

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPLICATION NO. 219 OF 2018

(Arising from Misc. Land Case Application No. 377 of 2017)

ASHA RAMADHANI MWAMBALA.....APPLICANT

VERSUS

MSELEMU RAMADHANI.....RESPONDENT

RULING

4/6/2018 & 3/8/2018

MZUNA, J.:

This is an application for temporary injunction pending hearing of the application to file appeal out of time from the decision of Kibaha District Land and Housing Tribunal in Land Application No. 125 of 2012.

The applicant appeared in person while the respondent was represented by Mr. Kavishe, the learned counsel. There is an affidavit in support thereof. The respondent did not file counter affidavit within the set time.

In the filed affidavit, the applicant says he will suffer irreparable loss if the order for temporary injunction is not granted. That the respondent be restrained from developing the suit premise pending hearing of the application.

This ruling is based on the failure by the respondent to file the counter affidavit within the set time which was by 4th April, 2018. The position of the law is that where a party fails to file counter affidavit, that means he has no objection to the application.


There are set conditions before an order for temporary injunction can issue as it was so held in the case of **Atilio vs. Mbowe** (1969) HCD no. 284, that is:-

- 1. That there must be a serious issue to be tried on the facts alleged and a probability that the plaintiff will be entitled to the relief prayed in the main suit.*
- 2. 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.*
- 3. That on the balance, there will be greater hardship and mischief that will be suffered by the Plaintiff from the withholding of the injunction than will be suffered by the Defendants from the granting of it.*

Having considered the filed application which is made under Order XXXVII Rule 1 (a) and Section 95 of the Civil Procedure Code Act, Cap 33 RE 2002, I grant same.

I find that if the order is not granted the pending matter may be rendered to be of an academic exercise. Further as stated under paragraph 6 of the affidavit, if the order is not granted the applicant is likely to suffer more.

Accordingly, temporary injunction which was not objected in the first place, is hereby granted for six months. I make no order for costs.


M. G. MZUNA,
JUDGE. 2/8/2018

03/08/2018

Coram: Hon. A. Teye DR

For applicant: present in person

For Respondent: Mr. Thobias

RMA: Bukuku

COURT: Ruling read and delivered this 03/08/2018 by Deputy Registrar before both parties.

A handwritten signature in black ink, appearing to read 'A. Teye', is written over a horizontal line.

A. Teye
DEPUTY REGISTRAR
03/08/2018