

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB-REGISTRY

AT BUKOBA

MISC. LAND APPLICATION NO. 9827 OF 2024

KURUBONE TIMOTHEO..... 1ST APPLICANT

GILANDI NGASA.....2ND APPLICANT

WILLSON DIDAS..... 3RD APPLICANT

VERSUS

KISHURO VILLAGE COUNCIL..... 1ST RESPONDENT

MULEBA DISTRICT COUNCIL..... 2ND RESPONDENT

MULEBA DISTRICT COMMISSIONER..... 3RD RESPONDENT

MULEBA DISTRICT EXECUTIVE DIRECTOR..... 4TH RESPONDENT

ATTORNEY GENERAL..... 5TH RESPONDENT

RULING

10th and 19th June, 2024

BANZI, J.:

The applicants have filed this application seeking for Mareva injunction against the respondents from entering and effecting anything into their land pending the institution of the main suit after expiration of statutory notice issued to the respondents. The application was made under the provisions of section 95 of the Civil Procedure Code [Cap.33 R.E. 2019] ("the CPC") and section 2 (3) of the Judicature and Application of Laws Act [Cap. 358 R.E. 2019] ("the JALA") and supported by affidavit of Ms. Erieth Barnabas, learned Advocate. The respondents resisted the application through the counter affidavit deposed by Mr. Johanes Miburo Johakimu, the village chairman of the first respondent.

The brief facts reveal that, the first, second and third applicants are owners of land measuring 39, 49 and 30 acres respectively located at Kishuro village which were allocated to them through village general meeting of Kishuro village on 10th March, 2008. After being allocated, they made the required payments and on diverse dates, each applicant signed the agreement and began to use and develop their lands without interruption. However, in July, 2023 Muleba District Council under the orders of the District Commissioner and the same being supported by Kishuro Village Council (the first respondent), announced a forceful evacuation of the residents of Kishuro village located at Binoni and Rubondo hamlets including the applicants. With such order, the applicants issued ninety days' statutory notice with the intention of suing the respondents and at the same time, they sought intervention of this court by way of Mareva injunction pending maturity of the said notice. On the other hand, the respondents in their counter affidavit denied to have allocated land to the applicants claiming that, the attached minutes of the meeting, copies of agreements and receipts are forged documents as the area mentioned by the applicants has been designed for ranch farms under the ownership of National Ranch Company (NARCO).

At the hearing, the applicants were represented by Ms. Erieth Barnabas, the learned Advocate whereas the respondents had the

services of Messrs. Nestory Lutambi and Muyengi Muyengi, the learned State Attorneys.

In her submission, Ms. Barnabas stated that, the respondents are forcing the applicants to evacuate from their land which they legally obtained from the first respondent in 2008. Explaining further Ms. Barnabas submitted that on 10th March, 2008, through village general meeting the first, second and third applicants were allocated 39 acres, 49 acres and 30 acres respectively as reflected in the minutes of the meeting (Annexure "A"). After being allocated the said land, they paid requisite fees, issued with receipts and signed agreements with the Village Council as evidenced by annexure "B". She added that, since then, the applicants continued to use their land until 2023, when the Muleba District Council under supervision of the District Commissioner ordered all residents of Rubondo and Binoni hamlets to evacuate from those areas for being trespassers. The applicants being dependent on that land for their survival, they have nowhere to go after being evacuated and they are in danger of losing their lives. It was contended that, the applicants have proved how they are legally owning the said land and they have described in their annexures where the said land is found. According to her, if the prayed injunction is not granted, they are going to suffer irreparable loss as they will have no place to live and they are in likelihood of losing their lives. She cited the case of the **Trustees of Anglican Church Diocese**

of Western Tanganyika vs Bulima Village Council and 2 Others,
[2022] TZHC 719 TanzLII to substantiate her argument that, the applicants have managed to fulfill all conditions required before Mareva injunction is granted.

In their reply, Mr. Lutambi contended that, the applicants have failed to meet the conditions for them to be granted Mareva injunction. Citing the case of **Attilio vs Mbowe** [1969] HCD 284, he stated that for Mareva injunction to be granted, there are three conditions that must be fulfilled; the applicant has to show that there is a chance of success if the main case is filed; if injunction is not granted the applicant will suffer irreparable loss and there must be a balance of convenience. However, in the instant case, there is no proof if the applicants are legal owners of the suit land because the annexed sale agreements are doubtful in terms of the size of land that was allocated to them and the amount they paid. According to him, with such doubts, injunction should not be granted because the applicants have failed to prove if they are legal owners of the land in question. He added that, the land in question was not specifically described, therefore, if the injunction is granted, it will be difficult to execute that order and there is likelihood for the applicants to invade other people's lands. He cited the case of **Fereji Said Fereji vs Jaluma General Supplies and Another** [2021] TZHCLandD 167 TanzLII to emphasize his point on the need to describe the suit land.

Furthermore, Mr. Muyengi submitted that, the applicants have failed to build their case due to the contradiction between the land that was requested and the one which was allocated to the them. According to him, such variance creates doubts, hence the application should not be granted the sought injunction because there is no any chance for their claims to succeed. He cited the case of **Emmanuel Abraham Nanyaro vs Paniel Ole Saitabau** [1987] TLR 47 to support his contention.

In her rejoinder, Ms. Barnabas argued that, the sale agreements, receipts and the minutes of the meeting were prepared by Kishuro Village Council and the applicants should not be blamed for the errors made by the Village leaders. She further contended that, the allocated land was described in details in their annexures to the affidavit as the annexures are part of the affidavit and should be read together. She insisted that, the applicants have been living in those areas for almost 17 years therefore, evacuating them will cause irreparable loss as they will have no place to get their food and a place to live.

Having examined the affidavit, counter affidavit along with the annexures, as well as the rival arguments of counsel for both sides, the main issue for determination is *whether the applicants have met the conditions for granting Mareva injunction.*

Generally, before the court can grant interim orders in the nature of injunction, there are certain conditions to be observed. These conditions were set out in the case of **Attilio vs Mbowe** (*supra*) as hereunder:

"(i) There must be serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed;

(ii) That the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established, and

(iii) That on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it."

These conditions must be satisfied conjunctively, that is all of them must be satisfied. On this, see also the case of **Godlove Lokila vs Aminiel Mafie and Another**, Misc. Civil Application No. 5 of 1999 HC Tanga Registry (unreported).

However, as stated herein above, in this application, the applicants are seeking interim orders pending institution of the main suit. In other words, the orders upon which the applicants are seeking are commonly

known as *Mareva injunction*. *Mareva injunction* traces from common law, particularly in the case of **Mareva Compania Naviera SA vs International Bulkcarriers SA** [1980] 1 All ER 213. According to that case, it is trite law that, whenever there is a danger that the respondent may dispose of the assets of the applicant so as to defeat the ends of justice before the institution of the suit, the court has jurisdiction to issue an interim order to prevent the former from disposing of such assets.

The Supreme Court of Canada through the case of **Aetna Financial Services vs Feigelman** [1985] 1 SCR 2 emphasised that *Mareva* injunction should be issued only where a strong case has been made out that, it is necessary to do so to prevent an imminent injustice. This Court through the case of **Leonila Kishebuka vs Dunstan Novat Rutageruka and Two Others**, Land Application No. 70 of 2022 HC Bukoba Registry (unreported) issued *Mareva* injunction in land matters after considering the following conditions that; first, existence of prima facie case or triable issues; second, granting the injunction is just and justifiable and third, the applicant cannot institute a case because of existing legal impediment.

In the present application, the applicants claim to be the owners of the land located at Rubondo and Binoni hamlets within Kishuro village which according to paragraph 4 of the affidavit, their residential houses

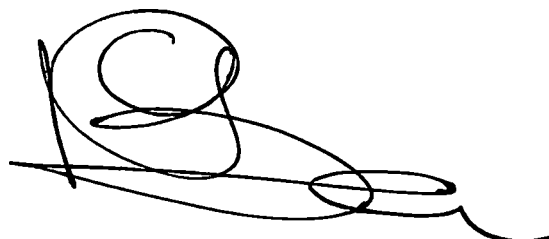
and farms are found therein. The applicants annexed the minutes of the meeting, agreements and payment receipts. As submitted by Ms. Barnabas, the annexures in question appeared to be issued by village authority. In that regard, whether the documents are authentic or not, or whether or not the applicants have been allocated the said will be the subject matter of the main suit because, determination of these issues at this juncture will definitely prejudice the main suit. In my considered view, a close look at the affidavit and counter affidavit demonstrates a triable issue as the applicants claimed to be allocated the land in question and the respondents claimed that, nothing was allocated to them. In other words, both sides claim to have better title on the disputed land. This is a clear indication that, there is triable issue or arguable case which cannot be determined at this point. Thus, it suffices to say that, the applicants have fulfilled the first condition.

Moreover, so far as the second and third conditions are concerned, the affidavit reveals that, the applicants were threatened to be evacuated from their land where they live and use for living. Definitely, any attempt to evacuate them will not only cause them to be homeless but also, they will have nowhere to conduct their activities for the living. Thus, the hardship that will be suffered by the applicants from withholding the injunction will be greater than that will be suffered by the respondents from granting it. Apart from that, it is undisputed that, on 18th April, 2024,

the applicants issued the statutory notice to the respondents which was duly served and received by them as evidence in annexure "C". It is common knowledge that, the applicants cannot institute a case against the respondents before expiration of the notice in question. Thus, it is apparent that, there is 90 days' notice which impedes the applicants from instituting the suit against the respondents. With such impediment, anything can happen to the disputed land which may cause irreparable loss to the applicants. It is therefore my settled view that, the applicants have met the conditions of the law in *Mareva* injunction.

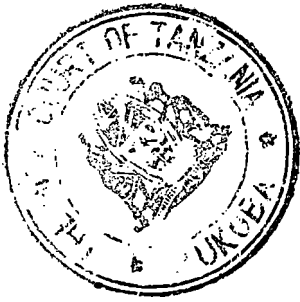
For the foregoing reasons, I hereby grant the application by restraining the respondents from entering and evacuating the applicants from the disputed land located at Rubondo and Binoni hamlets within Kishuro village in Muleba District before expiration of 90 days' notice issued to the respondents on 18th April, 2024. Each party shall bear its own costs.

It is accordingly ordered.

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a long horizontal stroke with a small loop at the end.

I. K. BANZI
JUDGE
19/06/2024

Delivered this 19th day of June, 2024 in the presence of the first applicant, Mr. Nestory Lutambi, learned State Attorney for the respondents, Mr. Audax V. Kaizilege, Judge's Law Assistant, and Ms. Mwashabani Bundala, RMA and in the absence of the second and third applicants.



A handwritten signature in black ink, appearing to read "I. K. Banzi".

I. K. BANZI
JUDGE
19/06/2024