conditions for issuing temporary injunction govern the issue of Mareva injunction, the Mareva injunction aims to prevent the defendant from either evading his or her obligations to the applicant, or from frustrating the anticipated court order. These requirements are clearly stated by Courtney, TB, *Mareva Injunction and Related Interlocutory Orders*, Dublin: Butterworths (Ireland) Ltd, 1998, at paragraph 1.0.6.

Both the Court of Appeal for Eastern Africa in *EA Industries Ltd v Trufoods Ltd* [1972] EA 420 at 421 and *Giella v Cassman Brown and Co Ltd* [1973] EA 358 at 360 and the Court of Appeal of Tanzania in *CPC International Inc v Zainab Grain Millers Ltd*, Civil Appeal 49 of 1995 have reaffirmed that the existence of a prima facie case with a probability of success for the applicant as a paramount consideration for issuing temporary injunctions. In the present application, I am satisfied that both parties have established prima facie case of ownership of the disputed land, hence the applicants do not stand alone in establishing the probability of success in the upcoming main suit. As mentioned earlier, the applicants' claims of ownership through inheritance and subsequent grant by Kimotorok Village Council is controverted by the respondents' claim of ownership through a 1970 Government Notice declaring the disputed land, part of Tarangire National Park.

The Mareva injunction may be granted even where the probability of success is evenly balanced between the parties where the applicant will suffer irreparable injury and, on a balance of convenience, the applicant stands to suffer more if the injunction is refused.

In connection with irreparable injury, I would at once state that the land law does not recognize an absolute right of occupation of land. A right of occupancy may be extinguished, revoked, or surrendered under the due process of law. There is no absolute right to spiritual sites. There is an absolute right to one's spiritual beliefs; one's freedom of conscience (*forum internum*) but physical location of spiritual sites not absolute. Spiritual sites may be removed or shifted subject to adherence to the principles of the due process of law. I find the applications' contention in this regard untenable.

The subject-matter in the present application relates to rival claims regarding ownership of the disputed land between private persons and Tarangire National Park under the control of TANAPA, the first respondent. From this perspective, there are environmental concerns that must be taken into account in determining irreparable injury. At the hearing of this application, I invited the parties to address this Court on whether any principles of environment and sustainable development under sections 5 and 7 of the Environmental Management Act, Cap 191 are relevant to this application. It was the applicants' argument that there was no evidence that the applicants had caused

environmental harm prior to issuing of the 21-days' notice. The respondents argued that granting Mareva injunction will contravene the precautionary principle as the applicants will cause or continue to cause harm to the disputed land in the Tarangire National Park. Human activities namely cultivation, settlement and livestock keeping can cause extreme harm to the Tarangire National Park.

A national park is a reserved land and an environmentally sensitive area where human activities of a permanent nature or likely to compromise environmental protection and conservation are prohibited. Considering that the disputed land may or may not be part of Tarangire National Park, the interim uncertainty regarding its ownership should be resolved in favour of environmental protection and conservation. Questions of irreparable injury and balance of convenience must be subordinated to the principle of ecosystem integrity where the prima facie case is evenly balanced between private persons and the guardian of a national park.

The learned State Attorney raised an additional point that the 21-days' notice expired on 5th January 2024, and some of the applicants left while others were removed from the disputed land. As long as the purpose was to maintain the status quo, the application has no merit since the applicants have already vacated the disputed land. The learned Advocate, Mr Alais contended that there was no evidence that the applicants left the disputed land and the fifth paragraph

of the applicants' individual affidavits should not be taken out of context. He argued that paragraph merely establishes a cause of action that the applicants were invaded by the first respondent and not that the applicants left the disputed land.

In dealing with this additional point, it is convenient to reproduce the contents of the fifth paragraph and examine its contents more closely:

> **That**, it is on diver's [sic] date of **6th, day of January, the year of our Chief Lord 2024**, the 1st Respondent herein without any colour of rights encroached, trespassed and unlawfully entered into the disputed land and started to evict and demolish my bomas without any apparent legal justification to evict over the land allocated by the village council and the same inherited land and the land where I was born and being raised over such land. [sic].

This is part of the first applicant's affidavit, Noa Matinda, and its contents have been replicated in the fifth paragraphs of individual affidavits of the rest of the applicants. The sixth paragraph of all the applicants likewise mentions the question of forceful eviction by the first respondent.

It is abundantly clear from these two paragraphs that the applicants claim being forcefully removed from the disputed land on 6th January 2024. Without laying down a general rule, an applicant who seeks to enjoin the respondent must act promptly. Considering that injunction is an equitable remedy, delay is an additional factor in determining whether it should be granted. In the context of the present application, the applicants should have brought the application

before the expiry of the 21-days' notice and not to wait until the eleventh hour when the first respondent carried out the directives contained in the notice or attempted to do so. There are already claims of chaos during the removal of the applicants from the disputed land and it would be contrary to the rule of law to grant an injunction that would resurrect havoc.

In the final result, I am satisfied the applicants have not made out a case for Mareva injunction and I dismiss the application with costs.

DATED at BABATI this 3rd day of April 2024.

F.M. MIRINDO

JUDGE

Court: Delivered this 5th day of April, 2024, in the presence of the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth applicants; Mr Joseph Melau Alais and Mr John Lairumbe, counsel for the applicants and Mr Leyani Mbise, State Attorney for the respondents. B/C: William Makori (RMA) present.

Right of appeal explained.

F.M. MIRINDO

JUDGE

5/4/2024