

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MANYARA
AT BABATI**

MISC. LAND APPLICATION NO. 5697 OF 2024

YAMAT NINI LAIZER.....APPLICANT

VERSUS

LOIBORSIRET VILLAGE COUNCIL1ST RESPONDENT

SIMANJIRO DISTRICT COUNCIL.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

3rd April & 23rd April, 2024

D. C. KAMUZORA, J.

This is an application for mareva injunction brought under certificate of urgency. The Applicant preferred this application under section 2(1) and (3) of the Judicature and Application of Laws Act [CAP 358 RE 2019], (hereinafter referred to as JALA), section 95 and Order XLII Rule 2 of the Civil Procedure Code [CAP 33 R.E. 2019] seeking for an interim order restraining the first and second Respondents and their agents from doing anything in respect of the land measuring 836.22 acres located at Loiborsiret village, Simanjiro District in Manyara Region (herein to be referred to as the suit land) pending expiry of the 90 days statutory notice of intention to sue the government. The application is supported by an affidavit sworn by the Applicant himself. On the other hand, the Respondents filed joint counter affidavit to contest the application.

When the matter was called for hearing, Mr. Godfrey Mlingi, learned advocate appeared for the Applicant while Mr. Leyan Mbise and Mr. Patrick Mwinuka, learned State Attorneys represented all Respondents. Subject to prayer by the counsel for the parties hearing of the application was ordered to proceed by way of written submissions. The Applicant complied with the submission schedule save for the Respondents who were ordered to file submission on or before 10/4/2024 but the digital case file as well as hard copy show that the reply submission was filed on 12/4/2024. The Respondents' submission was filed out of time contrary to the court's order and without leave of the court to file the same out of time and for that reason, the Respondents' reply submission will be disregarded.

In his submission in support of the application, Mr. Mlingi, the counsel for the Applicant argued that section 2(3) of JALA gives this court powers to grant mareva injunction. He referred the case of **Leopard Net Logistics Company Limited Vs. Tanzania Commercial Bank Limited and Others** Miscellaneous Civil Application No. 585 Of 2021(Tanzlii: [2021JTZHC 9043) cited the case of **Daud Mkwya Mwita Vs. Butiama Municipal Council and another**, Miscellaneous land Application No.69 of 2020 (unreported).

Referring the affidavit in support of application, the learned counsel for the Applicant submitted that the Applicant claims for 836.22 acres of

land on behalf of the family as the suit land covers the land from all family members. That, parts of the land were allocated to them by the first Respondent in 1993 and parts of the land were bought from the villagers. That, the Applicant applied for the certificate of customary right of occupancy which was granted for 836.22 acres since 2014 and land rents are paid annually as per annexures API, AP2, AP3 and AP7 respectively. That, the first Respondent claims ownership of 536 acres which are part of the land owned by the Applicant as stated in Respondents' joint counter affidavit.

The learned advocate for the Applicant argued that, in mareva injunction the Applicant has to prove three conditions set out in the case of **Attilio Vs Mbowe** (1969) HCD No. 284. That, the first condition is that, the Applicant must have arguable case or establish prima facie case. Reference was made to the case of **Abla Estate Developers & Agency Company Ltd v KCB Bank Tanzania Ltd** Miscellaneous Land Appl. NO.604 Of 2017 (Tanzlii: [2018] TZHC land 95). The counsel submitted that the Applicant's affidavit and the Respondents' counter affidavit prove that, the first and second Respondents forcefully and illegally entered and measured the suit land intending to take part of the Applicant's land which is used for grazing cattle and cultivation.

He prays for this court to invoke its powers and restrain the Respondents from alienating and take the Applicant's land in order to rescue the life of the Applicant's livestock. To him, the Applicant will suffer loss than Respondent because the Respondents had never used the said land and they have no evidence showing that they have any business or use of the suit land. He insisted that, on balance of convenience as stated in the case of **Atilio vs Mbowe** (supra), the Applicant will suffer more since the land is used by all members of the family and the same was planned and used for their cattle grazing and agriculture.

The Applicant's counsel added that, the Respondents' conduct of using armed police officers as stated in their joint counter affidavit, shows that Respondents have already made their own verdict and intends to execute the same. That, if the Respondents will execute their plan to alienate and allocate the disputed land to other villagers as stated in their joint counter affidavit, it will render the intended suit nugatory since there will be huddles on executing the judgment and decree of this honourable court if the Applicant would be declared owner of the suit land. That, there will be other people claiming interest over the suit land and that will lead to the new cause of action against new defendants with inclusion of the Respondents hence, consuming parties time and finance. He therefore urged the court to grant the application.

An application for mareva injunction like the instant one is preferred where there is legal impediment that bars the Applicant from directly instituting a suit before the court and for that, the same can be filed where there is no pending suit. The purpose is to maintain the status paving the way for the party to acquire legal status to institute a suit. In this application, mareva injunction is preferred pending expiry of 90 days for no substantive suit or application can be filed in court before issuing and serving to the parties, the 90 days' notice of intention to sue the government. Having gone through the Applicant's submission, the sole issue for my determination is whether the application has merits.

There is a plethora of decisions which underscored the practice in mareva injunction. See; **Tanzania Sugar Producers Association Vs. The Ministry of Finance of the United Republic of Tanzania and Another**, Miscellaneous Civil Case No. 25 of 2003, **Issa Selemani Nalikila and 23 Others Vs. Tanzania National Roads Agency and Another**, Miscellaneous Land Application No. 12 of 2016, **Abdallah M. Maliki and 545 Others Vs. Attorney General**, Miscellaneous Land Application No. 119 of 2017 and **Daud Makwava Mwita Vs. Butiama District Commissioner and another**, Misc. Land Application No. 69 of 2020, (all unreported), to mention but few. In the latter case the High Court at Musoma held that;

"Mareva Injunction may be applied where an Applicant cannot institute a law suit because of an existing legal impediment for instance where the law requires that a statutory notice be issued before a potential plaintiff can institute a suit."

The question is, what needs to be proved for mareva injunction to be granted. In the case of **Trustees of Anglican Church Diocese of Western Tanganyika Vs Bulimanyi Village Council and 2 Others**, (1 of 2022) [2022] TZHC 719 (30 March 2022), this court held that;

*"The principles in temporary injunction applications are applicable to Mareva Injunctions because both have the same purpose of holding the parties to the same position before the suit is filed. The only difference between temporary injunctions pending determination of the suit and Mareva Injunction is that the latter are granted ante filing of a suit while the former are granted after filing of a suit. The tests for temporary injunctions were expounded in the famous case of **Atilio vs. Mbowe** (1969) HCD n. 284."*

In the above case and other many cases, the position is that the conditions used in determining application for temporary injunctions are the same conditions applicable in determining application for mareva injunction. In that regard, and as well submitted by the counsel for the Applicant, three conditions set in **Atilio Vs. Mbowe** (supra) need to be established prior to grant of temporary injunction;

1. That, the Applicant must demonstrate a prima facie case by showing that there is a serious question to be tried on the alleged facts and probability that the Applicant will be entitled to the relief prayed,
2. That, the Applicant must demonstrate that the courts interference is necessary to protect the Applicant from any kind of injury which may be irreparable before his legal rights are established,
3. That, on the balance of convenience, whether there will be greater hardship or mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from granting it.

As rightly argued by the learned advocate for the Applicant, it is settled law that all ingredients stipulated above must be cumulatively established.

I have gone through the affidavit in support of the application, counter affidavit and submission by the counsel for the Applicant. The Applicant deponed that he is the owner of 836.22 acres of land held under the customary right of occupancy and the same was annexed to the affidavit. That, the suit land covers different parcels of land belonging to different family members but all registered in the Applicant's name as their representative. That, all his family members are using the suit land for grazing their cattle and for agriculture. That, the first Respondent intends to take part of the suit land (500 acres) and allocate it to other

people on account that the Applicant's family owns large part of the land. That, they have passed through number of discussions with village leaders but in vain. That, the village leaders called for the village assembly and informed the villagers that the suit land will be divided to other villagers. That, the village leaders reported the Applicant to PCCB and was requested to submit the certificate on right of occupancy for investigation. That, the Applicant was asked to attend at the village office on 14th March, 2024 for discussion and upon attending, he was introduced to the lawyer from the district council who was accompanied by armed police officers, village leaders and other individuals. That, they had an unsuccessful discussion but the whole cabinet led by the lawyer went to the suit land with armed police officers for purpose of measuring it as they intended to take 500 acres from the Applicant and allocate the same to other villagers. That, the Applicant's family was informed that upon obtaining permit, the land will be alienated from the Applicant and allocated to other people.

In their counter affidavit, the Respondents claim that the land measuring 536 acres is the property of the 1st Respondent. To them, the Applicant's family is neither the owner of the suit land nor possess a valid customary right of occupancy.

From the facts deponed in the affidavit and the submission by the Applicant's counsel, this court is satisfied that the Applicant was able to

demonstrate the existence of a prima facie case. Based on the Applicant's affidavit, while the Applicant allege ownership of 836.22 acres of land, the Respondents claim that out of 836 acres, 536 acres are owned by the 1st Respondent. Again, while the Applicant claim that he was issued with customary right of occupancy annexed to the affidavit, the Respondents alleged that the customary right of occupancy annexed to the affidavit has already been cancelled by the 2nd Respondent. Parties are also in contest of the size of the land allocated to the Applicant. The above facts rise a bona fide contest between the parties and a serious question to be tried by the court, hence a prima facie case.

Having said that there is a prima facie case, the question that follows is whether the Applicant stands to suffer irreparable loss, not capable of being atoned for by way of damages. The Applicant was called to demonstrate that the court's interference is necessary to protect the Applicant from any kind of injury which may be irreparable before his legal rights are established.

The Applicant deponed in his affidavit that if allocation process will take over, the land will be alienated from them and allocated to other villagers and that will cause serious problems or sufferings. In his submission, the Applicant's counsel added that the alienation of the suit

land is likely to affect Applicant's agricultural activities and livestock depending on that land to survive.

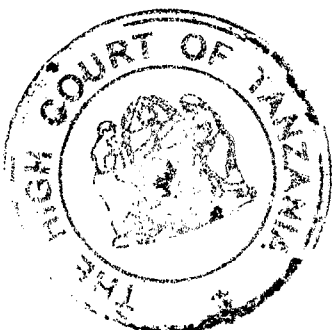
As well submitted by the counsel for the Applicant, the Applicant's affidavit reveals that the Applicant and other family members are currently using the suit land as pastures for their livestock and for agriculture. There is no doubt that alienation of the land is likely to affect their livestock and agricultural activities which is human survival. Although the Applicant did not demonstrate number of cattle which are kept in the disputed land and size of land used for agriculture, the Applicant was able to demonstrate that the suit land is not owned by single person rather, it is a total of merged land individually owned land of different family members from the same clan. That, they both use the suit land for pastures and agriculture and this court is convinced that the situation involves human survival and animal survival thus, there is likelihood of irreparable loss. For that reason, this court finds that there is likelihood for Applicant to suffer irreparable loss, not capable of being atoned for by way of damages.


On the last ground, this court finds that on the balance of convenience, there will be greater hardship on part of the Applicant if the injunction is not granted as opposed to the Respondents if the same is not granted. I say so because, the Applicant claimed to use the land for grazing cattle and agricultural activities which are basic activities for their

survival. However, the Respondent apart from claiming ownership of the suit land, they have not disclosed if they have any activities which are being performed in the suit land which, if stopped, will cause hardship to the Respondents. Basically, if the Respondent will reallocate land to other people as so alleged by the Applicant, those people will have right to develop the land and there will be hardship in recovering the same if the decision is made in favour of the Applicant. In fact, it is likely to result into number disputes in an attempt to recover the land in case the decision is made in favour of the Applicant. But if the decision will be made in favour of the Respondent, it will be easy for them to take immediate possession of the suit land from the Applicant. For that reason, there will be greater hardship on part of the Applicant if the injunction is not granted as opposed to Respondents if the same is granted.

Having said so, this court finds that the Applicant was able to demonstrate the three grounds for temporary injunction and for that reason, mareva injunction is granted pending expiry of 90 days' notice. In the upshot, the application is granted and each party shall bear its own costs.

DATED at BABATI this 23rd Day of April, 2024.




D. C. KAMUZORA
JUDGE