

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO. 6735 OF 2024

JOYCE HARUN MACHODO.....APPLICANT

VERSUS

TANZANIA COMMERCIAL BANK (TCB) PLC.....1ST RESPONDENT

PATRIC EMMANUEL RUGEZI.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

6th & 17th May, 2024.

MUSOKWA, J;

This is an application for temporary injunction both *ex-parte* and *inter-parties*, made under the provisions of section 2(1) and (3) of the Judicature and Application of Laws Act, Cap. 358 R.E. 2019 (JALA); and section 95 of the Civil Procedure Code, Cap.33 R.E. 2019 (CPC). The application, was brought under certificate of urgency, seeking from this court the following orders: -

EX-PARTE

- 1. That, this honorable court be pleased to make an order for maintenance of status quo of the suit premise pending the hearing and determination of this application for an order of mareva injunction to restrain*

the 1st respondent, its authorized agent(s), assignee(s) or any other person(s) acting under its instructions(s) from selling the applicants house situated at Plot No. 613, Block BD, Nzuguni Within Dodoma City Council pending the institution and determination of the intended suit against the 1st and 2nd and 3^d respondents after the expiration of the mandatory statutory notice served to the 1st and 3^d respondents.

INTER-PARTIES

- 1. That, this honorable court be pleased to issue an order of mareva injunction to restrain the 1st Respondent, its authorized agent(s), assignee(s) or any other person acting under its instructions(s) from selling the applicants house situated at Plot No. 613 Block BD, Nzuguni C, within Dodoma City Council pending the institution and determination of the intended suit against the 1st, 2nd and 3^d respondents after the expiration of the mandatory statutory notice served to the 1st and 3^d respondents.*
- 2. Costs be provided for,*
- 3. Any other relief(s) this honorable court may deem fit and just to grant.*

The application is made by way of chamber summons supported by the affidavit of the applicant, one Joyce Harun Machodo sworn on 26th day of March, 2024. The said application is disputed by a joint counter affidavit of the 1st, and 3rd respondents.

On the date fixed for hearing, Mr. Chacha Mwita learned counsel, appeared for the applicant and Ms. Kumbukeni Kondo, learned state attorney represented the 1st and 3rd respondents. The application was

heard *ex parte* against the 2nd respondent upon failure to appear even after substituted service had been duly effected.

Mr. Chacha submitted that, the matter was brought under the certificate of urgency under section 2 (1) and (3) of JALA; and also under section 95 of the CPC. The applicant sought an order of *mareva* injunction against the 1st respondent, to restrain the said respondent including his authorized agents from selling the applicant's house, pending institution and determination of the intended suit upon the expiry of the mandatory statutory notice to the 1st and 3rd respondents.

The learned counsel for the applicant prayed for adoption of the affidavit of the applicant, Joyce Machodo together with the relevant annexures, to form part of this submission. Further, Mr. Chacha asserted that the applicant simultaneously uses the names of Joyce Harun Machodo, (Harun with no "I") and Joyce Haruni Machodo (Haruni with an "I") as reflected in annexure JH-1, being an affidavit of proof of names. Mr. Chacha stated that the 90 days' notice to the 3rd respondent had already been issued, as reflected by annexure JH-2.

Mr. Chacha submitted that, the applicant is the lawful owner of the suit land since 2018, which is located at Plot No. 613, Kitalu BD, Nzuguni C, Dodoma Municipality. Further, that the applicant purchased the said

property from the 2nd respondent, one Patric Rugezi, who processed the sale upon obtaining the required consent from his wife. Proof of ownership was stated to be Certificate of Title No. DOM 02 6129, annexed as "JH3" in the application before this court. The sale agreement was witnessed by the Village Executive Officer (VEO) as evidenced by the contract of sale, annexures JH-4 and JH-5. The 2nd respondent, the seller, in proving his title to the suit land, issued to the purchaser customary title, annexed as JH6.

The counsel for the applicant averred that the applicant, upon obtaining the title in 2018, enjoyed their rights to the suit land without any disturbance until August, 2022. However, in September 2022, the 1st respondent unlawfully trespassed into the land of the applicant and required her to vacate from the suit property. The orders were issued as part of the initial processes to enable sale of the suit land, for the alleged claims that the 2nd respondent had mortgaged the suit land for a loan facilitated by the 1st respondent. In May 2024, the 1st respondent unlawfully repeated the same act of trespassing the property of the applicant and without the consent of the applicant, enscribed the following words on the house of the applicant; "*Nyumba inauzwa, TCB Bank, inauzwa TCB Bank, inauzwa*". These words were painted on all the walls of the applicant's house, and on some of the windows. The intention of

the said words was to inform the public that the house of the applicant was for sale.

Further, Mr. Chacha submitted that on 19th March 2024, the 1st respondent together with her agents who introduced themselves as court brokers unlawfully and without the consent of the applicant, and without the presence of any local leader, entered all the rooms of the applicant and took photos therein. In view of the foregoing, the applicant's counsel prayed for a *mareva* injunction against the 1st respondent together with all her agents in order to ensure that the house of the applicant is not sold. The learned counsel submitted that the said injunction was necessary for the purpose of ensuring that the rights of the applicant and her family are protected until the expiry of the 90 days' statutory notice. Further, it was added that the suit land is the applicant's home.

Proceeding with his submission in chief, Mr. Chacha argued that in order for the court to issue the *mareva* injunction, there are conditions which have been prescribed by law which must be established. These conditions were discussed in the case of **Genoveva Ndelimbi Muro vs Tanzania Commercial Bank PLC and 2 Others**, Misc. Land Case Application No. 17 of 2023. The conditions are provided for at page 5 as follows: -

- i. *There should be no main suit that is pending before the court.*

- ii. *There must exist triable issues as established in the case of Atilio vs Mbowe [1969] HCD No. 284.*
- iii. *There must be irreparable loss.*
- iv. *There must exist a balance of convenience.*

In this regard the applicant confirmed that there is no case pending in court. The applicant submitted that in the matter before this court, the triable issues include; whether the 2nd respondent borrowed money from the 1st respondent; and who was the lawful owner of the suit land at the time the alleged facility loan was advanced to the 2nd respondent. The applicant, averred that should the house be sold then she will lose her dwelling home wherein she resides with her family. That consequently, she shall remain homeless as a result of a loan agreement she was never party to.

It was the assertion of the applicant that if the said order is not issued then she will suffer to a greater extent than the 1st respondent. The reason being that, the 1st respondent shall be able to proceed with their business operations as usual, undisturbed, while she will be left homeless. On the basis of the foregoing, the applicant prayed that this application be granted with costs and that the *mareva* injunction be issued against the 1st respondent and his agents until the expiry of the 90 days' notice.

In reply, Ms. Kumbukeni Kondo, learned state attorney submitted that a *mareva* injunction ought to be applied for pending the expiry of the

statutory notice. Whereas upon such expiry the applicant will then be able to file a case against the intended respondents. Accordingly, the learned state attorney submitted that the prayers before this court are unmaintainable. Citing paragraph 1 of the chamber summons under the title 'inter-parties' she stated that the wording therein indicates that the applicant prays for the order of the *mareva* injunction '*pending the institution of the intended suit*' rather than '*pending the expiry of the 90 days' notice.*'

Contending further, Ms. Kumbukeni asserted that apart from paragraph 3 of the affidavit, nowhere in the application including the affidavit does the applicant indicate that this application has been filed pending the expiry of the 90 days' notice. However, under paragraph 3 the applicant merely depones that the statutory notice has been filed, pending filing of the intended suit. The counsel for the respondent referred this court to the case of **Joseph Wilrick Marimoto vs Boay Village Council and 2 Others**, Misc. Civil Application No. 31 of 2023 at page 10, in support of her position. The case of **Daudi Makwava Mwita vs Butiama District Commissioner and Another**, Misc. Land Application No. 69 of 2020 at page 10, was further cited to cement her point.

Opposing the submissions by the learned counsel for the applicant, Ms. Kondo averred that the prayers that have been lodged in this application, to wit, *pending the filing of the suit* are incorrect as the application was supposed to be filed *pending the expiration of the 90 days' notice*. Further, it is a requirement that the chamber summons must be supported by the affidavit. Hence therefore, issues regarding irreparable loss that is likely to be suffered by the applicant; and issues of balance of convenience, should have been reflected in the affidavit. Instead, they were merely raised in the submissions before the court. The case of **Fatuma Hamisi Sultani vs. TCB Bank PLC and 4 Others**, Misc. Land Application No. 277 of 2022 at page 7, was preferred to support her argument. Ms. Kumbukeni reiterated that the prayers before this court are unmaintainable.

Addressing the issue of irreparable loss, the learned state attorney submitted that, it must be shown that the loss to be suffered is irreparable. In the circumstances, loss of a house is not irreparable loss as it can be compensated. She stated further that, the 1st respondent is a financial institution capable of compensating the applicant if it is proven after the sale that the house was not mortgaged by the 2nd respondent. She referred this court to the case of **Richard William Matibu vs CRDB**

PLC and 2 Others, Misc. Land Case Application No. 21 of 2022 at page 8 to cement her point that a house can be compensated.

On the issue of balance of convenience, she referred to the case of **Richard William Matibu** (*supra*) where the court cited the case of **Charles D. Msumari and 83 Others vs The Director of Tanzania Harbours Authority**, Civil Appeal No. 18 of 1997.

Ms. Kumbukeni contended that, the 1st notice to the applicant was issued in September 2022, the second was issued in May 2023, and the 3rd in March 2024. Since September 2022, to the 3rd notice issued last, a total of 18 months has lapsed without the applicant taking any action. She therefore argued that, the urgency of this application is not proven and prayed that the applicant be dismissed with costs.

In rejoinder, the learned counsel for the applicant emphasized that, the learned state attorney misdirected herself by stating that for such order to be granted it must be pending the expiration of 90 days' notice. According to him, this requirement is for the institution of a main suit and not a requirement for a *mareva* injunction, he referred this court to the case of **Genoveva Ndelimbi Muro** (*supra*) at page 5. Addressing the issue of suffering irreparable loss, the advocate for the applicant referred to paragraph 13 of the affidavit; whereby the irreparable loss which the

applicant is likely to suffer is clearly outlined. Regarding the issue of balance of convenience, Mr. Chacha reiterated that the applicant will be the one to suffer great loss as she is at risk of losing her dwelling home. Referring to the joint counter-affidavit of the 1st and 3rd respondents, the respondents at paragraph 5 admitted that the 2nd respondent is the one who borrowed the money. In view of this, Mr. Chacha submitted that the respondents ought to have compensated the applicant.

I have carefully considered the application and the prayers thereto, the counter- affidavit filed contending the application and the respective annexures. The pertinent issue for determination is whether this application is meritorious. In the case of **Leopard Net Logistics Company Limited vs. Tanzania Commerical Bank Limited and 3 Others**, Misc. Civil Application No. 585 of 2021, the High Court referred the case of **Mareva Compania Naviera SA vs International Bulkcarriers SA** (1980) 1 ALL ER 213 and stated that;

"Mareva injunction is a common law remedy developed by the courts of England and originates from the landmark case of where Lord Denning accorded a broader interpretation to section 25 of the Judicature Act of 1873 which provided for grant of temporary injunctions pending suits to be filed in courts to cover grant of interim injunctions in anticipatory suits."

The High Court went further and stated that;

*"In our jurisdiction, it is a settled principle that this court has jurisdiction to grant injunction under section 2(3) of the Judicature and Applications of Laws Act, Cap. 358 which recognized the application of common law and equity in our jurisdiction. The position has been settled in many authorities, and among them is the case of **Jitesh Ladwa vs Yono Auction Mart and Co. Ltd and Others**, Misc. Civil Land Application No. 26 of 2020; **Ugumba Igembe and Machinya Nemba Singu vs The Trustees of The Tanzania National Parks and The Attorney General**, Misc. Civil Application No. 1 of 2021, HC Mbeya."*

Indeed, as correctly submitted by the advocate for the applicant, the case of **Atilio vs. Mbowe (1969) HCD 284**, enlists three (3) pre-conditions for the issuance of temporary injunction. **One**, a *prima facie* case must be established; **two**, the likelihood of irreparable loss to be suffered by the applicant; and **three**, balance of convenience. For clarity, the relevant part is reproduced hereunder: -

"It is generally agreed that there are three conditions which must be satisfied before such an injunction can be issued:- (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."

From the above legal position on the granting of a temporary injunction, the applicant must establish the existence of the conditions in order for the court to grant an injunction.

I will commence with the first condition on establishing a *prima facie* case.

In the instant case, the applicant demonstrated the existence of triable issues. Mr. Chacha submitted that, the applicant is the lawful owner of the suit land since 2018, which she purchased from the 2nd respondent by the name of Patric Rugezi. The seller, in proving his title to the suit land, issued to the purchaser customary title, annexed as JH6. Mr. Chacha asserted that the triable issues at hand are; whether the 2nd respondent borrowed money from the 1st respondent; and who was the lawful owner of the suit land at the time the alleged facility loan was advanced to the 2nd respondent. Looking at the facts deponed in the applicant's affidavit from paragraph 4 to paragraph 10, the applicant disputed to have obtained the loan from the 1st respondent and further denied placing her house as security for any loan. In my view, the aforementioned facts constitute triable issues that require to be determined by the court.

On the other hand, the learned state attorney submitted that the prayers for *mareva* injunction are unmaintainable before this court as the

applicant prayed for the order of *mareva* injunction pending the institution of the intended suit rather than pending the expiry of the 90 days' notice.

I have made a perusal of the application; the chamber summons reads as follows: -

INTER-PARTIES

- 1. That, this honorable court be pleased to issue an order of mareva injunction to restrain the 1st Respondent, its authorized agent(s), assignee(s) or any other person acting under its instructions(s) from selling the applicants house situated at Plot No. 613 Block BD, Nzuguni C, within Dodoma City Council **pending the institution and determination of the intended suit against the 1st, 2nd and 3rd respondents after the expiration of the mandatory statutory notice served to the 1st and 3rd respondent.** [emphasis added]*

I am of the settled view that the learned state attorney has misdirected herself. The applicant has prayed that this court should grant an order of *mareva* injunction to restrain the 1st respondent from selling her house pending the institution and determination of the intended suit against the 1st, 2nd and 3rd respondents; after the expiration of the mandatory statutory notice. Clearly, the wording implies that the institution and determination of the intended suit is subject to the expiration of the statutory notice that has been served to the 1st and 3rd respondents. Meanwhile, the applicant, while waiting to obtain legal standing to

institute the law suit, is seeking the intervention of the court in an attempt to safeguard her rights.

Annexure "JH-2", the statutory 90 days' notice indicates that it was issued to the respondents on the 21st March, 2024 whereas this application was filed on 28th March, 2024. Accordingly, contrary to the submission of the learned state attorney, this application is maintainable. The reason being that, the order of *mareva* injunction being applied for is merely for the subsistence of the life-span of the statutory notice, to wit, 90 days since it was issued.

Proceeding to the issue on the likelihood of suffering irreparable loss; the applicant claimed that the suit property is her dwelling house. In the circumstances, the likelihood that she will suffer irreparable loss as compared to the 1st respondent is greater, for reason that the 1st respondent shall not be impeded in continuing with his business operations while she will be left homeless. In the case of **Leopard Net Logistics Company limited Tanzania Commercial Bank Limited Chief Executive and 3 Others**, Misc. Civil Application No. 585 of 2021 at page 8 and 9; this court referred to the case of **Charles D. Msumari and 83 Others vs. The Director of Tanzania Harbours Authority**,

Civil Appeal No. 18 of 1997, HC at Tanga (unreported) whereby it was held that: -

*"Courts cannot grant injunctions simply because they think it is convenient to do so. Convenience is not our business. Our business is doing justice to the parties. They only exercise this discretion sparingly and only to protect rights or prevent injury. According to the above stated principles, courts should not be overwhelmed by sentiments however lofty; or mere highly driving allegations of the applicants such as, that the denial of the relief will be ruinous and or cause hardship to them and their families, without substantiating the same. **They have to show they have a right in the main suit which ought to be protected or there is an injury (real or threatened) which ought to be prevented by an interim injunction and that if that was not done, they would suffer irreparable injury and not one which can possibly be repaired.**" [emphasis added]*

In the instant application, the applicant claims title to the suit property. This is a right that she intends to defend in the intended suit, upon expiration of the statutory 90 days' notice period. In the circumstances that her dwelling house is sold prior to the determination of the intended suit which will determine the rights of the parties; this will in fact amount to irreparable loss.

On the issue of balance of convenience, this court makes all endeavors to protect the interest of parties by evaluating their interests and how such rights are to be affected and who will be prejudiced or suffer most in each

circumstance. In this matter, I have no doubt that the applicant stands to suffer most if the prayers are not granted.

In view of the foregoing, it is my considered view that there are triable issues in this application, which cannot be determined at this stage. It is apparent that there are 90 days that impede the applicant from instituting the suit.

Having said so, this application is hereby allowed. The 1st Respondent and, or its officers; and or agents; are hereby restrained from selling the applicant's house situated at Plot No. 613 Block BD, Nzuguni C, within Dodoma City Council pending the expiration of the mandatory statutory notice served to the 1st and 3rd respondents. Each party to bear own costs.

It is so ordered.

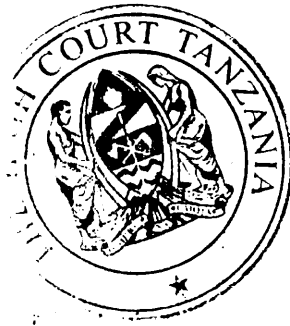
DATED at DODOMA this 17th day of May, 2024.



A handwritten signature in black ink, appearing to read "I.D. Musokwa".

**I.D. MUSOKWA
JUDGE**

Ruling delivered in the presence of the applicant and her advocate, Mr. Chacha Mwita; and in the presence of Ms. Kumbukeni Kondo, state attorney, representing the 1st and 3rd respondents; and in the absence of the 2nd respondent.



A handwritten signature in black ink, appearing to read "I.D. Musokwa".

**I.D. MUSOKWA
JUDGE**