IN THE HIGH COURT OF TANZANIA

SUB-REGISTRY OF GEITA

AT GEITA

MISC. LAND APPLICATION NO. 10920/2024

MANYANDA SHIKA.....APPLICANT

VERSUS

SHIJA SHIHEKA.....RESPONDENT

RULING

Date of last Order:28/05/2023
Date of Ruling: 04 /06/2023

K. D. MHINA, J.

This application of temporary injunction was brought under a certificate of urgency by way of chamber summons, which has been preferred under sections 68 and 95 and Order XXXVII, Rule 1 (a) (b) of the Civil Procedure Code, Cap 33 R: E 2019 ("the CPC"), the Applicant is moving this Court, *inter alia*, to;

i. *Issue an injunction prohibiting the respondent from harvesting food crops, including rice, which the applicant has cultivated.*
ii. *Costs of the application and*
iii. *Any other reliefs this Court may deem fit to grant.*

The chamber summons is supported by an affidavit affirmed by Manyanda Shika, the applicant, which expounds the grounds for the application.

The hearing of the application proceeded ex parte because despite the respondent being served with the summons, the efforts proved futile after he refused to receive the summons.

The application was argued orally, and the applicant appeared in person and was unrepresented.

The applicant was very brief in supporting the application. He prayed for an injunction from this court to prohibit the respondent from harvesting rice from the farm.

He informed the court that in 2018, he filed a land dispute against the respondent at the District Land and Housing Tribunal ("the DLHT") for Geita. The dispute concerned the boundaries of their farmlands. However, instead of determining the issue of boundaries, the DLHT awarded the respondent the whole farm of 24 acres. He submitted that the decision was not proper.

In his affidavit, he stated that he had an earlier decision of the High Court of Tabora in PC Civil Appeal No. 26 of 2010, which declared him the

owner of 24 acres of land by confirming the decision of the Ward Tribunal of Mbogwe in Application No. 25 of 2007. Therefore, despite the DLHT decision in 2018, he continued cultivating the suit land.

Having considered the chamber summons and its supporting affidavit and the oral submission made by the applicant, the issue that has to be resolved is:

"Whether the injunction can be granted".

In applications of this nature, it is trite that before a temporary injunction and/or any interlocutory order could be lawfully granted by the Court, there must be an existing suit. See **The Trustees of Sunni Muslim Jamaat (With leave of the Attorney General and Minister of Justice) vs. Sayed Mazar Kadir and three others**, Civil Appeal No. 18 of 2002, CAT (unreported).

In his affidavit, the applicant indicated that he filed Land Appeal No. 8978 of 2024 in this Court to challenge the DLHT's decision in Land Appeal No. 85 of 2018, which originated from the Ward Tribunal of Mbogwe.

Having gone through that appeal, I found that the applicant in the instant application was aggrieved by the decision of the DLHT for Geita in

Land Appeal No. 85 of 2018. That decision was delivered in 2018. In that appeal before the DLHT, the respondent was awarded 24 acres of land.

Therefore, the applicant is now appealing against that decision based on the main ground that a previous decision of the Ward Tribunal of Mbogwe in Application No. 25 of 2007 pronounced him the owner of the 24 acres of land. That decision was confirmed by the High Court of Tabora in PC Civil Appeal No. 26 of 2010.

After recapitulating the short history of the matter, the question is whether the criteria and principles stated in the case of **Atilio vs Mbowe** (1969) HC 284. The requirements set are;

i. *There is a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed.*
ii. *the Applicant stands to suffer irreparable loss requiring the courts' intervention before the Applicant's legal right is established;*
iii. *that on balance, there will be greater hardship and mischief suffered by the plaintiff from withholding the injunction than will be suffered by the defendant from granting it.*

Having gone through the cited case above, I am not persuaded by the applicant's prayer because the applicant is praying for an injunction while the land which he cultivated was already declared to be owned by

the respondent. In such a circumstance, there is no triable issue between the parties. What is before this Court is an appeal.

The Court of Appeal of East Africa in **Jayndrakumar Devechand Devani vs. Haridas Vallabhhdas Bhadresa,** Civil Appeal No. 21 of 1971 elaborated the purpose of the temporary injunction. It held that

> "*In cases of interlocutory injunction in aid of the plaintiff's right, all the Court usually has to consider is whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve property without waiting for the right to be finally established but in no case does the Court grant an interlocutory injunction as of course.*"

In the instant application, as I alluded to earlier, it is quite clear that since 2018, the land was declared by the DLHT to be owned by the respondent. Therefore, why does the applicant continue to cultivate on that land while the decision of the DLHT is in force? He decided to appeal this year on the 24th of April. In such circumstances, he has to blame himself for what happened.

Further, at the moment, the applicant is a trespasser on that land; therefore, issuing a temporary injunction means prohibiting a person who was declared the owner of the land by the DLHT.

The Court of Appeal in **Selcom Gaming Ltd vs. Gaming**

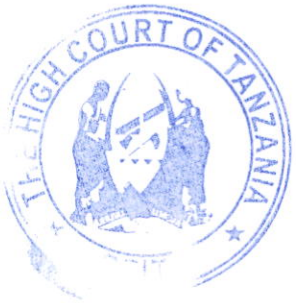
Management (T) Ltd and another, Civil Application No. 175 of 2005 (Unreported), where the Court drew the inspiration in **Hadmor Productions Ltd. & Others vs. Hamilton and Another** (1983) 1 AC 191 wherein Lord Diplock stated as under at page 220 that;

> *"An interlocutory injunction is a discretionary relief, and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard".*

Flowing from above, in exercising that discretion, I don't see the merits of the application because there are no triable issues between the parties, and it is the applicant who, after the decision of the DLHT in 2018, trespassed into the farmland.

In the event, the application is untenable and has no merits, consequently, I dismiss it without costs. Let the applicant pursue his appeal.

I order accordingly.



K. D. MHINA
JUDGE
04/06/2024