

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO. 11946 OF 2024

*(Arising from Probate and Administration Cause No. 2555 of 2024 of the High Court at Temeke,
One Stop Judicial Centre at Temeke)*

ERICK MICHAEL NJUMBA.....APPELLANT

VERSUS

PAMELA MICHAEL NJUMBA.....1ST RESPONDENT

MAS & ASSOCIATES CO. LTD & COURT BROKER.....2ND RESPONDENT

EX-PARTE RULING

31st May & 14th June, 2024

BARTHY, J.:

The matter before this court has been filed by the applicant under a certificate of urgency, pursuant to Order XXXVII, Rule 1(a), and Sections 68(e) and 95 of the Civil Procedure Code R.E. 2019. The application seeks injunctive orders to restrain the respondents and their agents from alienating, wasting, damaging, or disposing of by sale the house on Plot No. 118, Block E, situated in Sinza, pending the hearing and determination



of Probate and Administration Cause No. 2555 of 2024, which is scheduled for hearing of inventory and final accounts before this honorable court.

The respondents were dully served with the chamber summons, supported by an affidavit of the applicant. The first respondent entered appearance and informed the court that she could not file her affidavit as she was expecting to gather up some facts from Registration Insolvency and Trusteeship Agency (RITA); therefore, she prayed for more time to file her counter affidavit. The second respondent never appeared in person or by representation.

Hence, the application was heard ex-parte to allow the respondents file their counter affidavit before the hearing of the matter was heard inter-partes.

At the hearing of this matter, the applicant enjoyed the services of Ms. Anna Mareale, learned advocate who prayed to adopt the chamber summons, affidavits sworn by the applicant, and its annexures to form part of her submission.

Ms. Mareale argued that the applicant, a son and beneficiary of the late Michael Mukalula Njumba, who died intestate on 3/10/2023, filed an urgent application for injunctive orders to restrain the respondents from



disposing of a house on Plot No. 118, Block E, Sinza, pending the hearing and determination of Probate and Administration Cause No. 2555 of 2024. The applicant resided in the house until the deceased's illness when he returned to assist his father. After the deceased's death, a clan meeting nominated the applicant to petition for letters of administration, but the first respondent refused to attend, delaying the process.

The applicant faced non-cooperation from the first respondent in obtaining the death certificate, prompting him to secure another death certificate from RITA. He lodged a petition for administration on 10/1/2024. The first respondent, represented by counsel, filed a caveat and preliminary objection. On 18/4/2024, the applicant discovered the first respondent's unilateral actions to transfer a bond worth Tsh. 3,133,000,000 without his consent, leading him to request intervention from Bank of Tanzania and Tanzania Commercial Bank.

On 17/5/2024, the applicant learned the first respondent planned to sell the disputed property. Investigations revealed that the first respondent had fraudulently obtained letters of administration without the applicant's consent. The matter now is scheduled for hearing for the estate's inventory.



Ms. Mareale highlighted the first respondent's fraudulent claims, which included false affidavits and impersonations. She referenced the **Atilio v. Mbowe** (1969) HCD 284 case, arguing that the applicant met the conditions for a temporary injunction: a prima facie case, potential for irreparable injury, and a balance of convenience favoring the applicant, who stood to suffer significant loss without court intervention.

With regard to these conditions, Ms. Mareale emphasized the establishment of a prima facie case, insisting that there is a serious question to be tried, as the current matter does not include all of the deceased's properties. Therefore, disposing of the properties before they are confirmed to form part of the deceased's estate, if the applicant is among the heirs entails a serious question to be tried by the court.

On the second condition of establishing if the applicant is likely to suffer irreparable injury, Ms. Mareale stated the court intervention is necessary to prevent irreparable loss to the applicant before his legal rights are established. Without an injunction, the applicant risks losing his inheritance as the respondents intend to dispose of the estate's assets without his consent, causing further harm.




Lastly, on the condition of on the balance of probabilities Ms. Mareale stated the court ought to grant the injunction to favor the applicant, who has a legitimate interest in the deceased's estate. He stands to suffer significant harm if the properties are disposed of before the main suit is resolved.

Having heard the arguments in support of the application and regarded the application and supporting affidavit, I have carefully considered the annexures attached to this application and the associated prayers. This court must therefore determine whether it can grant the injunctive prayers sought.

The essence of injunctive reliefs is to prevent harm that cannot be rectified by monetary compensation alone, such as damage to property, business interests, or personal rights.

In determining this matter, I considered the conditions set forth in the case of **Atilio vs. Mbowe** (cited supra) and the case of **Christopher P. Chale vs. Commercial Bank of Africa** (Misc. Civil Application 635 of 2017) [2018] TZHC 2538, where the court has emphasized that all three conditions must be fulfilled for the court to consider granting the injunctive prayers.



Starting with the first condition of whether there is a serious question to be tried: Ms. Mareale informed this court that the first respondent had intentionally not included all of the deceased's assets in the petition. From the submission made by Ms. Mareale, it is evident that the first respondent, soon after being granted the letters of administration, before filing the inventory and accounts of the deceased's estate, where the beneficiaries would be entitled to inspect and raise any concerns about the inclusion or exclusion of certain properties—decided to hire the services of the second respondent to dispose of a house on Plot No. 118, Block E, Sinza, pending the hearing of the matter.

Indeed, if properties that formed part of the deceased's estate were intentionally excluded and the respondents intend to dispose of them before the hearing on the inventory and accounts, it is clear that there is a serious question to be tried by the court.

The second condition is the danger of irreparable injury. Ms. Mareale submitted that the court's interference is necessary to protect the applicant from irreparable loss before his legal right as an heir to the deceased's estate is established. There is a danger that the applicant will lose his right



to inheritance since there is an intention to dispose of the properties without his consent, causing further mischief if an injunction is not granted.

The court has considered the facts stated in the affidavit, along with the annexures attached to the affidavit supporting the application, and the arguments of Ms. Mareale. It is clear that there was an intention to auction the house on Plot No. 118, Block E, Sinza, and the bonds before the inventory and accounts of the deceased's estate were approved by the beneficiaries and the court.

Regarding this condition, the court stated in the case of **Kibo Match Group Limited vs. H.S Impex Limited** [2002] TLR 152, that unless immediate action is taken, the applicant may suffer quantifiable or unquantifiable irreparable damage, and if the temporary injunction is withheld, the final decision would be rendered nugatory. In the circumstances of this case, there is no doubt that if this court does not grant an interim injunction, the applicant is bound to suffer irreparable loss if he is affirmed by the court to be a beneficiary/heir of the deceased's estate.

Turning to the last condition, where the court is called to determine whether the balance of convenience favors the applicant, Ms. Mareale



argued firmly that, the balance of convenience must favor granting the injunction. The applicant, as a beneficiary, has a legitimate interest in the deceased's estate and stands to suffer significantly if the properties are disposed of before the resolution of the main suit.

I must agree with the applicant's assertion that, on the balance of probabilities, if the court does not grant the application, it is the applicant who will suffer more.

Based on the foregoing analysis, this court finds that the applicant has satisfied all the necessary conditions for the grant of a temporary injunction. Therefore, the application for a temporary injunction is hereby granted. The respondents, their agents, servants, or anyone acting on their behalf are hereby restrained from alienating, wasting, damaging, or disposing of by sale the house on Plot No. 118, Block E, Sinza, pending the hearing and determination of Probate and Administration Cause No. 2555 of 2024.

It is so ordered.

Dated at Dar es Salaam this 14th day of June, 2024.


G. N. BARTHY
JUDGE



Delivered in the presence of the applicant in person, Ms. Anna Mareale advocate for the applicant, 1st respondent in person, Ms. Shija Kusekwa advocate for the first respondent and RMA Ms. Bernadina