

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(DAR ES SALAAM SUB-REGISTRY)**  
**AT DAR ES SALAAM**

**MISCELLANEOUS LAND APPLICATION NO. 286 OF 2022**

(Originating from Land Case No. 107 of 2022)

**GODFREY ALLEN DHAHABU ..... 1<sup>st</sup> APPLICANT**  
**ABDULMALIKI IDRISA BAJWALA ..... 2<sup>nd</sup> APPLICANT**  
**YAHYA ISMAIL MIRANDU ..... 3<sup>rd</sup> APPLICANT**  
**SHARIFA H. HAMDOUN ..... 4<sup>th</sup> APPLICANT**  
**ALLY ISSA ALLY ..... 5<sup>th</sup> APPLICANT**

VERSUS

**KIGAMBONI MUNICIPAL COUNCIL ..... 1<sup>ST</sup> RESPONDENT**  
**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Date: 21/08/2023 & 04/03/2024

**NKWABI, J.:**

This application derives from Civil Case No. 107 of 2022. The applicants are representing others in this application and in the main case: The orders that are sought in this application are:

- a. That the honourable Court be pleased to issue a declaratory order stopping the 1<sup>st</sup> Respondent, her agents and contractors from dumping waste in the applicants' premises pending hearing and determination of the main case.
- b. Costs of the application.

The application is brought under the provisions of section 95 and Order XXXVII Rule 2 of the Civil Procedure Code Cap. 33 R. E. 2019.

The chamber summons is supported by a joint affidavit duly deponed upon by the applicants. The respondents filed a counter-affidavit. The disposal of the application was by way of written submissions. Mr. Walter Shayo, learned counsel for the applicants, submitted in favour of the application while Mr. Gallus Lupogo, learned State Attorney, filed arguments against the application.

While advancing the application, the counsel for the applicants made it clear to the Court that the basis of this application is the proviso to Order XXXVII Rule 2 and the inherent powers of the Court under section 95 of the Civil Procedure Code. He relied too on **Atilio v. Mbowe** [1967] H.C..D No. 284 which outlined the conditions for granting an injunction order as:

- i. There must be a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed.

- ii. That the court interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established.
- iii. That on the balance there will be great hardship and mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from granting it.

Mr. Shayo maintained that the first condition has been met on account of the fact that there is a pending case Civil case No. 107 of 2022 and the applicants stand chance to succeed.

On his side, Mr. Lupogo contended, while adopting the counter affidavit, that the application misses the element of existence of a serious question (issues) to be tried and applicants' likelihood of success. He made reference to **Abdi Ally Salehe v. Asc Care Unit Ltd & 2 Others**, Revision No. 3/2012, CAT (unreported) at page 9 where it was stressed that:

*"When all the above minimal conditions are established, the court before deciding one way or another should then consider other factors such as the conduct of the parties, delay, lack of clean hands etc. this is because as seen above*

*the remedy of injunction has its roots in equity and so equitable principles may be applied in appropriate cases. ..."*

It is thus pressed by Mr. Lupogo that even where the three tests as stated in **Atilio's** case (supra), the application too should pass the additional elements mentioned in **Salehe's** case (supra). It was amplified that since the applicants have added eight impostures and only three plots are mentioned then the applicants lack clean hands.

The learned State Attorney, did not end there, he beefed up that in granting an application of this nature, public interest or public policy has to be considered by the Court, whereas in this application if the declaratory order would be issued, environmental policy and health policy would be affected thus affecting public policy.

In rejoinder, Mr. Shayo stated that the correct number of applicants is sixty-one and indicating them as 69 in paragraph 2 of the affidavit is a slip of the pen. He adds that the amended plaint clearly indicates the location of the dump site in the respective plots. It is also stressed that the challenged legality of the allocation of a dumping site in residential area and there is a chance of succeeding. It is expanded that the applicants are firm that the

dump site was unlawfully located in their residence. It is further claimed that the applicants occupied the area in dispute prior to the plan. In respect of the article cited by the learned State Attorney, he said the same is not binding on this Court. It is prayed that the declaratory order be granted.

Truth be said once and for all, the declaratory order sought by the applicants appears to be impossible to be handed down at this moment owing to public policy and environmental concern which culminate into public interest. The order if granted would affect all the residents of Kigamboni district and perhaps cause them to incur more costs thus hardship to the respondents as opposed to the applicants. In the premises I am inclined to accept the submission made by the learned State Attorney for the respondents.

In the final analysis, I rule that this application is untenable because public interest will be jeopardized with the order. Costs shall abide by the outcome of the main suit.

It is so ordered.

**DATED** at **KIGOMA** this 4<sup>th</sup> day of March, 2024



  
J. F. NKWABI  
**JUDGE**