

**IN THE HIGH COURT OF TANZANIA  
AT DODOMA**

(Arising from Land Appeal No.33 of 2014)

**MISC. LAND APPLICATION NO. 80 OF 2015**

IBRAHIM ALLY MPORE	.....	APPLICANT
	<b>VERSUS</b>	
CAPITAL DEVELOPMENT AUTHORITY	.....	RESPONDENT

**R U L I N G**

**08/09/2016 & 04/10/2016**


**SEHEL, J:**

Before me is an inter parte application for a temporary injunction restraining order against the respondent, its agents or servants or anyone acting under its instructions from continuing to re-allocate the Plots Nos. 20A, 20B and 20C Industrial Area (Now known as Plot No. 13 Central Business Park (CBP)) in Dodoma Municipality. The application is supported by the affidavit of Ibrahim Ally Mpire, the applicant. The respondent filed a counter affidavit opposing the application for temporary injunction.

At the hearing of the application the applicant had the services of Mr. Kabunga, learned advocate while the respondent was represented by Ms. Kyamba, learned ~~advocate~~

advocate. Mr. Kabunga first prayed for the affidavit filed be adopted and he said the respondent is intending to re-allocate the plots in dispute while the main suit is still pending before this Court and that the applicant would suffer loss if the respondent will proceed with the reallocation of plots.

The affidavit of Ibrahim Ally Mpore in support of the application reads:

- 1) That, I am the applicant hereinabove mentioned and thus conversant with the facts I am about to depose to in the following paragraphs;
- 2) That, I am a legal owner of the land described as Plots Nos. 20A, 20B & 20C Industrial Area, (Now calling as Plot 13 Central Business Park (CBP) in Dodoma Municipality, since 06/October/2008, by virtue of legal representative of the late Ally Yusuph Mpore. The copy of Certificate of Occupancy with a Title No. 20402 is hereby annexed and marked as annexure MK1 to form part of this affidavit.
- 3) That, the applicant on 15<sup>th</sup> September, 2009 handed over his original Certificate of Occupancy before the Director General of Capital Development Authority for renewal endorsement. But no reply has been received nor has the renewed Certificate of Occupancy been returned to the 

applicant. The copy of the said letter is hereby annexed and marked as annexure MK2 to form part of this affidavit.

4) That, the applicant on 17<sup>th</sup> December, 2010 and 2<sup>nd</sup> September, 2012 wrote a reminder letters to the respondent asking as to how long his application would be completed in order to enable him to effect development on those particular plots. No reply has been received from the respondent to date. The copies of the said letter are hereby collectively annexed and marked as annexure MK3 to form part of this affidavit.

5) That, the applicant complied with the terms and conditions of that right of occupancy in satisfactory manner and in which it is practical so to do. This is evidenced by this letter wrote to the respondent asking him to renew my right of Occupancy when came to an end through affliction of time.

6) That, pursuant to the applicant's action of applying for renewal of his certificate of title 15<sup>th</sup> September, 2009 the defendant remaining silence. As to which the respondent caused to the applicant to suffer loss for failure to start his project for Hotel construction as planned in time frame work.

7) That, the applicant has been informed that the respondent is intending to re-allocate the Plots Nos. 20A, 20B & 20C Industrial Area (Now calling as Plot 13 Central Business Park (CBP)) in Dodoma Municipality to somebody else.

8) That, due to the acts of the respondent, I suffered damages and unless this application is granted, I will continue to suffer irreparable loss as the respondent intending to re-allocate the plots in dispute."

The respondent, on it part, resisted the application by arguing that the applicant has failed to show why injunction should be granted. Ms. Kyamba used the principles set down in the case of *Atilio Vs Mbowe* (1969) HCD 284 to show how the applicant failed to persuade this Court in granting the prayers made. She said for a temporary injunction to issue, three conditions must be satisfied, namely: -


(i) There must be a prima facie case.

(ii) The Applicant must show that he will suffer irreparable injury, and lastly. ~~HA~~

- (iii) That the balance of convenience is such that the Applicant is likely to suffer more by not granting the injunction than would the Respondent by granting it.

Ms. Kyamba submitted that the applicant failed to show the kind of irreparable loss. She argued if it happens that the applicant wins the pending suit then the loss can be repaid by damages. She referred this Court to the case of **Hans Wolfong Golcher Vs. General Manager of Morogoro Canvass Mill Ltd [1987] T.L.R** where irreparable injury has been defined. Ms. Kyamba also submitted that the applicant's submission is hearsay since failed to say to whom the respondent is intending to re-allocate. She concluded by saying that the disputed plot has reverted back to the respondent and that if injunction will be granted then the respondent will be curtailed in performing its statutory duty of allocating land. With this, the respondent prayed for the dismissal of the application.

Mr. Kabunga rejoined that it is a matter of procedure for the land to revert back the procedure which the applicant argued it is premature to discuss it at this application.

The issue that this Court is invited to determine is whether the application for restraining order can be issued to the respondent. 

Under Section 68 (e) and Order XXXVII Rule (1) (a) of the Civil Procedure Act, Cap. 33 cited by the applicant, this court has powers to order temporary injunction upon being satisfied that there is a pending suit and there is sufficient cause to make such an order for the purposes of preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of the disputed property.

What constitutes a sufficient cause is a question of fact that may vary from each case. There cannot therefore, be any hard and fast rules to determine what constitutes sufficient cause. It is also the law that before any Court grants injunctive orders, it must be satisfied that:

- (i) There is a prima facie case.
- (ii) The Applicant will suffer irreparable injury that cannot be atoned by way of damages; and
- (iii) The Applicant is likely to suffer more by not granting the injunction than would the Respondent by granting it.

Applying the above conditions in the present application, I am satisfied and there is no dispute that there is a pending suit ~~and~~

at this court, land case. I also find as a fact that the applicant was the legal representative and was the holder of the Certificate of Title No. 20402 and that he applied for renewal of the Title. The respondent in its counter affidavit disputes this by stating that the right of the applicant over the disputed no longer exists as the same reverted back to the Government after its tenure expired by effluxion of time. This means that there is arguable case.

On the question of irreparable loss, the counsel simply stated that the applicant will suffer irreparable loss. The applicant in his Paragraph 6 of the affidavit said the loss suffered is failure to start his project for Hotel construction in time and if the re-allocation will be done then the applicant will suffer damages. Ms. Kyamba submitted that the kind of loss suffered by the applicant can be atoned by way of damages and if injunction will be granted then the respondent will failed to perform its statutory duties. The failure to construct the hotel and the damages suffered by the applicant can be atoned by way of compensation. So the kind of injuries that the applicant suffered and is likely to suffer can be atoned by way of damages as such it is not irreparable loss.

On the question of balance of convenience, the first consideration is that the applicant is the holder of Certificate of

title which he asked the respondent to renew its term. As the holder of the title, the applicant has the inherent right to know the circumstances that led to non-renewal of his title. Although the applicant may be compensated for disposition of his title it is my finding that the balance of convenience is in favour of the applicant.

The application for temporary injunction is hereby granted. This order of injunction shall be in force for a period of six months as prescribed by Order XXXVII Rule 3 of the Civil Procedure Act, Cap. 33. Each party to pay for its costs of this application. Right of appeal fully explained.



**B.M.A Sehel**

**JUDGE**

**4<sup>th</sup> October, 2016**

Ruling delivered at Dodoma under my hand and seal of the court, this 4<sup>th</sup> day of October, 2016 in the presence of Ms. Kyamba, learned advocate for the respondent and in absence of the applicant.



**B.M.A Sehel**

**JUDGE**

**4<sup>th</sup> October, 2016**