

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC LAND CASE APPLICATION NO. 774 OF 2016
*(Original Land Case No. 189 of 2016)***

JONATHAN OMARY MBWAMBO

(The Administrator of the Estate of

the late Jonathan Mbwambo).....APPLICANT

VERSUS

SAIDI SHABAN MTONGA.....1ST RESPONDENT

KESSY KASILATI.....2ND RESPONDENT

ZENA ALLY.....3RD RESPONDENT

RULING

19/6/2018 & 17/8/2018

MZUNA, J.:

This is an application for temporary injunction whereby Jonathan prays for this court to restrain **SAIDI, KESSY** and **ZENA** from effecting developments or committing any waste of any kind or disposing the suit premise to any person till final determination of the suit.

There is an affidavit deponed by Jonathan Mbwambo in support of the application as well as counter affidavits of the 1st respondent.

The 2nd respondent filed an affidavit (not counter affidavit) contrary to known practice. The third respondent did not file any counter affidavit.

During hearing of this application Mr. Alfred Shanyangi, the learned counsel appeared for the applicant while the respondents were represented by Mr. Kelvin Kidifu, the learned counsel holding brief for Mr. Geoffrey Said, the learned counsel.

The question is, are there grounds upon which temporary injunction can issue?

Reading from the filed affidavit and the oral submission, it is argued that the suit plot measuring about 10 acres was sold by the 1st respondent, then a shamba boy, to the 2nd and 3rd respondents. That based on paragraph 8 of the affidavit, there are major developments currently going on at the suit premise despite the fact that there is a pending suit before this court.

That the application meets the three conditions laid down in the case of **Atilio vs. Mbowe** (1969) HCD no. 284, namely:- That there exist a triable issue; The need for court's intervention to preserve the kind of injury which may be irreparable before the legal right is

established; AND, balance of convenience that the applicant is likely to suffer more if the order is not granted.

In opposition, Mr. Geoffrey Said, submitted that the applicant has not satisfied the requirements of Order XXXVII Rule 1 and 2 of the CPC. That he has not shown that the subject matter is in the danger of being wasted, damaged or dealt with illegally. That there was no description of the property in dispute contrary to Order VII Rule 3 of the CPC. That merely alleging a surveyed land is not enough otherwise the order may be issued against innocent people.

That there is no proof of irreparable damage likely to be suffered in view of what was held in the case of **Kibo Match Group Ltd vs. Hs Impex Ltd** [2001] TLR 152.

As for the last condition, it is submitted that the respondents will suffer more because currently they reside in the suit premise and have already built houses. He prayed for the dismissal of the application with costs.

In rejoinder, Mr. Shanyngi, reiterated his submission in chief and insisted that the subject matter has been well described and the respondents are mere trespassers.

Generally speaking, there are three conditions to be met when a court issues temporary injunction under Order XXXVII Rule 1 (a) and 2 (1) of the Civil Procedure Code, Cap 33 RE 2002, as it was SO held in the case of **Atilio vs. Mbowe** (supra) 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.*
(Emphasis mine).


The argument that the description of the suit property is not indicated is unfounded. That is a point to be argued during hearing of the main suit as Order VII Rule 3 of the CPC, talks about a plaint not an application. The prayer is to have the order restraining the respondents from disposing the property by sale or otherwise which the respondents concedes to know it. That would mean there exist a triable issue which requires immediate protection of the plaintiff/applicant before his legal right is established. To do

otherwise would mean the suit will be rendered superfluous as it was so held in the case of **Kibo Match Group Ltd vs. Hs Impex Ltd** (supra), the decision which I fully subscribe to.

The kind of injury may also be irreparable by way of damages. Above all, on the balance of convenience, he is likely to suffer more than the respondents if the order is not granted.

I am satisfied that the application meets the conditions for temporary injunction as well stated in the case of **Atilio vs. Mbowe** (supra) above stated.

This application for temporary injunction is hereby granted as prayed for. The same shall be valid for six months. I make no order for costs.


M. G. MZUNA,
JUDGE. 