IN THE HIGH COURT OF TANZANIA

DODOMA SUB REGISTRY

AT DODOMA

CONSOLIDATED MISCELLANEOUS LAND APPLICATION NO 11376/11103 OF 2024

THE REGISTERED TRUSTEES OF TANZANIA AGRICULTURAL SOCIETY(TASO).....1ST APPLICANT

JACOB D WASENA.....2ND APPLICANT

DR SAMSON MUNIKO..... 3RD APPLICANT

DR ANDREW HARANI MIYALLE.....4TH APPLICANT

PRISCA PROSPER MALLYA.....5TH APPLICANT

BARAKA JOSEPH MAKINGA..... 6TH APPLICANT

VERSUS

1. **THE REGIONAL ADMINISTRATIVE SECRETARY FOR DODOMA REGION.....1ST RESPONDENT**
2. **THE ATTORNEY GENERAL.....2ND RESPONDENT**
3. **THE REGISTRAR OF TITLES.....3RD RESPONDENT**

RULING

Date of the last Order: 26/06/2024

Date of the Ruling: 28/06/2024

LONGOPA, J.:

The applicants, on 15th May 2024 filed two separate applications, Miscellaneous Land Application No. 11376/2024 and Miscellaneous Land Application No 11103/2024 for mareva injunction against the respondents under certificate of urgency. The applicants are seeking injunction against respondents in respect of land dispute at Plot No 29, Title No. 21403 DRL, Nzuguni area within Dodoma City.

The applicants allege that 1st Respondent issued a notice intending to evict the first applicant and her tenants including the second to sixth applicants from the premises. The applicants pray that this Court be pleased to stop the 1st respondents, its agents or any other person acting under his authority to forcefully evict the applicants from Nanenane Grounds.

The Chamber Summons is made under Section 2(3) of the Judicature and Application of Laws, Cap 358 R.E. 2019 and section 95 and 68(e) of the Civil Procedure Code, Cap 33 R.E. 2022 seeking the following prayers, namely:

1. That, this Honourable Court be pleased to grant an interim order for injunction against the Respondents, their

agents, assignees, workmen, or any person acting under their authority from evicting the Applicants, their tenants or sub-lessees, demolishing their buildings, businesses, structures and other developments in the property in dispute at Nanenane grounds in Dodoma constituting all the land at Plot No. 29, Nzuguni Area within Dodoma City, pending the hearing and determination of the appeal at the Court of Appeal of Tanzania between the Applicants and the 3rd Respondent concerning the ownership of the said land.

2. That, this Honourable Court be pleased to grant declaratory order that, the Applicants, their agents, tenants, assignees, workmen, or any person acting under their authority are entitled to remain in their businesses, buildings structures, developments, investments at Nanenane grounds in Dodoma constituting all the land at Plot No. 29, Nzuguni Area within Dodoma City, pending the hearing and determination of the appeal at the Court of Appeal of Tanzania between the Applicants and the 3rd Respondent concerning the ownership of the said land.

3. That, this Honourable Court be please to dispense with the requirement of pending suits on the orders and prayers sought in this Application.

4. *That, the Honourable Court be pleased to grant a declaratory order that, the Applicants are entitled to remain the suit land at Plot No. 29 Block ... Nzuguni Area within Dodoma City as sub-tenants of the pending the maturity of the 90 days' statutory notice issued to the Respondents on 10 May 2024*
5. *Cost of this application to be provided for.*

6. *That, this Honourable Court be pleased to grant any other relief(s) as it deems fit to grant.*

The applications are supported by the joint affidavit of one Aron Fellow Mwasile and Advocate Onesmo D.M. Issiah for the 1st applicant while the 2nd to 6th respondents also sworn a joint affidavit. In opposition to the Consolidated Miscellaneous Application, the respondents filed counter affidavits of one Aziza Rajabu Mumba, a Principal Officer of the 1st Respondent assigned to deal with the matter. During the oral submission of the parties, the 1st applicant enjoyed the legal services of Mr. Elias Machibya, advocate and Mr. Lucas Komba, learned advocate for the 2nd to 6th applicants. On the respondents, three persons appeared to represent the respondents namely Ms. Kumbukeni Kondo, State Attorney, Mr.

Nicodemus Agweyo, State Attorney and Mr. Geofrey Pima, Principal State Attorney.

Mr. Elias Machibya, advocate for the 1st applicant submitted that applicants are praying for injunctive orders against the respondents pending the hearing and determination of the intended appeal at the Court of Appeal between the applicant and third respondent.

It was submitted that there is a dispute between the applicant and the 3rd respondent based on 3rd respondent's action to rectify the Certificate of Title registered in the name of 1st applicant by replacing it with the name of Her Excellence the President of the United Republic of Tanzania. Further, the matter in dispute was referred to this Court as the Land Appeal No. 53 of 2023. Upon conclusion hearing of the appeal, on 17th April 2023 the High Court did strike out the said appeal on ground of being incompetent for failure to attach the challenged decision.

The decision of the court aggrieved the 1st applicant who mounted an appeal process immediately by preparation and lodging of the notice of appeal. Meanwhile, the 1st respondent sent its officers to the disputed land to force the applicants and their tenants to vacate the premises by forcefully demolishing the buildings. Such action was resisted and halted shortly.

It was argued that surprisingly on 7th May 2024 the 1st respondent issued a 14 days' notice requiring 1st applicant and all its tenants to vacate the premises as the 1st respondent intended to demolish the same. According to 1st applicant since the said order to strike out the appeal that aggrieved the 1st applicant is not a decree, the applicant had nothing to stay.

It was the 1st applicant story that the applicant had no alternative other than seeking refuge to the inherent powers of this honourable court under the cited provisions of the law. It was submitted that this court being the fountain of justice it is in the interest of justice that orders sought in the Chamber Summons be granted.

The grounds for the prayers are stated in the joint affidavit namely: First, there are no identification of buildings and structures in the suit premises and absence of valuation makes it impossible that compensation shall be paid. Second, suit land is the only source of income for the 1st applicant to pay for the costs of appeal pending determination before the Court of Appeal. Third, the injunction pending appeal requires satisfaction that the intended appeal has the prospects of success. It is the 1st applicant's view that there was a misdirection of this honourable court on interpretation of Section 102(1) and (2) of the Land Registration Act, Cap 334 R.E. 2019, as a party who is aggrieved is allowed to appeal against decision, order or act. Indeed, the 1st applicant was challenging the act done by the 3rd respondent in rectification of the title deed.

The case of **Tanzania Union of Industrial and Commercial Workers (TUICO) and Another versus TIPER**, Civil Application No. 110 of 1999 was cited to reiterate that the Court of Appeal granted injunction pending the appeal before the Court of Appeal. It set conditions for grant of injunction pending appeal. These are irreparable loss and the prospects of succeeding in the said appeal. It was further argued that 1st applicant shall suffer irreparable loss as the applicant cannot be compensated and it shall have no other sources of income as well being subjected to unlimited litigations from the sub tenants who are around 1600 tenants in the suit premises.

Mr. Lucas Komba, advocate stated that for 2nd to 6th applicants are seeking declaratory orders that they are entitled to remain in the suit land located in Plot No 29 Nzuguni area within Dodoma as sub tenants of the 1st applicant pending maturity of the 90 days' notice dated 10th May 2024. It was argued that the 1st respondent should be stopped from evicting, removing or preventing or interfere with the applicants' peaceful enjoyment of the suit land as the sub tenants of the 1st applicant in the suit intended to be lodged before this Honourable Court on maturity of the 90 days' notice.

Accordingly, the applicants are seeking orders of mareva injunction to restrain the respondents unlawful act of demolition of the buildings and structures developments on the said land pending the expiration of the statutory notice of 90 days. The applicants argued that all the conditions

necessary for this honourable court to grant the restraining orders to the respondents exist. First, there is arguable case/ triable issues against the respondents as the applicants are sublessees of the 1st applicant who is the lawful occupier of the said land. It was argued that the 1st applicant title has a provision allowing subletting and the act of the respondent to issue 14 days' notice is against the law and procedure for terminating the lease agreements.

It was a further submission that 1st respondent's intention of demolishing the buildings and developments in the disputed land without making valuation and identification of applicants as tenants is likely to be without any compensation. Thus, there are triable issues between the 2nd to 6th applicants, on one hand and the respondents, on the other hand that necessitates the intervention of this court. The first condition for granting mareva injunctions is met.

Second condition is irreparable loss, where it was submitted that the applicants have developed the land in question by erecting the structures for business, industrial and petrol stations and other structures which are used throughout the year. This land is the only source of income for the applicants and their families. It is possible that the respondents shall fail to compensate since there have been no valuation of the properties/ improvements made on the suit land. For that reason, it was argued the applicants shall suffer irreparable loss.

Third, on a prima facie case, it was submitted that applicants have a strong case against the respondents on ground that the respondents issued a 14 days' notice without following a proper procedure of terminating lease agreements. Thus, the Counsel for 2nd to 6th applicants reiterated the prayer for this court to grant orders sought in the Chamber Summons.

On the other hand, Ms. Kumbukeni Kondo, learned State Attorney upon adopting a counter affidavit of the Respondent's principal officer, reiterated that the application is for grant of injunction against a matter pending determination at the Court of Appeal as the notice has been already served to the respondents regarding that appeal. It was submitted that 1st applicant having lodged the notice of appeal to the Court of Appeal all prayers sought in the Chamber Summons are incompetent as this Court has no jurisdiction to entertain and grant them given that the matter is at the Court of Appeal.

The case TANESCO cited in the **Serenity of the Lake Limited versus Dorcas Martin Nyanda,** Civil Revision No. 1 of 2019 was referred to cement a principle laid by the Court of Appeal that the High Court lacks jurisdiction to deal with a matter once an appeal is instituted in the Court of Appeal by way of lodging the notice of appeal.

Also, the principle in **Sauda Juma Urassa Versus Coca-Cola Kwanza Limited,** Civil Appeal No. 227 of 2018 at page 10 where the

Court of Appeal stated that subordinate court lacks jurisdiction where an appeal is preferred to the superior Court was cited as illustrative to the point.

Another case cited was that of **Exaud Gabriel Mmari versus Yona Akyo and Others**, Civil Appeal No. 91 of 2019 cited the case of **Arcardo Ntagazwa** at pages 5-6, CAT stated the trial court judge should halt the proceedings when there is notice of appeal lodged to the registry to appeal to the Court of Appeal. It was reiterated further that the cases cited by the applicant's counsel has in effect stating that where there is appeal before the CAT the High Court ceases to have powers to entertain that matter.

Furthermore, the counsel for respondents argued that submission by applicants that they have no alternative other than this application is incorrect as they have an alternative to seek the orders at the Court of Appeal.

According to the respondents, the respondents being government entities there is nothing on applicants to worry about compensation as government is a financially tycoon that can ably compensate the applicants in case their appeal succeeds.

On the suit premises being the only source of income, it was submitted that courts do grant orders to costs of the case. The costs

awardable are likely to recompense and meet the costs of the cases of 1st applicant if the appeal succeeds as the applicant stated.

It was further submitted that this application for mareva injunction is also pegged on pending maturity of the statutory notice issued on 10th May 2024. The Government Proceedings Act, Cap 5 R.E. 2022 requires that a notice must be issued to the respective government ministry, department or officer concerned and a copy be served on the Attorney General. The purported notice was served in contravention of the law in section 6(2) of the Act. The Attorney General was not served with notice and there is only a draft plaint without demand notice.

On irreparable loss as submitted by applicants, it was argued that land is not among the aspects qualifying to irreparable loss. It can be quantified in monetary terms and paid thereof. The respondents are able to compensate the applicants in case the appeal succeed as the same is compensable aspect.

On prima facie case, it was reiterated that the respondents being owners of the suit plot and then 2nd to 6th applicants being tenants of the 1st applicant, it is intended that the respondents have a strong case against the applicants.

On violation of the law in termination of lease agreements, it was submitted that there is no lease agreement existing between the applicants and respondents concerning the suit plot, the applicants have alleged purported lease with the 1st applicant who are not the owners of the land currently. Thus, it was prayed that this application be dismissed for lack of merits with costs.

In respect to a Point of Preliminary objection, Mr. Nicodemus Agweyo submitted that the 2nd to 6th applicants have no locus standi to represent 47 others in the case. The contents of Para. 2, 7, 13, 14, 15 and 16 indicate that there other 47 tenants represented by the applicants. Order I Rule 8 of the Civil Procedure Code, Cap 33 R.E. 2022 provides that leave must be sought and granted before a representative suit is filed. The leave of the court must precede the institution of the case. In **Ramadhani Mbuguni versus Ali Ramadhani,** Civil Case No 6 of 202 at page 4, it was held that in commencing proceedings the instrument that gave the persons representing others a right to sue on behalf must be attached regarding such representation.

In **Hassan Salehe Ndengenyu and Others versus Director General, Export Processing Zones Authority (EPZA) and others,** Civil Appeal No 315 of 2020, at pages 4-6, the Court stated that presence of leave makes the institution of the case a proper one. Leave is mandatory but the 2nd to 6th applicants have not complied with the principles of the

law regarding the institution of the representative suits. Thus, this court was urged to dismiss the application for contravening the law with costs.

To rejoin, it was submitted in respect of the preliminary objection that there is nowhere indicated that all other 47 persons are represented in the title as well as in prayers, there is nowhere indicated that the applicants are not representing others. According to applicants, those paragraphs state only those five applicants to be among 52 tenants. The Paragraphs do not mean that those five persons namely 2nd to 6th applicants are representing other 47 tenants. It was reiterated that in paragraphs 13-16 inclusive, the applicants stated the efforts that the applicants with other 47 tenants did take including: First, filing the statutory notice. Second, meeting to nominate representatives who shall represent all others in the intended suit.

With regard to the main application, it was submitted that applicants managed to establish irreparable loss as there are improvements on that land and there is no valuation for compensation purposes to the tenants. The suit premises are the only source of income to the applicants. The demolition would cause loss to them as they will fail to do business. The loss cannot be quantified.

On triable issues and prima facie case, it is submitted that they are aspects that do exist as the 14 days' notice to give vacant possession is

against all the developments made in the suit premises. The legal procedures were not adhered to. There is a good 90 days' notice as there is a dispute that calls for this court's intervention.

Further, the applicants argued that Order I Rule 8 of the CPC deals with suits and the matter before this Court is an interlocutory application as it is temporary injunction pending another action in court. Indeed, the matter that is to be determined by this court is that of whether party's representation is determined by affidavit or party's assertion in the pleadings. The applicants have not stated anywhere to represent others throughout the documentations thus all the cases cited on the preliminary objection are distinguishable as they relate to suits and not applications.

In addition, it was reiterated that mareva injunction is the one sought before this court. It is only pegged on equity. The applicants have stated that the process of the representative suit have commenced by filing a representative suit application for leave as stated in joint affidavit of the applicants (2nd to 6th applicants).

Regarding the cases cited on powers of the High Court where there a pending appeal on the subjected matter, it was submitted that the principles are valid as the lower court ceases to have jurisdiction to stay the execution of the decree or order. However, the counsel for applicants noted that there is no single case cited that has dealt with inherent powers

of this Court under the Judicature and Application of Laws Act, Cap 358 R.E. 2019. Simply, the counsel for applicant urged this court to distinguish that it is only on appeals where the High Court's jurisdiction is limited to deal with execution once an appeal is preferred to the Court of Appeal but the same does not apply where there is invocation of inherent powers of the court in an application like the instant one. It was argued that the existing matter in this application is correct before this court and there is no law nor case that has limited the powers of the High Court.

It was further submitted that present application is very exceptional in two circumstances for two reasons: First, it does not directly deal or challenge pending dispute before the Court of Appeal. The issues complained relate to matters that have arisen after the dispute is already in Court. Second, the application includes the parties who are different from those in the Court of Appeal.

On costs, it was submitted that contingency fees is prohibited and capacity of the applicant to pursue their appeal solely depend on the suit premises. It was reiterated further that currently, there is no identification nor valuation of the existing properties of the applicants. Thus, the applicants urged this court to grant the application as the applicants have a good arguable case. The same be granted with costs.

On the preliminary objection, it was rejoined short that the application is prematurely preferred as those paragraphs reveal the representation without the leave of the Court and that definition of the suit includes all the applications of a civil nature. This application before this honourable court is a suit in that sense. It was reiterated by respondents that this application be dismissed with costs.

Having heard the rival oral submissions by the parties in respect application before this Court, I have dispassionately perused the application before me together with supporting affidavits to find out validity or otherwise of the consolidated application.

The consolidated Miscellaneous Land Application No. 11376/11103 of 2024 is preferred under Section 2(3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2019; and sections 68(e) and 95 of the Civil Procedure Code, Cap 33 R.E 2022. In essence the provision under JALA allows the use of common law, doctrine of equity and statutes of general application within our jurisdiction. Similarly, the cited provisions of the Civil Procedure Code cater for inherent jurisdiction of the Court in dispensation of justice.

The basis of the institution of the Consolidated Miscellaneous Land Application can be discerned from the joint affidavits in support of the applications. A joint affidavit for the 1st applicant in Paragraphs 4, 5, 6, 7, 8 and 9 reveal that dispute arose out of ownership question in Plot No. 29

Nzuguni, within Dodoma City registered under Certificate of Right of Occupancy No. 21403- DLR, L.O No. 16325 measuring 171.5 hectares.

It is revealed further that the 3rd respondent did rectify such title on 4th October 2021 upon filing of the Document 30230-DLR thus by rectification the Registered owner is Her Excellence the President of the United Republic of Tanzania.

On the other, Paragraphs 2,3, 4 and 5 of the joint affidavit for the 2nd to 6th applicants aver that basis of the claim is the same land at Plot No 29 Nzuguni area with L.O No. 16325 measuring 171.5 hectares registered under Certificate of Right of Occupancy No. 21403- DLR. All five applicants assert that they are invitees to that Plot of land by virtue of sublease agreements between the 2nd to 6th applicants with the 1st applicant.

The 2nd to 6th applicants have no direct relationship with the respondents in this matter. In essence, the 2nd to 6th applicants inclusive are litigating in the shoes of the 1st applicant as they only derive their locus standi on existence of ownership of the land in question by the 1st applicant. It was on that reason that this Court consolidated the applications to determine the same once and for all.

The consolidation of the application has made the application to have two main limbs for determination. First, grant of an injunction pending

appeal before the Court of Appeal of Tanzania; and second, grant of injunction pending expiry of statutory notice of 90 days to institute the suit against the respondent.

I shall examine the general principles guiding the grant of injunctive orders as pertain to our jurisdiction before determining whether the consolidated application has merits or otherwise.

It is a common knowledge that ordinarily injunctive orders are granted by a court exercising original jurisdiction or an appellate court while exercising its appellate jurisdiction. This position on proper court to grant injunctive orders was stated in the case of **Hyasinta Elias Malisa vs The Ministry of Land, Housing & Human Settlements Development & Others** (Civil Application No. 614/17 of 2021) [2023] TZCA 17752 (11 October 2023), at pages 5-6, where the Court of Appeal stated that:

> *In the circumstances of this matter we are guided by* ***Gazelle Tracker Limited v. Tanzania Petroleum Development Corporation****, Civil Application No. 15 of 2006 (unreported) for* ***its holding that applications for injunctive reliefs are more appropriately suited for the court exercising original jurisdiction.*** *In that case, the applicant sought an order of temporary injunction to restrain the respondent from carrying out an*

intended eviction of the applicant from the suit property. A single judge of the Court dismissed the application on the following reasoning: "It is common knowledge that the Civil Procedure Code, 1966 does not apply in this Court. In view of the fact that no provision is made in the Court Rules,1979 for injunctive reliefs, I am persuaded by Mr. Kilindu's submission that application for injunctive reliefs such as this, are more appropriately suited for the court exercising original jurisdiction and not the Court of Appeal. The logic is not far to seek. As provided for under Rule 1, Order 37 of the Civii Procedure Code, 1966, temporary injunction may be granted where in any suit, the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit. It is therefore dear that injunctive reliefs are, according to the law as set out above, generally invoked at the stage where the trial of a suit is in progress or pending." [Emphasis added]

Thus, injunctions generally are when there are pending matters before the court with jurisdiction to determine that matter. Injunction to issue addresses some of the intervening events that are likely to affect the outcome of the pending suit or matter.

The conditions for grant of injunctive orders of this nature preferred in the enabling provisions cited have been enumerated by the Courts in our jurisdiction. For instance, in the case of **Decent Investment Limited vs Tanzania Railway Corporation & 3 Others** (Misc. Civil Appl. No. 13 of 2023) [2023] TZHC 16084 (6 March 2023), at page 7, the High Court (Hon Bahati, J.) noted that:

> *It is trite law that the interim injunction is sought prior to the institution of a suit. It should be noted that an interim injunction order preceding the institution of a suit "Mareva Injunction" which is a common law remedy developed by courts of England. It derives its name from the case of* ***Mareva Compania Naviera SA v International Bulk Carriers SA*** *[1980] 1 All ER. Applying this principle, the supreme court of Canada in* ***Aetna Financial Services v Feigelman*** *(1985) 1 SCR 2 stated that; "In granting Mareva injunction, two conditions must be established firstly, the applicant must demonstrate a strong prima facie case or a good and arguable case and secondly having all the circumstances of the case, it appears that granting the injunction is just and justifiable".*

According to this decision of the Court there must be no existing suit relating to that subject matter for the mareva injunction to be invoked.

This is a prerequisite aspect before considering other conditions for such grant of mareva injunction.

Also, in **Leopard Net Logistics Company Limited vs Tanzania Commercial Bank Limited & 3 Others** (Misc. Civil Application 585 of 2021) [2021] TZHC 9043 (28 December 2021), at pages 6-7, this Court (Hon Masabo, J.) observed that:

> *In our jurisdiction, it is a settled principle of law that, this court has jurisdiction to grant such injunction under section 2(3) of the Judicature and Application of Laws Act which braces the application of common law and equity in our jurisdiction. This position has been stated in plethora of authorities, including* ***Abdallah M. Malik & 545 Others v AG*** *(supra);* ***Jitesh Ladwa v Yono Auction Mart and Co. Ltd & Others*** *(supra);* ***Ugumba Igembe & Machanya Nemba Singu v The Trustees of The Tanzania National Parks & The Attorney General,*** *Miscellaneous Civil Application No. 1 of 2021, HC- Mbeya (unreported). And, as argued by both parties, for such an injunction to issue, the court must be satisfied that there is no pending suit because, as pointed out in* ***Daudi Mkwaya Mwita v Butiama Municipal Council & AG,*** *Misc. Land Application No 69 of 2020, HC Musoma*

(unreported), mareva injunction cannot be applied or granted pending a suit. It is an application pending obtaining a legal standing to institute a suit. It may be issued where, the applicant cannot institute a law suit because of an existing legal impediment. Since the instant application is applied pending the expiry of the 90 days' notice to sue the Government which impends the institution of a suit by the applicant, there is no doubt that the application falls within the realm of mareva injunction and can be issued if the conditions for grant of injunction are demonstrated.

It is lucid that mareva injunction applies to circumstances where there is no pending matter before the Courts of law. That is what can be gathered from the decisions of the Court.

It is on record that the subject matter giving rise to the application at hand has several times knocked the doors of this court. It appears that the applicants, namely 1st applicant was not satisfied by the decision of this Court thus appealed to the Court of Appeal which is pending determination before the Court of Appeal.

As I have pointed out above that this consolidated application has two limbs. The first limb is that of grant of injunction pending appeal. It can be garnered from Paragraph 12, 13 and 14 of the joint affidavit of the 1st applicant that this matter is pending determination in the Court of Appeal against the decision of the High Court dated 17th April 2024 which struck out the Land Appeal No. 53 of 2023.

Similar averments on the dispute of the land in question being subject of appeal before the Court of Appeal of Tanzania is reiterated in Paragraph 11 and 12 of the joint affidavit of 2nd to 6th applicants.

With explicit evidence on record regarding existence of an appeal before the Court of Appeal on the same subject matter can this court assume to have jurisdiction to entertain the matter at hand? The answer seems to be in the negative. The reason is simple and straight forward that there is no legal impediment on part of the 1st applicant to institute a matter before the Court as already the appeal exists before the Court of Appeal.

The Court of Appeal has instructively reiterated in plethora of authority that once an appeal is preferred to the Court of Appeal against a decision of the High Court, the High Court is precluded from entertaining anything regarding issues revolving that subject matter as it lacks jurisdiction.

In **Exaud Gabriel Mmari vs Yona Seti Akyo & Others** (Civil Appeal 91 of 2019) [2021] TZCA 726 (3 December 2021) (TANZLII), at pages 5-6, the Court of Appeal stated explicitly that:

> *The case of **Milcah Kalondu Mrema (supra)**, cited by Mr. Maro, has well rounded up the argument. At page 5 of the ruling the Court observed that: "It is now settled that once a notice of appeal to this Court have been duly lodged, the High Court ceases to have jurisdiction over the matter."*
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> *It was not the first time this Court was faced with the situation in the **Milcah Kalondu Mrema case** (supra). In **Arcado Ntagazwa v Buyogera Bunyambo** [1997] T. L. R. 242, which referred to Milcah Kalondu Mrema, this Court stressed: "Once the formal notice of intention to appeal was lodged in the Registry, the trial judge was obliged to halt the proceedings at once and allow for the appeal process to take effect or until that notice was withdrawn or was deemed to be withdrawn."*
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> ***Since there was nothing placed before the court, that the lodged notice of appeal has been withdrawn or was deemed to be withdrawn, then the notice of appeal lodged is considered to be still intact. Under the circumstances, the High Court***

jurisdiction ceased to warrant continuation with the hearing. The effect is that all the proceedings which commenced from 16th March, 2016, onwards were a nullity.

The decision of the Court of Appeal has two main aspects of importance. First, where there is a formal notice lodged to the Court of Appeal regarding a matter that was determined by the High Court such lower court ceases to have jurisdiction to entertain anything else on that that subject matter. Second, the effect of meddling with a matter whose appeal is preferred to Court of Appeal results into nullity of the whole proceedings by the High Court that entertained such matter subject of appeal.

In the case of **Sauda Juma Urassa vs Coca-cola Kwanza Limited** (Civil Appeal 227 of 2018) [2022] TZCA 295 (20 May 2022) (TANZLII), at page 10, the Court of Appeal reiterated that:

It goes without saying that the above settled position is applicable to the appeal lodged in the High Court in respect of the decisions and orders of the subordinate courts, in this case, the District Court. Thus, once the appeal was lodged in the High Court, the District Court ceased to have jurisdiction over the matter. We therefore

agree with the learned counsel for the parties that the learned trial Magistrate who presided over the proceedings did not have the requisite jurisdiction to entrain the appellant's application for amendment of its decision which was being challenged at the High Court. Unfortunately, this error skipped the attention of the learned High Court Judge though he was duly alerted by 10the appellant's counsel as intimated above.

Indeed, the Court of Appeal invoked its revisional powers to nullify all the proceedings that resulted from the trial court's action of entertaining a matter before it while the same matter is pending appeal. Proceedings and decision arising out of exercise of powers by subordinate Court on an issue pending determination at a superior court have only a single effect of being nullity.

This principle was also applicable in the **Serenity on The Lake Ltd vs Dorcas Martin Nyanda** (Civil Revision No. 1 of 2019) [2019] TZCA 65 (12 April 2019) (TANZLII), at pages 3-4, the Court of Appeal lucidly stated that:

*In answer to the first issue, we have no other good words to give than those stated by this Court in **Tanzania Electric Supply Company Limited vs. Dowans Holdings S. A. (Costa Rica) and Dowans Tanzania***

Limited (Tanzania), *Civil Application No. 142 of 2012 (unreported) stating that- "It is settled law in our jurisprudence, which is not disputed by counsel for the applicant that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court commences proceedings in the Court. We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter."*

Similar position was taken by this Court in ***Awiniel Mtui and Three Others vs. Stanley Ephata Kimambo (Attorney for Ephata Mathayo Kimambo)***, *Civil Application No. 19 of 2014 (unreported) in which the Court held that:- " once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter." See also* ***Aero Helicopter (T) Ltd. vs. F. N. Jansen*** *[1990] T.L.R. 142.*

On the strength of the above decisions, ***we are settled in our minds that the Deputy Registrar, of the High Court (Labour Division) did not have jurisdiction to hear and order stay of execution*** *and at the same time order the applicant to deposit a sum of Tshs. 2,500,000/= to that court as security for the due performance of the decree in Revision No. 24 of 2017* ***while already there***

was a Notice of Appeal filed in this Court *(Emphasis added).*

Given that both joint affidavits for applicants have admitted that there is pending appeal at the Court of Appeal of Tanzania on the subject matter that gave rise to the instant application, I am of the settled view that the first limb of the application fails to meet one of the important criteria for it to be granted. The criterion is that before considering whether to grant a mareva injunction or otherwise, the Court must satisfy itself that there exists no pending suit or matter before a court of law as the applicant is prevented by an impediment to institute such case.

It is therefore this court's view that existence of an appeal before the Court of Appeal has impact of ousting jurisdiction of this Court to entertain the application that surrounding on the subject matter of the pending appeal.

I cannot agree with the submission by the learned Counsel for the applicants that the High Court in exercise of its inherent jurisdiction can entertain any matter before it despite the same subject matter being pending determination by the Court of Appeal. Concurring to that submission would be bringing the administration of justice into chaotic situation.

It is correct exposition of the law that when a matter is pending determination by a superior court, it is the same superior court that is empowered to deal with all the interlocutory applications regarding that subject matter. I concur with submission of the learned State Attorney that in the **Tanzania Union of Industrial and Commercial Workers (TUICO-OTTU Union) and Another vs Tanzania and Italian Petroleum Refining Company Ltd** (Civil Application 110 of 1999) [2000] TZCA 10 (6 March 2000) (TANZLII), at page 4, the Court of Appeal did grant the injunction pending appeal which was denied by the High Court. There was a pending appeal at the Court of Appeal as it is in this instant application.

It is settled law in Tanzania that once an appeal is preferred to a superior court, the subordinate court has no jurisdiction to entertain the issues surrounding that matter. Settled matters should not be disturbed. As such, I am guided by a wise counsel of the Court of Appeal in **Mohamed Enterprises T. Limited vs Masoud Mohamed Nasser** (Civil Application 33 of 2012) [2012] TZCA 219 (27 August 2012) (TANZLII), at page 21, where the Court stated that:

> *Laws and Rules are intended to promote and guarantee consistency in the dispensation of justice in society. They imply fairness to parties who seek justice before the courts of law. It will therefore, be improper and dangerous to the*

settled tenets of our judicial system to ignore them for the so called "interest of justice" or "substantive justice". Some of those norms and rules are so fundamental to the cause of justice that they go to the very roots of justice itself. To ignore them therefore will cause greater injustice to the parties. Justice implies fairness to all parties to a case.

Indeed, that being the position, this Court is duty bound to adhere to the settled principles of law within the jurisdiction regarding conduct of the court on matters that are pending appeal. It cannot reinvert the wheel on pretext of upholding interest of justice in contravention of settled principles.

However, it is lucid that the second limb of the application on grant of mareva injunction for the 2nd to 6th applicants might pass the first test of non- existence of the suit if the applicants are to be detached from their reliance on existence of title deed by the 1st applicant on plot in question.

To address this second limb, I shall hasten to subject the same on the conditions for grant of such injunctive reliefs. In the case of **Kurubone Timotheo and 2 Others vs Kishuro Village Council and 4 Others** (Misc. Land Application No. 9827 of 2024) [2024] TZHC 5832 (19 June 2024) (TANZLII), at page 6, this Court (Hon Banzi, J.) had this to say:

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).*

As per averments in Paragraph 2, 3, 4, 5, 12, 14, 15 and 16 of the joint affidavit of the 2nd to 6th applicants it is reiterated that all the five applicants trace their legal standing from the purported existence of the tenancy agreements between themselves and 1st applicant. It is their claim that they have interest on the subject matter as they have valid tenancy agreements with the 1st applicant.

It appears that 2nd to 6th applicants cannot have any legal standing against the respondents in absence of their purported contractual relationship with first applicant. There is nowhere in both joint affidavit of the 2nd to 6th applicants where they are asserting to have any direct or indirect relationship with the respondents. Their lamentation is that the 1st respondent's notice to give vacant possession has been issued against the procedure in the tenancy agreements.

The main question is whether the applicants have satisfied the conditions for grant of mareva injunction. As I have just stated that basis of the 2nd to 6th applicants lamentation is that a notice dated 7th May 2024 from the 1st respondent has issued in contravention of the procedure obtainable in the lease agreements.

I have thoroughly perused the submissions by the parties, I am unable to find anything linking the 2nd to 6th applicants to the respondents except the fact that according to the 2nd to 6th applicants the land in question is owned by the 1st applicant. On both joint affidavits of the applicants, there is nothing to suggest that either of the respondents are privy to the purported lease/tenancy agreements between the 2nd to 6th applicants with the 1st applicant.

I am not convinced that there is a prima facie case on part of the 2nd to 6th applicants against the respondents on a matter where the respondents have not been privy to the purported lease agreements. The 2nd to 6th applicants can only have a direct cause of action against the 1st applicant as two parties allege to have contractual relationship between them.

Given the fact that the applications were consolidated for reason of arising on the same cause of action i.e. disputed ownership of the plot of land in question, which is pending before the Court of Appeal, the claim against the respondents is not supported by serious averments in the joint affidavit of the 2nd to 6th applicants or submission made by the applicants.

Regarding the issue of irreparable loss and that on balance of convenience that applicants are likely to suffer more than the respondent, it is my settled view that there is no material evidence adduced at my disposal to conclude that the applicants are likely to suffer such irreparable loss. None of the 2nd to 6th applicants have tendered anything regard the type of loss that is irreparable.

I am not oblivious of the fact that Annexure TASO-2 collectively which is just incomplete offer on tenancy agreements, a business licence for one Kelvin Romani Mng'anya for Lodging House, Grant of Permit to Sink or Enlarge the bole hole to Phillip John Mchomba, Hotel operation licence

for Peniel Aitael Maimu, Business Licence for sale of spare parts for Mohamed Khalid Abdi, Facility Letter worth around TZS 5 million from CRDB to Phillip John Mchomba and Business Plan for Mr. Peniel Maimu for Economic Fish Farm Project.

Needless to say, neither of these documentary evidence adduced at the hearing of this consolidated application have presented any possibility of material or monetary loss that is incapable of being compensated was Essentially, the Annexture TASO 2 collectively has nothing to do with the 2nd to 6th applicants. The only aspect that touches the 2nd to 6th applicants is offer for allocation of plot for tenancy. There is no tenancy agreement that was tendered to validate assertion that 2nd to 6th applicants are tenants in the disputed plot of land.

The copies of business licences, loan facility and business plan for fish farming are for the persons who are not part of this application. It was the submission by both Counsel for 1st applicant and that of 2nd to 6th applicants that this application is not representative in nature. It only concerns parties who appear in the Chamber Summons and supported by their joint affidavit only and not otherwise.

Similar imports of existence of tenants is supported by annexure MPA -9 of the joint affidavit of the 1st applicant. It is only an offer for a plot at Nane Nane ground dated 2012. There is nothing to substantiate that 1st

applicants and the purported tenants have entered into any binding agreements relating to such leases as the offer for allocation does not contains terms of the tenancy.

What can be easily seen in the court proceedings are two assertions by the Counsel for applicants. First, the 1st applicant depends solely on the suit plot to pay for the litigation fees for the ongoing cases and future cases. Second, that the tenants depend on the business activities that are conducted on the disputed plot. I hasten to state that in absence of tangible evidence to support these assertions, the same remain mere allegations that have not been proved.

This Court has reiterated the criteria for grant of injunctive reliefs whether temporary injunction or mareva injunction as the instant consolidated application, that there must be prima facie case, court's interference is necessary for irreparable loss that is likely to occur, and that on balance of probabilities, the applicant is likely to suffer more than the respondent. See For instance, in **Kurubone Timotheo and 2 Others vs Kishuro Village Council and 4 Others (Supra)** and **Leopard Net Logistics Company Limited vs Tanzania Commercial Bank Limited & 3 Others (supra).**

Having examined the evidence available in the respective joint affidavits of the 1st applicant and that of 2nd to 6th applicants as well as

respective counter affidavits by Aziza Rajabu Mumba and the submissions by parties, it is my settled and firm view that the applicants have not managed to discharge the duty to prove existence of the conditions necessary for grant of injunctive reliefs. In the case of **Registered Trustees of Joy in The Harvest vs Hamza K. Sungura** (Civil Appeal 149 of 2017) [2021] TZCA 139 (28 April 2021) (TANZLII), at pages 16-17, the Court of Appeal reiterated on burden and standard of proof in the following words, namely:

> *With the above evidence at our disposal, and in order to decide whether the respondent managed to prove the case at the required standard we had to revisit the trite principles in the law of evidence; the general concept of the burden and the standard of proof in civil litigations. The concept is "he who alleges must prove," and it means that the burden of proof lies on the person who positively asserts existence of certain facts. The concept is embodied in the provisions of section 110 (1) and (2) of the Evidence Act [Cap 6 R.E. 2019] which provides that:*
>
> *"(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist*

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Certainly, the position that he who alleges must prove is part of our jurisprudence as per this Court's decisions in ***The Attorney General v. Eligi Edward Massawe,*** *Civil Appeal No. 86 of 2002 and* ***Ikizu Secondary School v. Sarawe Village Council,*** *Civil Appeal No. 163 of 2016 (both unreported) and the standard of proof, in civil cases is on the balance of probabilities, see the decision in* ***Manager, NBC Tarime v. Enock M. Chacha*** *[1993] TLR 228.*

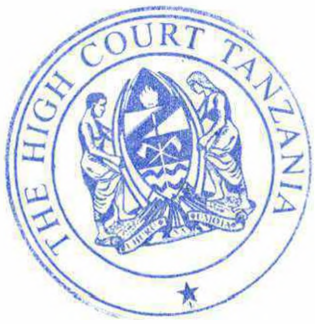
It is a settled opinion of this court that the applicants have failed to prove cumulatively the existence of all the prerequisite conditions for grant of mareva injunction. Thus, the prayers in consolidated application fell short of the legal requirements for this court to exercise its discretion to grant mareva injunction.

That being the case, it is my humble view that there was no need for this Court to analyse the preliminary objection on point of law that the 2nd to 6th applicants were litigating in the representative capacity in contravention of the law. It would be an academic exercise to address the same.

As a result, the consolidated Miscellaneous Land Application No. 11376/ 11103 of 2024 deserves nothing but a dismissal on its entirety to being devoid of merits. Costs shall in cause.

It is so ordered.

DATED at **DODOMA** this 28th day of June 2024



Longopa.

E.E. LONGOPA
JUDGE
28/06/2024.