

IN THE HIGH COURT OF TANZANIA
[LAND DIVISION]
AT IRINGA

MISC. LAND CASE APPLICATION NO. 34 OF 2013

(From Misc. Land Application No. 21 of 2013 of the High Court of Tanzania at Iringa; Misc. Application No. 10 of 2012 of the District Land and Housing Tribunal of Iringa and Original Ward Tribunal of Mlenge Ward in Land Case No. 9 of 2011)

ATHUMANI SADALA APPLICANT

VERSUS

ATHUMANI MFILIMA RESPONDENT

3/06/2015 & 3/7/2015

RULING

MADAM SHANGALI, J.

This application has been brought by the applicant Athumani Sadala seeking for a temporary injunction restraining the respondent, Athumani Mfilima or his agents, workmen, or assignees from continuing using, selling the Land in dispute until the disposal of the pending application for leave to appeal out of time and an intended appeal.

This application has been filed under the provisions of Order XXXVII Rule 1 (a), Sections 68 (e) and 95 of the Civil Procedure Code Cap. 33 R.E. 2002 and duly supported by the affidavit deposed by the applicant in person.

Before the trial Ward Tribunal of Mlenge the applicant Athumani Sadala unsuccessfully sued the respondent Athumani Mfilima for trespass into his land (*the suit plot*). Dissatisfied with that decision the applicant successfully appealed to the District Land and Housing Tribunal for Iringa (*the first appellate Tribunal*).

Still the respondent Athumani Mfilima felt dissatisfied. He decided to file another appeal to this court but found himself out of the prescribed limitation period. As a result he filed an application Misc. Land Application No. 21 of 2013 before this court seeking for extension of time to file his appeal against the first appellate Tribunal out of time.

While awaiting for the determination of the said application, the present applicant Athumani Sadala has filed this application seeking for temporary injunction restraining the respondent from continuing using or selling the piece of land in dispute until the final disposal of the pending application to appeal out of time and the intended appeal.

In the conduct of this application the applicant was represented by Ms. Kitta, learned advocate while the respondent was represented by Mr. Mhagama, learned advocate. Both advocates complied with the order of this court dated 24th March, 2015 which gave leave to the parties to argue the application by way of written submissions.

Ms. Kitta submitted to the effect that the applicant was declared the rightful owner of the land in dispute by the first appellate Tribunal on 31/01/2013 but todate it is the respondent who is using the said piece of land. She also submitted that for all fairness the applicant's prayer for temporary injunction should be granted. She also pointed out that Mr. Mhagama, learned advocate for the respondent is in conflict of interest because he was a Commissioner for Oaths who attested the respondent's counter affidavit and at the same time appeared to represent him in this matter.

In response, Mr. Mhagama craftly submitted on the point of information that the applicant in this application has passed away some few months ago and therefore the applicant should follow the necessary procedures to proceed with this matter in accordance with the law. However, the learned advocate admitted that he acted contrary to the law, to wit Section 7 of the Notaries Public and Commissioners for Oaths Act, Cap. 12 R.E. 2002. As a result Mr. Mhagama

decided to withdraw himself from representing the respondent.

It is very interesting on the way Mr. Mhagama responded in this matter. He withdrew himself from the matter after representing the respondent. Secondly, he announced the death of the applicant who was duly represented in court by an advocate without any evidence to substantiate the death claims.

Be as it may, the crucial issue at this juncture is whether in the circumstances of this application the applicant has shown sufficient reasons to warrant for the issue of temporary injunction.

Having gone through the applicant's affidavit and submission made by both advocates I am convinced that the respondent is unfairly enjoying and benefiting from the possession and use of the piece of land in dispute to the detriment of the applicant. Secondly, and as stated in the applicant's affidavit, there is a likelihood of tempering with the piece of land in dispute by way of sale while the matter is still pending in this court. In addition I see no injustice occasioned on the side of the respondent in granting this temporary injunction taking into account that it was the respondent who lost the appeal before the first appellate

Tribunal.

In the circumstances, therefore, the application for a temporary injunction restraining the respondent or his agents or workmen or assignees from continuing using or selling the suit land until the disposal of the pending application seeking for a leave to appeal out of time is hereby granted.

Each party to shoulder its costs.

M. S. SHANGALI

JUDGE

3/7/2015