IN THE HIGH COURT OF TANZANIA

GEITA SUB REGISTRY

AT GEITA

MISCELLANEOUS LAND APPLICATION NO. 2771 OF 2024

BINGELE BUHWAHWA AND 12 OTHERS.....APPLICANTS

VERSUS

HALMASHAURI YA MJI WA GEITA.....1st RESPONDENT

BOARD OF TRUSTEES OF CCM PARTY.....2nd RESPONDENT

ATTORNEY GENERAL.....3rd RESPONDENT

RULING

Date of last order: 05/03/2024

Date of Ruling: 11/03/2024

MWAKAPEJE, J.:

This application, made via chamber summons and supported by an affidavit of one Yisambi Siwale, learned counsel for the applicants, was brought under the provisions of ***section 2(3) of the Judicature and Application of Laws Act, Cap. 358 R.E. 2022*** and ***sections 68 and 98 of the Civil Procedure Code, Cap 33 [R.E. 2022].***

The background of the present application briefly follows: The applicants, who are businessmen and women, entered into a lease agreement with the then Geita Town Council (now Geita District Council) in 1992, whereby they were leased land to construct booths and pay rent.

This lease agreement included compensation provisions if land usage changes necessitated the removal of the Applicants and their structures. Initially, both parties fulfilled their obligations under the agreement.

However, in 2008 a dispute arose between the Applicants and the 1st Respondent, and resolved in 2015 by the District Land and Housing Tribunal of Geita. The Tribunal determined that the Applicants and the 1st Respondent were joint land owners and should enter into another contract with conducive terms for using the land and rent payment between the parties. In 2015, the parties entered into a subsequent contract, which included provisions for compensation in case of changes initiated by the 1st Respondent. The lifetime of the said agreement was five years from the date it was signed in 2015.

In 2023, the 2nd Respondent issued a 60-day notice for the Applicants to vacate the premises, claiming ownership and his intention to develop the land. The Applicants contested this notice, citing a lack of compensation in their agreement with the 1st Respondent. Hence, this application has been filed against the Respondents. However, it is alleged that it is legally required that the 3rd Respondent be given a notice period of 90 days before being sued. While waiting for this notice period to expire, it is stated that the Applicants are to suffer due to the actions of the 2nd Respondent. Therefore, they are seeking the orders prayed for urgently as follows:

(a) The Court be pleased to grant them a Mareva injunction to prevent the 2nd Respondent from removing them from the disputed area, where they are co-owners with the 1st Respondent, until the filing of the main suit after the expiry of a 90-day notice;

(b) The Court be pleased to grant them a Mareva injunction to restrain the 2nd Respondent from constructing on the disputed area, which the Applicants are co-owners of along with the 1st Respondent, until the filing of a main suit after the expiry of a 90-day notice;

(c) Costs of the application and any other relief that the Court deems fit to grant.

At the application hearing, the Applicants were represented by Mr Yisambi Siwale and Mr Shija Jeremiah, both learned advocates. Ms Sabina Yongo, a State Attorney (SA), assisted by Mr Netho Mwambalaswa and Mr Kabwenge Lucas Mathias, both learned State Attorneys (SAs), appeared on behalf of the 1st and 3rd Respondents. Additionally, Mr. Laurent Magoti, a learned advocate, represented the 2nd Respondent.

During the proceedings, the 1st and 3rd raised preliminary objections, which required the Court to determine before proceeding with the application hearing. However, the Court reserved the ruling on the preliminary objection until the entire application was heard.

In addressing the objection, the Respondents contested that the application presented to the Court is omnibus and thus contained more than one prayer in the chamber summons. They pointed out that the Applicants sought an injunction to restrain the 2nd Respondent from evicting them from the disputed land, where they claimed joint ownership, and an order to halt construction by the 2nd Respondent on the same land. The Respondents argued combining two different prayers in a chamber summons violated legal precedent, which stipulates that a chamber summons should contain only one prayer. To bolster their argument, they referred to the case ***Hamis Othmani Mwanya and Three Others v.***

Kinondoni Municipal Council and Three Others [2023] **TZHCLand D15751.** They asserted that the application before the Court suffered from the same legal flaw and requested its dismissal with costs.

Secondly, they contested the validity of the application's affidavit, alleging it to be defective. They highlighted discrepancies in the verification clause, where the deponent claimed knowledge of matters beyond his scope. They argued that as an advocate, the deponent could not attest to facts beyond his personal knowledge, citing relevant legal provisions and precedents. They referred to Order XIX R. 3 (1) (2) of the Civil Procedure Act and case law such as ***Trifon Kazungu & 7 Others v Boniphace Nugaji Kachimu*** [2024] TZHC 215 and ***Lalago Cotton Ginney & Oil Mills Co. Limited vs The Loans & Advances Realization Trust (LART)*** [2004] TZCA 48, which supported their contention. They concluded that the defects in the chamber summons and its accompanying affidavit warranted the dismissal of the entire application with costs.

To join hands with the 1st and 3rd Respondents, Mr. Laurent Magoti, a learned advocate for the 2nd Respondent, concurred with the arguments presented by the learned State Attorneys. His stance was with the precedent outlined in the case of ***Tanzania Breweries Ltd & vs Harman Bildad Minja (Civil Application 11 of 2019) [2020] TZCA 63***, wherein the Court of Appeal accentuated the necessity for separate oaths from both the advocate and the material person involved in the application. He cemented his arguments by the ruling of ***Elihaki Giliad Mbwambo vs Mary Mchome Mbwambo and Another [2020]*** **TZHC 1289.**

In reply to the objections raised, Mr Yisambi Siwale, advocate for the Applicants, objected to the preliminary objections raised by the Respondents as they did not address a legal point as observed in the case of ***Mukisa Biscuit Manufactures Ltd. v. West End Distributors Ltd [1969]*** E.A. 696. He argued that the objections lacked merit and should be dismissed.

Regarding the first preliminary objection, he contended that the application being termed omnibus is insufficient grounds for dismissal. He highlighted that the prayers in the application were similar and, therefore, permissible. He also distinguished the cited case law, arguing that it did not apply to the current situation.

Concerning the second preliminary objection, Mr Yisambi defended the affidavit accompanying the application, stating that the information provided was within the advocate's knowledge. He further argued that the application would still stand even if specific paragraphs were expunged. He also referenced the case of **Tanzania Breweries Ltd** (*Supra*), where similar errors were overlooked in favour of justice.

Mr. Jeremia, a learned advocate for the Applicants and, in concurrence with Mr. Yisambi's objections, added further arguments. He emphasised that there was no legal prohibition against including more than one prayer in a Chamber summons. He cited the case of ***M.I.C. Tanzania Limited vs. Minister for Labour and Youth Development and Another*, Civil Appeal No.103/2004,** to support his assertion and argued that the prayers in the current application were interrelated, thus justifying their inclusion. Regarding the alleged defect in the affidavit, he maintained that the information provided was valid as it was within the advocate's knowledge, and there was no legal requirement for the

deponent to swear only on personally known information. Both learned advocates urged the Court to prioritise the dispensation of justice, usage of overriding objectives and to dismiss the preliminary objections with costs.

In their rejoinders, Mr Netho Mwambalaswa and Mr Laurent Magoti, both State Attorneys for the 1st and 3rd Respondents, reiterated that the submissions made by the Applicant lacked merit and should not be considered by the Court. They argued that the case of **Mukisa Biscuits** (supra) did not apply to the present situation, as it was purely a point of law. He dismissed the Applicant's reliance on overriding objectives and emphasised that such arguments could not cure the defects in the affidavit. He also pointed out that the prayers in the application were distinct and, therefore, should not be considered one.

On the other hand, Mr Bugoti disagreed with the Applicant's assertion that prayers in the case of **Tanzania Breweries** were granted, highlighting that only an extension of time for filing an appeal was granted on the point of illegality. He also disagreed with Mr. Shija's submission regarding the required affidavit, stating that jurisprudence should not be hindered by attempts to bypass legal provisions.

After submitting the preliminary objection, the Court invited parties to submit the main application, whose ruling would follow. Mr. Yisambi Siwale, a learned advocate, prayed that his chamber summons, accompanied by an affidavit, be adopted by the Court. In his submission, he stated that the dispute's history and nature are detailed in the affidavit. He highlighted the Applicant's use of the disputed area since 1992. He noted the emergence of the dispute with the 2nd Respondent over compensation and the existence of a previous land dispute between the

applicants, who are co-owners, and the 1st Respondent, whichever the Geita District Land and Housing Tribunal adjudicated. Furthermore, he emphasised the urgent need for an injunction due to ongoing construction activities posing risks to the Applicants and other civilians in the area.

In response, Mr Netho Mwambalaswa (SA) argued that the Applicants had not met the legal requirements for an injunction. He contended that the issue was compensation, which did not constitute irreparable loss. He challenged the applicants' portrayal of the construction as dangerous, stating that no professional report supported such claims. He further asserted that granting the injunction would unfairly impact the 2nd Respondent and hinder business activities in the disputed area.

Mr. Kabwenge Lucas Mathias (SA) echoed the argument that the application lacked merit. He pointed out the inconsistency in the Applicant's request for an injunction against the 2nd Respondent while continuing with their business activities in the same area. He contended that the Applicants could not benefit from their alleged wrongdoing and emphasised the lack of evidence supporting irreparable loss.

Mr. Laurent Bugoti, counsel for the 2nd Respondent, focused on disputing the applicants' claims of ownership and entitlement to compensation. He argued that the Applicants had no legal standing to sue the 2nd Respondent since he was not a party to the agreement. Mr. Bugoti emphasised the importance of the contract terms and the subsequent issuance of a title deed to the 2nd Respondent, establishing his ownership of the disputed area.

In rebuttal, Mr. Yisambi reiterated the applicants' claim against the 2nd Respondent based on his issuance of a notice and initiation of construction activities. He emphasised the urgency of the situation and refuted the Respondents' arguments regarding the prayers' lack of merit and maintainability. He affirmed the applicants' need for injunctive relief to prevent irreparable loss. Mr. Shija Jeremiah addressed the issue of compensation and the risk of demolition of the Applicants' booths. He argued that the 2nd Respondent's actions threatened irreparable loss and reiterated the applicants' entitlement to compensation based on their longstanding use of the disputed area as far as their agreement, which is still valid with the 1st Respondent, is concerned.

Having considered the parties' submissions, I am compelled to address the preliminary objections the 1st and 2nd Respondents raised. However, I would like to address the issue by Mr Yisambi, a learned advocate for the Applicants, regarding preliminary objections as he considered them to lack a point of law. It is common knowledge that preliminary objections intend to inform the court of the legal, procedural, or technical irregularities in the face of the pleadings before it, which needs to be addressed. In the case of ***Selcom Gaming Limited vs. Gaming Management (T) Limited & Gaming Board of Tanzania,*** Civil Application No. 175 of 2005, [2006] T.L.R 200, it was observed that:

> *"A preliminary objection is in the nature of a legal objection not based on the merits or facts of the case, but on* ***stated legal, procedural or technical grounds. Any alleged Irregularity, defect or default must be apparent on the face of the application."*** *[Emphasis is mine].*

In the landmark case of **Mukisa Biscuits** (*supra*), preliminary objection, therefore, was defined as follows:

> *"a preliminary objection consists of a point of law,* ***which has been pleaded or which arises by clear implication out of the pleadings, and which, if argued as a preliminary***
> ***the objection may dispose of the suit.*** *Examples are objection*
> *to the jurisdiction of the Court or a plea of (time) limitation, or a submission that the parties are bound by the contract giving to the suit to refer the dispute to arbitration". [Emphasis supplied].*

The test, therefore, is that a preliminary objection, if argued successfully, will dispose of the suit. This was as well articulated in the case of ***Cotwu (T) OTTU Union and Another vs Hon. Iddi Simba, Minister of Industries and Trade*** **and 7 Others (Civil Application 40 of 2000) [2000] TZCA 14.** In this case, it was stated that:

> "*The preliminary objection must raise a point of law based on ascertained facts, and the objection, if sustained,* ***should dispose of the matter***" [*Emphasis supplied*]

In essence, preliminary objections intend to resolve fundamental legal issues efficiently and avoid unnecessary costs, time, and resources for both the Court and the parties involved without considering the merits of a case. The case of ***Shahida Abdul Hassanali Kasam vs. Mahed Mohamed Gulamali Kanji,*** Civil Application. No. 42 of 1999 underscored that:

> *"The aim of a preliminary objection is to* ***save time of the Court and of the parties*** *by not going into the*

> *merit of an application because there is a point of law that will dispose of the matter summarily. [Emphasis supplied]*

Therefore, in the instant application, and at this juncture, the Court has to determine the tenability of objections raised by the Respondents and find out if the same can dispose of the matter without considering the merits of the main application.

Concerning the first objection, which is that the application is omnibus, one has to note that various authorities have expounded it despite there being no statutory definition of the term. However, the high Court in the case of ***UDA Rapid Transit Public Limited Company & Another Vs Dar Rapid Transit Agency***, Misc. Commercial Application Cause No. 81 of 2018, referred to the Black's Law Dictionary 7th edition by Garner, page 1116, where the term was defined as follows:

> *"a doctrine of omnibus as relating to or dealing with numerous object, or items at once, including many things or having various purposes."*

From the above, it can be said that an omnibus application is where a chamber summons contains more than one prayer. In this application, the two distinct prayers in the chamber summons of the applicants, as contented by the Respondents, are one, restraining the 2nd Respondent from removing them from the suit premises and two, restraining the 2nd Respondent from constructing on the disputed area. The Respondents contend that the prayers ought to be in two different applications.

At the onset, it should be borne in mind that in recent years, litigants have been preferring omnibus applications in chamber summons. Courts of law also tend to encourage them since they habitually reduce the

administrative burden of filing multiple documents separately, helping minimise costs associated with filing all relevant documents and saving time. In the case of ***M.I.C. Tanzania Limited vs. Minister for Labour and Youth Development and Another*****(supra),** the Court of Appeal stated that:

> *"Unless there is a specific law barring the combination of more than one prayer in one chamber summons,* ***the courts should encourage this procedure rather than thwart it for fanciful reasons****. We wish to emphasise, all the same, that each case must be decided on the basis of its own peculiar facts" [Emphasis supplied].*

Despite there being no statutory provisions relating to omnibus applications and the same being encouraged, courts have set conditions in that regard. The condition is that the prayers may be several but are to interrelate. They should not be different and unrelated prayers in one chamber summons. This condition was set in the case of ***Mohamed Salimin vs Jumanne Omary Mapesa (Civil Application 103 of 2014) [2014]*****TZCA 302,** where it was stated that:

> *".... As it is, the application is omnibus for combining two or more* ***unrelated applications****. As this Court held for time(s) without number,* ***an omnibus application renders the application incompetent and liable to struck out****" [Emphasis supplied].*

Since its issuance, this decision has served as a precedent in numerous High Court rulings across various cases, including, but not limited to, ***Geofrey Shoo and Another vs Mohammed Saidi Kitumbi And 2 Others*** (Misc. Land Case Application 109 of 2020) [2020] TZHCLandD 3916; ***Juliana Armstrong Jerry vs International***

Commercial Bank of Tanzania & 2 Others (Land Application 170 of 2022) [2022] TZHCLandD 439; ***Zaidi Baraka & Others vs Exim Bank (T) Limited*** (Misc. Commercial Cause 300 of 2015) [2016] TZHCComD 42; and ***Ally Salum Said vs Idd Athumani Ndaki*** **(Misc. Land Case 718 of 2020) [2021] TZHCLandD 6908**, among others. Generally, it is now established that two or more independent matters cannot be combined into a single application unless they are interconnected and can be conveniently determined together by the Court.

In the present application, the Applicants seek orders against the 2nd Respondent to restrain him from evicting them from the premises, asserting their co-ownership with the 1st Respondent. They also seek an order to restrain the 2nd Respondent from construction on the same premises. In my view, these prayers are interconnected as they pertain to the disputed area involving the 2nd Respondent. Consequently, I concur with the Applicants' argument regarding the interrelated nature of the prayers. Therefore, I dismiss the objection.

The second objection is that the affidavit is defective as it was sworn by the advocate for the Appellants, who was not the source of information. The Respondents contend that in the versification clause, what the counsel for the Applicants did swear was never his information but rather his client's. Mr Yisambi claimed that even if the paragraph is expunged, the remaining information contained therein may cause the application to be heard.

Order XIX Rule 3(1) of the Civil Procedure Act, Cap. 33 [R.E. 2022], which deals with affidavits, provides that:

> *"3(1) Affidavits shall be confined to such facts* ***as the deponent is able of his own knowledge to prove,*** *except on*

> *interlocutory applications on* ***which statements of his belief may be admitted****: Provided that, the grounds thereof are stated." [Emphasis supplied]."*

Accordingly, it is trite law that one should depose the facts of his own knowledge; otherwise, the fact would be hearsay, which the court cannot admit in evidence. In the case of ***Tanzania Breweries Limited Vs Herman Bildad Minja*****(Supra),** when quoting with approval the holding in ***Lalago Cotton Ginnery and Oil Mills Company Ltd vs. the Loans And Advances Realization Trust*** **(LART),** the Court stressed that;

> *"An advocate can swear and file an affidavit in proceedings in which he appears for his client but* ***on matters which are in the advocate's personal knowledge only****. For example, he can swear an affidavit to state that he appeared earlier in the proceedings for his client and that he personally knew what transpired during these proceedings." And that "From the above,* ***an advocate can swear and file an affidavit in proceedings in which he appears for his client but on matters which are within his personal knowledge. These are the only limits which the advocate can make an affidavit in proceedings on behalf of his client****." [Emphasis supplied]*

The first part of the sentence of the Applicant's verification clause of the affidavit accompanying the chamber summons reads as follows:

> *"Mimi Yisambi Siwale, nathibitisha kuwa maelezo niliyoyatoa katika vipengele Namba 1,9,10,11, 12 na 13 ni maelezo ya kweli kadri ya uelewa wangu,....."*

The Respondents are questioning the legality of paragraph 9, as verified by the Applicants' advocate. The contention is that the advocate

stated that what he verified was the information according to the best of his knowledge. The paragraph reads as follows:

> *"9. Kwamba kutokana na kitendo kilichofanywa na **mjibu maombi wa kwanza (1) kukabidhi/kuuza eneo lililojengwa vibanda/maduka kwa mjibu maombi wa pili (2) kuanza kuwaondoa waleta maombi bila kuwa na fidia kama mikataba wao inavyosema,** waleta maombi wanaweza kupata hasara isiyorekebishika hivyo ni wazi kuwa kuna kesi ya msingi ambayo inabidi isikilizwe na kutolewa maamuzi na Mahakama hii tukufu ili waweze kupata haki yao" [Emphasis supplied]*

Therefore, the question is, how did he know all these facts if his clients did not inform him that the 1st Respondent had surrendered the disputed land to the 2nd Respondent? How did he know they were evicted or that they were not compensated? Unless he is one of the affected persons, the information stated was, in fact, told to him, and it could never be his.

What, then, is the remedy when the court finds that an affidavit has speculative facts and the advocate deposed matters that are not within his personal knowledge about the representation of his client? Mr. Yisambi contended that the same could be expunged without harm, and the Court may proceed to consider the application. On the other hand, the Respondents prayed for the same to be struck out, as in the case of ***Tanzania Breweries Limited Vs Herman Bildad Minja*** (*Supra*).

Now concerning the law related to affidavits, the Court of Appeal in the case of ***Phantom Modern Transport (1985) Limited vs D.T. Dobie (Tanzania) Limited*** **(Civil Reference 15 of 2002) [2002] TZCA 6**, accepted the Ugandan position in the law on affidavits as

promulgated in the case of ***Uganda v Commissioner of Prisons Ex Parte, Matovu,*** (1966) EA 514, as good law. The same has been the position since then, and it provides that:

> *".....as a general rule of practice and procedure, an affidavit for use in court, being a substitute for oral evidence, should only contain a statement of facts and the circumstances to* ***which the witness deposes either of his own knowledge, or such affidavit should not contain extraneous matters by way of objection or prayer or legal argument or conclusion.*** *" [Emphasis Supplied]*

This position has been accepted this position as sound law, and it has been held on several occasions, as seen herein, that an affidavit violating these conditions should be struck out. However, in the same case of ***Phantom Modern Transport (1985) Limited vs D.T. Dobie (Tanzania) Limited*** *(supra),* the Court went on to state further that:

> *"****where defects in an affidavit are inconsequential, those offensive paragraphs can be expunged*** *or overlooked,* ***leaving the substantive parts of it intact so that the Court can proceed to act on it. If, however, substantive parts of an affidavit are defective, it cannot be amended in the sense of striking off the offensive parts and substituting thereof correct averments in the same affidavit.*** *But where the Court is minded to allow the deponent to remedy the defects, it may allow him or her to file a fresh affidavit containing correct averments. " [Emphasis supplied].*

Following the decisions above, it is right to say that it is not in all cases that defective affidavits attract striking out of applications; instead, the offensive part may be ordered to be expunged while leaving the substantive part of it. It was, therefore, categorically pronounced in the

case of ***Rustamali Shivji Karim Merani vs Kamal Bhushan Joshi*** (Civil Application 80 of 2009) [2012] TZCA 237 that:

> *"In Tanzania, after expunging the offensive paragraphs of an affidavit,* ***courts are enjoined to examine whether the remainder of the affidavit can support the application****. If the remaining parts are insufficient to support it, the application must also go, but a party may file a fresh affidavit." [Emphasis supplied].*

After reviewing the legal principles governing affidavits, it is evident that paragraph 9 of the current application is objectionable. The crucial question now is whether, even without paragraph 9, would the application retain merit for the Court's consideration. In my considered opinion, the affidavit in the remaining paragraphs contains substantive contents that may still support the Applicant's case. Consequently, paragraph 9 is hereby struck out from the Applicant's affidavit, and the remaining paragraphs are retained. I, therefore, reject the Respondents' objection on the same grounds.

With the considerations above in mind, I shall now address the application for an injunction against the 2nd Respondent, restraining him from evicting the applicants, and he be restrained from further construction activities in the suit premises pending the expiry of a 90-day notice. In doing so, I will apply the relevant principles governing injunction orders.

In general, an injunction is a potent legal mechanism for preventing irreparable harm, preserving rights, and upholding fairness in legal disputes. The court may, in its discretionary powers, issue orders on whether by restraining specific actions or compelling compliance.

Injunctions are, therefore, instrumental in maintaining the status quo, enforcing court orders, and protecting individuals or entities from unlawful or harmful conduct.

In Tanzania, courts have been vested with jurisdiction to consider applications for injunction orders pursuant to the provisions of ***Section 68 and Order XXXVII, Rules 1 and 2 of the Civil Procedure Code Cap. 33 [R.E 2002]***. The Applicants in the present application seek a Mareva injunction against the 2nd Respondent. As commonly known, the Mareva injunction is a remedy under the doctrine of equity that allows temporary injunction to maintain the status quo for parties where there are no filed cases or suits in court due to some impediments. See the cases of ***Nicholaus Nere Lekule vs Independent Power (T) Ltd vs The Attorney General***, miscellaneous Civil Cause No.117 of 1996, ***Tanganyika Game Fishing and Photographic Ltd vs Director of Wildlife and Two others***, Miscellaneous, civil cause No. 48 of 1998(unreported), and ***Sugar Producers Association vs Ministry of Finance and another***, Misc. Civil case. No. 25 of 2003(unreported), to mention a few.

For an order of injunction to be granted, it is a settled principle of law that three conditions are to be met. These conditions were laid in the ***Atilio v Mbowe*** (supra), which has been religiously followed in a number of cases in this court. The said conditions are that:

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

(b) *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*

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

Furthermore, the Court of Appeal in the case of ***Suryakant D. Ramji V. Savings and Finance Limited and Others*** [2002] TLR 121 stated that:

> *"What is basic in granting temporary injunction is that* ***there should be in existence a serious triable issues between the parties****, a looming* ***danger of irreparable injury to plaintiff*** *and,* ***on a balance of convenience, the existence of more sufferings by plaintiff*** *if the injunction is refused than would be the case with the defendant if granted, between the two therefore, the plaintiffs stand to lose more if the injunction is refused" [Emphasis Supplied].*

Now, in the application at hand, with respect to the first condition in granting an injunction, the Applicants submitted that they are joint owners of the suit land. They derive their contention from the decision of the District Land and Housing Tribunal of Geita and agreements entered between them and the 1st Respondent in 2015, which they contend are valid. With due respect to learned counsel for the applicants, I disagree with the Applicants that they have any claim against the 2nd Respondent on the issue of compensation. Any compensation claims, if any, are to be demanded against the 1st Respondent.

The ownership of the suit land is with the 2nd Respondent, who has nothing to do with their issue of compensation against the 1st Respondent. Therefore, as stated in the case of ***Suryakant D. Ramji V. Savings and***

***Finance Limited and Others* (*Supra*),** in the application at hand, I find no basis for granting an injunction in the absence of a substantial triable issue involving the 2nd Respondent.

Regarding the irreparable loss, the Applicants failed to submit to this Court the loss beyond repair, which they will likely suffer if the injunction is not granted. The 2nd Respondent began construction in November 2023, and it is ongoing. The applicants' loss sustained to date is not substantiated; hence, it is an afterthought. This is so because the injuries likely to be suffered by the Applicants have not been clearly stated while they are still operating their businesses as usual. I agree with the counsels for the Respondents that what the advocate for the Applicants submitted was just hearsay, as there is no proof from the health department, the Engineering Registration Board, or any organisation supporting the assertion of the applicants.

On the balance of convenience, there needs to be proof that the Applicants will suffer the most compared to the Respondent. In the circumstances of this application, from when the Respondents received the notice in June 2023 until the 2nd Respondent started construction, there is no indication that they have or will suffer. The evidence adduced by the Applicants in the affidavit does not show that the loss likely to be suffered. In short, the same has not been ascertained. On the contrary, the 2nd Respondent is likely to suffer since construction is ongoing, and he has engaged workers on the site to undertake the investment project on his land.

It is trite law that to secure an order for an injunction, one has to establish all three co-existing conditions. This position has been stipulated in the cases of ***Tanzania Breweries Limited versus Kibo Breweries***

Limited and Another (1998) EA 341 and ***Christopher P. Chale vs. Commercial Bank of Africa*****, Misc. Civil Application No. 635 of 2017.** Specifically, in the case of *Christopher P. Chale vs. Commercial Bank of Africa*, the Court of Appeal articulated that:

> *".....it is also the law that the conditions set out* ***must all be met, and some meeting one or two of the conditions will not be sufficient for the purpose of the Court exercising its discretion to grant an injunction.****"*
> *[Emphasis supplied]*

Based on the reasons provided above, I conclude that the application lacks merit and is therefore dismissed. However, considering the circumstances surrounding the application, I refrain from making any orders as to costs.

It is so ordered.

G.V. MWAKAPEJE
JUDGE
11/03/2024