

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB- REGISTRY

AT MBEYA

MISC. LAND APPLICATION NO. 16 OF 2023

(Originating from Land Case No. 9 of 2023 in the High Court of Tanzania at Mbeya.)

ERICA BARNABAS ZILINDE.....APPLICANT

VERSUS

REMMY BARNABAS ZILINDE.....1ST RESPONDENT

DEBORA GIDION SIRIKWA.....2ND RESPONDENT

FANUEL ISAYA SIRIKWA.....3RD RESPONDENT

RULING

Date of Last Order: 13/02/2024

Date of Ruling: 22/04/2024

NDUNGURU, J.

This is a ruling in respect of an application for temporary injunction made by the applicant ERICA BARNABAS ZILINDE against the three respondents, those are REMMY BARNABAS ZILINDE, DEBORA GIDION SIRIKWA and FANUEL ISAYA SIRIKWA in relation to a land with Title No 3023-MBYLR Plot No. 1435 Block "M" Morogoro Road within Mbeya City.

The applicant preferred the application under Order XXXVII Rule 1 (a), 2 (1), section 68 (c) and (e) and 95 of the Civil Procedure Code, Cap. 33 R.E. 2019. It is supported by an affidavit sworn by the applicant.

In nutshell, the applicant's affidavit states that the applicant and the 1st respondent are siblings of the same father but from different mothers. That, their father died in 2014, after the demise they convened a clan meeting in which properties of the deceased were distributed and the 1st respondent was suggested to be an administrator of the deceased estates and in 2016, he was confirmed by being appointed by Mbagala Primary Court. That, following the fact that the deceased had purchased the disputed land but had not yet effected transfer, the 1st respondent told the applicant that he has to make follow up to effect the transfer. That thereafter the applicant came to learn that the 1st respondent had sold the disputed land to the 2nd and 3rd respondents.

Following that fact, she filed a caveat to the registrar. However, on 29th March, 2023 the Registrar issued her with a notice notifying her that, he is willing to register the transfer of the title in respect of the disputed land from the name of the 1st respondent to the 2nd and 3rd respondents. Up on the notice she filed a land case in this court and made the instant application for this court to issue injunctive order to

the respondents, their agents or assignees from trespassing, selling, transferring title of ownership or alienating the disputed land.

The application was resisted by the 2nd and 3rd respondent through a joint counter affidavit. They have refuted the averment of the applicant then added that the applicant is complaining about the intended registration of transfer whereby it is the registrar of titles who is responsible for effecting transfer but, he was not made a party to the application.

The hearing of the application was done by way of written submissions, only the applicant filed her written submission filed by Baraka Mbwilo learned advocate. I need not recapitulate the submission by the learned counsel for the applicant for the reason hereinbelow.

As I have hinted earlier on that in the counter affidavit of the 2nd and 3rd respondents stated that neither of the respondents is responsible for complained notice of effecting transfer of the title. This account, neither the applicant filed any reply to the counter affidavit nor Mr. Mbwilo in the written submission gave any plausible explanation as to how the complained notice for the transfer can be injuncted against the respondents herein or stated why the Registrar of Titles is not a party.

In my concerted view, having studied all four of the instant application, specifically paragraphs 18 and 19 of the applicant's affidavit in which state that the assistant registrar of titles intends to register the transfer within 30 days, it is true that the sought injunction order is in that respect. This is because, the applicant is not seeking to injunct the disposition/transfer among the respondents as it has been already effected according to paragraphs 16 and 20 of the affidavit that the 1st respondent admitted to have sold the disputed property to the 3rd and 2nd respondents.

In that regard, this court is unable to transcend into the facts given for grant of the application since no order can be given to injunct certain action to take place while a person responsible for that action is not a party to the application. Any order against a non-party to a suit is in contravention of the natural justice of the right to be heard which this court is not prepared to commit. See the decision in **Juma B. Kadala vs Laurent Mkande** (1983) TLR 103 and **Anatolia J. Mgeni vs Njocoba & Others** (Civil Appeal No. 291 of 2021) [2023] TZCA 17987 (15 December 2023) (**Tanzlii**) on the importance of the right to be heard.

For that reason, I find the applicant's application unmaintainable.
It is thus rejected and dismissed. Cost to be in the main cause.

Ordered accordingly.




D.B. NDUNGURU
JUDGE
21/05/2024