

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

CIVIL APPLICATION NO. 12061/2024

PETER NYAMHANGA.....1ST APPLICANT
DIONIZI NYAOLO.....2ND APPLICANT
SALA SAMWEL.....3RD APPLICANT
MODESTER MARWA.....4TH APPLICANT
WILLIAM MAHAMBA.....5TH APPLICANT

VERSUS

MUSOMA MUNICIPAL COUNCIL.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT

RULING OF THE COURT

03/06/2024 & 04/06/2024

Kafanabo, J.:

This is an application made under section 2(3) of the **Judicature and Application of Laws Act, Cap. 358 R.E. 2019** and section 95 of the **Civil Procedure Code, Cap. 33 R.E. 2019**. The application is made by chamber summons supported by a joint affidavit of the Applicants.

This application, consistent with an affidavit supporting the application, was made in respect of a dispute involving the parties herein regarding a piece of land located at the Sokomjinga Area, Mlimani Street, within Nyakato Ward, in the Musoma Municipality. The area in dispute is surrounded and bordered by Alexander Mashauri in the eastern part, Maingu Road in the west, Nyakato Gengeni Road in the north, and Mwajuma Ibagi plot in the southern part. The said land will be referred to as the land in dispute in this Application.

The Applicants deposed in their joint affidavit that they are the co-occupiers of the land in dispute since 1984 because they cleared a virgin forest. They also claimed that the 1st Respondent recognized the area as a

squatter area in respect of which they paid the land rent fees every year to the 1st Respondent for the past 40 years. It was further stated that the land in dispute is recognized as plot number 184 "C" Squatter Area by the 1st Respondent.

The Applicants also averred that they have been residing in the said area and have developed the land in dispute and that there was no road near the disputed land for so many years since they occupied the area in 1984. They stated that the road that passes near the disputed area was established in 2018 when the Applicants had already established themselves in the disputed land for so many years. The Applicants also contended that the road reserve does not extend to the area covered by the land in dispute.

It is also deposed in the affidavit that on 2nd May 2024, the 1st Respondent's officers/agents visited the land in dispute and ordered the Applicants to demolish their houses without justification which shocked the Applicants. The Applicants prepared a ninety (90) days' notice which was served on the Respondents and the relevant notice was attached to the Affidavit supporting the Application. The Applicants also visited the 1st Respondent's executive director intending to get clarification and reasons for the matter. They were informed by the 1st Respondent that the land in dispute is a road reserve.

The Applicants averred that the demolition of the Applicant's improvements on the land in dispute would cause loss to the Applicants who are the owners of the land in dispute, pending the maturity of the ninety (90) days' statutory notice. The Applicants filed this application seeking for maintenance of the status quo on the land in dispute pending maturity of the ninety (90) days' notice, because if the Respondents would be allowed to continue with the demolition exercise as categorically stated in the relevant notices of demolition, they would cause irreparable loss to the Applicants and the evidence of the improvements/developments of the land in dispute would be lost.

Under the circumstances, the Applicants applied for the following substantial orders:

- 1. The Court be pleased to issue a Mareva injunction and orders restraining the respondents and their agents, assignees, brokers, and any other person who receives, implements, and or executes from (sic) the Respondents not to demolish and or do any act that will affect the structure, part of the building or the entire building and or remove any materials therefrom, to the building located at Sokomjinga Area, Mlimani Street, within Nyakato Ward, in the Musoma Municipality.*
- 2. That the respondents be restrained from issuing and or uttering words that tend to affect the applicants psychologically, pending the determination of the suit the Applicant will file in this court after expiring 90 days of the statutory notice on the 14th day of August 2024 in this court.*

When the matter was called for necessary orders Ms. Neema Mwaipyana, State Attorney, representing the Respondents submitted that the Respondents opted not to file a counter affidavit because they did not intend to contest the application; and thus the Application be granted, but each party shall bear their costs. Mr. Emmanuel Gervas, who represented the Applicants, graciously concurred with Ms. Mwaipyana's submission for obvious reasons.

It follows that since the Respondents do not object to the Applicants' application, it is not uncommon that the application may be granted taking into account that it is trite law that this court has jurisdiction to issue interim orders under the circumstances of the present case, and where there is no pending suit. The cases 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), **Nicholas Nere Lekule vs Independent Power (T) Ltd and Another, Misc. Civil Case No.117 of 1996** (unreported), **Tanganyika Game Fishing and Photographic Limited vs. Director of Wildlife and Two Others, Miscellaneous Civil Cause No. 48 of 1998** (unreported) and **Abdallah M. Malik and 545 Others vs. Attorney General, Miscellaneous Land Application No. 119 of 2017** (unreported) **Jetish Ladwa vs. Yono Auction Mart and Company**

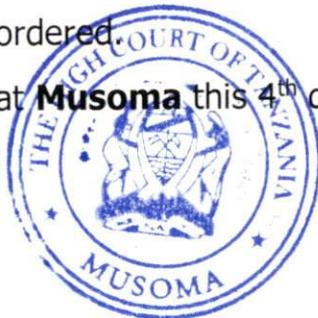
Limited, Miscellaneous Land Application No. 26 of 2017
(unreported) are relevant as regards the orders sought by the Applicant.

Therefore, after a thorough consideration of the application and its supporting documents, and the legal principles as outlined in the above-mentioned authorities, which this Court fully subscribes to, this court orders that:

- 1. As of today, the status quo of the land in dispute, all its improvements and developments thereon, located at Sokomjinga Area, Mlimani Street, within Nyakato Ward, in the Musoma Municipality; and whose boundaries are: land owned by Alexander Mashauri in the eastern part, Maingu Road in the West, Nyakato Gengeni Road in the north and Mwajuma Ibagi, the plot in the southern part (the area also known as Plot No. 184 'C' Squatter Area), should be strictly maintained pending maturity of the Ninety (90) Days Statutory Notice issued to and served on the Respondents by the Applicants and which is expected to mature on 15th August 2024.*
- 2. The second prayer in the chamber summons is not granted for want of basis in the affidavit supporting the application.*

It is so ordered.

Dated at Musoma this 4th day of June 2024.




K. I. Kafanabo
Judge

The ruling was delivered in the presence of the Applicants and Mr. Aneisius Kamugisha, learned State Attorney for the Respondent.


K. I. Kafanabo
Judge
04/06/2024