

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

**MISC. LAND APPLICATION NO. 7444 OF 2024**

*(Arising from Land Case No. 5529 of 2024 before the High Court (T) Manyara sub-registry)*

**KERIKA OLOINYO LENDOLOK..... 1<sup>ST</sup> APPLICANT**  
**NDEREE KOPEJO KUNDAYO..... 2<sup>ND</sup> APPLICANT**  
**SESILI SOKOYOTI NGOTO..... 3<sup>RD</sup> APPLICANT**  
**PARESOI NJURU KILONGOSI..... 4<sup>TH</sup> APPLICANT**  
**KIYONDO NGINANYI MENG'ORU..... 5<sup>TH</sup> APPLICANT**

**VERSUS**

**EMMANUEL MPOSI.....1<sup>ST</sup> RESPONDENT**  
**SIWAJIBU KILANGWA.....2<sup>ND</sup> RESPONDENT**  
**ROBERT MADINGA.....3<sup>RD</sup> RESPONDENT**  
**SANGANENA MBOGO.....4<sup>TH</sup> RESPONDENT**  
**NOEL MBULA.....5<sup>TH</sup> RESPONDENT**  
**MOI NGANENA MBOGO.....6<sup>TH</sup> RESPONDENT**  
**PORINO NYARUSI.....7<sup>TH</sup> RESPONDENT**  
**LETANGA KILOGOMBI.....8<sup>TH</sup> RESPONDENT**  
**HILARI NGANENA MBOGO.....9<sup>TH</sup> RESPONDENT**  
**BOSCO DANDA.....10<sup>TH</sup> RESPONDENT**  
**SEBIGA CHAMWERA.....11<sup>TH</sup> RESPONDENT**  
**TINO NYWAGI.....12<sup>TH</sup> RESPONDENT**  
**KOSI MASAI NG'ORO.....13<sup>TH</sup> RESPONDENT**  
**FESTO NGANENA MBOGO.....14<sup>TH</sup> RESPONDENT**

**RULING**

*29<sup>th</sup> April & 21<sup>th</sup> May 2024*

***Kahyoza, J.:***

**Kerika Oloinyo Lendolok, Nderree Kopejo Kundayo, Sesili Sokoyoti Ngoto, Paresoi Njuru Kilongosi and Kiyondo Nginanyi Meng'oru** (the applicants) instituted a suit seeking this Court to declare **Emmanuel Mposi, Siwajibu Kilangwa, Robert Madinga, Sanganena Mbogo, Noeli Mbula, Moi Nganena Mbogo, Porino Nyarusi, Letangav Kilogombi, Hilari Nganena Mbogo, Bosco Danda, Sebiga Chamwera, Tino Nywagi, Kosi Masai Ng'oro, Festo Nganena Mbogo and Soteli Mkalawa** (the respondents) trespassers. Further, the applicants instituted the instant application seeking this court praying for an injunctive order to restrain the respondents and, or their agents, privies, workers or any other persons acting under their instructions from undertaking any farming or agricultural activities on the suit Land (situated at Engusero Sinani village), pending the determination of the main suit.

The applicants enjoyed the service of Mr. Baraka, Advocate, and Mr. Bonaventure, Advocate, for the respondents. However, when this matter came for hearing parties' advocates being invited to submit, they seemed

unprepared-this court was not ready to grant an adjournment, thus, resolved to rely on the affidavits of both sides to prepare this ruling.

The pertinent issue for determination is whether the applicants have demonstrated sufficient grounds to warrant the issuance of injunctive order pending the determination of the main suit.

In a celebrated case of **Attilio vrs. Mbowe** (1969) HCD 284, it was held that there are conditions to be fulfilled before an injunctive order is given-

*"(i) there must be serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed;*

*(ii) that the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established; and*

*(iii) that on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it."*

### **Is there any serious issue to be tried?**

The applicants had a task to establish that there is serious issue to be tried by this Court. Reading the contents of the affidavit and the counter affidavit, I have no doubts that the parties are at issue. To appreciate my take on it, I wish to reproduce paragraphs 3 and 13 of the Joint Supporting affidavit by the applicants as follows-

*"3. That, the applicants herein carryout their cattle rearing activities on an area of land measuring 9113.68 Ha (the suit land) and that, the said land was given to them with other live-stock keepers at Engusero Sidani Village for such purposes under the "MPANGO WA MATUMIZI BORA YA ARDHI KIJIKI CHA ENGUSERO SIDANI, KATA YA DONGO, TARAFU YA SUNYA, WILAYA YA KITETO..."*

*13. That, the filed suit has overwhelming chances of success because the "2014-2024 Land use plan for Engusero Sidani Village" has not expired or rendered invalid, the By-laws governing the same land use plan is still on use, and the map showing the demarcations of pastoral and agricultural areas are not changed".*

Briefly, the respondents refuted the averments in the cited paragraphs, in the following terms-

*"3. That the contents of paragraph 3 of the applicants affidavit is hereby disputed intoto and the applicant shall be called to strict proof thereto and the respondents wish to state further that the said land*

*use plan of 2014 known as MPANGO WA MATUMIZI BORA YA ARDHI KIJJI CHA ENGUSERO SIDANI, KATA YA DONGO, TARAFU YA SUNYA, WILAYA YA KITETO... is null and void ab initio due to fact that there has never been any consent from the villagers.....*

*13. That, the content of paragraph 13 of the applicant's affidavit is vehemently denied and the applicants shall be called to strictly prove thereof and the respondents wish to state further that there is no overwhelming chances of the main suit to succeed..... "*

It is obvious from the gist of affidavits that the subject matter of the main suit is on land trespass and the applicants among other reliefs, seek this Court to declare the respondents as trespassers. On this factual basis, the subject matter may entitle the applicants the relief sought, thus, a serious matter ripe for trial.

### **Do the applicants stand to suffer an irreparable loss?**

The position in **Attilio vrs. Mbowe** and Order XXXVII rule 1, of the Civil Procedure Code [Cap. 33 R.E 2019], temporary injunction may be granted where in any suit, the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit. An injunction is granted to guard the applicants (the plaintiffs) from obtaining an empty decree at the end of trial. The dispute is over trespass to land. I do not contemplate how the applicants will obtain an empty decree. They have

not demonstrated that the respondents are alienating the land in dispute or wasting it.

In addition, I was not convinced, how the applicants will lose grazing grounds from 9113.68 Ha. The applicants failed to provide sufficient facts to establish the viability of the second condition. The applicants never deponed that upon failure to grant this application, they stand to suffer an irreparable loss which cannot be compensated by monetary consideration. Not only that but also, the conflict arose five years ago and the nothing has happened to their detriment or at least proved to befall on the applicants' side. The applicants have not established that a dire need to issue an injunctive order to maintain the *status quo* till the rights can be decided.

**Does the balance of conveniences tilt in favour of issuing an injunction?**

The lengthy applicants' affidavit with arguments, did not establish that the balance of convenience is in their favour, that, there will be greater hardship and mischief suffered by the applicants from withholding of the injunction than will be suffered by the respondents from the granting it. The applicants deponed that the dispute has existed for five years from when it arose. I do not see how the applicants will suffer unbearable loss for nine months this matter will last in court. I am

convinced that this matter will not take more than nine months in this court has it has been assigned to speed track one.

In the upshot, I find no merit in the application as a result I dismissed it. Costs shall be in due course.

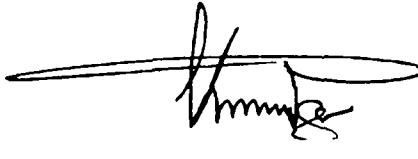
It is ordered accordingly.

Dated at Babati this 21<sup>st</sup> day of **May**, 2024.



  
**J. R. Kahyoza**  
**Judge**

**Court:** Ruling delivered in the virtual presence of Mr. Baraka, Adv, assisted by Mr. Moses and Alexander adv. for the applicants and Mr. Bonaventura, Advocate, for the respondents. B/C Ms. Fatina Haymale (RMA) present.

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**J. R. Kahyoza**  
**Judge**  
**21/05/2024**