

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF SHINYANGA)
AT SHINYANGA**

MISC. LAND APPLICATION NO. 4711/2024

(Arising from Land Case No.2761/2024 at the High Court of Tanzania, Shinyanga Sub-Registry.)

KEMBO MATULANYA.....APPLICANT

VERSUS

THOMAS NDOMALE.....RESPONDENT

RULING

Date of Last Order: 18.04.2024

Date of Ruling: 14.05.2024

MWAKAHESYA, J.:

The applicant, Kembo Matulanya, has brought the present application against the respondent, Thomas Ndomale, seeking the court to grant: an interim order to restrain the respondent from collecting money resulting from gold mining activities on the suit land pending the hearing and determination of Land Case No. 2761/2024 (the main suit) that is also

before this court; and this court to order the collection of money from gold mining activities on the suit land to be in custody of the mining office of Kahama pending the hearing and determination of the suit.

The application has been made under section 95 and Order XXXVII rule 1 & 2 of the Civil Procedure Code (the CPC). It has been brought by way of chamber summons and is supported by the affidavit of the applicant while the respondent, resisting the application, has also filed a counter affidavit sworn by himself.

The applicant and the respondent are contesting ownership of a piece of land measuring 38 acres located within Zongomera Ward, Kahama District, Shinyanga Region (the suit land), and apparently there is gold mining activities in the suit land and the respondent has been collecting money from such activities to the ire of the applicant, thus prompting the present application.

On 18.04.2024 by consensus the application was to be argued by way of written submissions and both parties complied with the agreed schedule.



In his submission in chief the applicant is of the view that before granting an order of temporary injunction the court must satisfy itself that three conditions exist, to wit:

1. The applicant must demonstrate a *prima facie* case;
2. Whether the intervention of court is necessary to protect the applicant from suffering irreparable loss; and
3. On the balance of convenience who between the applicant and the respondent will suffer more hardship if the injunction is not granted.

The applicant has credited the decisions in **Atilio v. Mbowe (1969) HCD. 284, East African Industries Limited v. Trufoods Limited (1972) E.A. 420** and **Giela v. Cassman Brown & Co. Ltd. (1973) E.A. 358**, for the aforementioned conditions. The respondent, citing the **case of Atilio v. Mbowe** (supra) and **Cosmoss Properties Limited v. Exim Bank Tanzania Limited** (Misc. Civil Application No. 584 of 2021) TZHC 3073 (21 April, 2022) is in agreement with the conditions.

With regards to the first condition, the applicant is adamant that the same has been met by the fact that there is already a pending suit before the court and the applicant is claiming ownership therein. However, the

respondent, in his reply disputes that the first condition has been met and is adamant that he is the lawful owner of the suit land.

As for the second condition, the applicant submits that the intervention of this court is necessary so as to prevent him from suffering irreparable loss taking into consideration that the respondent is still collecting money from mining activities on the suit land and at the point of these submissions he has collected a total of TZS 75,799,000/=. Meanwhile, in response, the respondent submitted that it is not true that the applicant is likely to suffer irreparable harm, of course, on the allegation that he is not the true owner of the suit land.

On the third condition, it is the applicant's submission that he is the one suffering and will continue to suffer if an order for temporary injunction will not be granted. The reason being that the respondent has no collateral which can be attached and sold to reimburse the collected amount if the applicant emerges victorious in the main suit. The applicant went further to beseech this court to restrain the parties from collecting money from the mining activities and order the same to be kept in the village account. In response the respondent submits that it is he who

stands to suffer more hardship if an order for temporary injunction is granted as he depends on that money to run his daily life.

The jurisdiction of this court to grant temporary injunctions is governed by section 68(c) and Order XXXVII rules 1 & 2 of the CPC. I join hands with the parties that case law has established the conditions to be met in order for the court to entertain an application for temporary injunction. The same being as laid out in the case of **Atilio v. Mbowe** (supra), therefore I need not reproduce them.

Having gone through the rival submissions of the parties, it is clear that there is a dispute as to the ownership of the suit land and that there are economic activities carried out therein, in the form of mining, at present. And it is the respondent who is benefiting by collecting revenue garnered from the said activities.

As for the application itself, the first condition need not detain us much. It is clear that the parties are at variance as to who is the rightful owner of the suit land and the applicant claims that he purchased the same in the year 2003 from one Mabala Hussein Msoma at the price of TZS 1,500,000/= and only after the discovery of minerals therein the

respondent initiated a land dispute. If these facts are established, then surely the applicant (plaintiff in the main suit) will be entitled to the reliefs he claims. Therefore, I rule that the first condition has been met.

As for the second condition, the applicant must prove that he will suffer loss that cannot be adequately compensated monetary wise. However, it is the applicant himself who has deponed in his affidavit in support of the application that to the date of filing the present application the respondent has already collected a total of TZS 75,799,000/= from mining activities conducted on the suit land. This sum, and any other greater sum, is recoverable by way of damages, thus making the alleged loss recoverable. The second condition, has therefore, not been established.

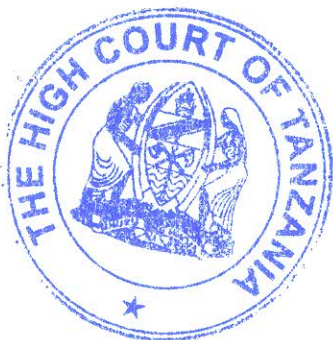
Likewise, the applicant has failed to establish the third condition as well. From the submission of the parties it seems that the respondent will suffer greater hardship, if an order for temporary injunction is granted, than the applicant as the former relies on the revenue collected from the mining activities on the suit land for his subsistence.



The three conditions being cumulative and the applicant having failed to establish the second and third conditions, this application must fail altogether. Therefore, temporary injunction is refused with costs.

It is so ordered.

DATED at SHINYANGA this 14th day of May, 2024




N.L. MWAKAHESYA
JUDGE