

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO 818 OF 2018**

(Arising from Land Appeal No. 83 of 2013)

**LEONARD NICHOLAUS SEIF.....APPLICANT**

**VERSUS**

**MOHAMED ALLY DALLA.....RESPONDENT**

Date of Last Order: 05.08.2019  
Date of Ruling 27.09.2019

**RULING**

**V.L. MAKANI, J**

The applicant in this application is LEONARD NICHOLAUS SEIF. He is praying for the following orders inter partes:

- 1. That this Honorable court be pleased to issue and grant an interim orders restraining the respondent, its agents, servant, workmen or any other person whoever acting on his behalf from conducting agricultural activities on the applicant's land and or disturbing the applicant's use of its land pending determination of the appeal No. 83 of 2018 intrerparty (sic)*
- 2. Costs of the application to be provided for.*
- 3. Any other reliefs this Honourable Court deem fit and just to grant.*

The application is brought under section Order XXXVII Rule 1(a) and (b), Section 68(e) and section 95 of the Civil Procedure Code, CAP 33 RE 2002 (the **CPC**). The application is supported by the affidavit of the applicant herein. The respondent also filed his counter-affidavit.

At the hearing the parties appeared in person and they orally argued the application.

The applicant submitted that the application is intended to seek for an order to bar the respondent from continuing to use the suit land while there is an ongoing appeal. He said the suit land should remain as it is until the appeal is concluded because the use of the suit land by the respondent does not make any sense as he was the one who was successful at the Tribunal. He said they all have to wait for the decision of the appeal which is before this court.

The respondent's argument was very brief that there was no injunction order and so there was nothing to prevent them from continuing to cultivate in the suit land. He said he was deprived of his right at the Tribunal that is why he filed an appeal.

It is settled law that grant of an injunctive relief is one of discretionary nature but has to be exercised judicially upon satisfaction of the principles governing such reliefs. This position has been set out in the landmark case of **Atilio vs. Mbowe (1969) HCD 284**. The conditions for grant of temporary injunction envisaged in the case are as follows:

- 1. That on the facts alleged, there must be a serious question to be tried by the court and a probability that the plaintiff will be entitled to the relief prayed for (in the main suit);*

- 2. That the temporary injunction sought is necessary in order to prevent some irreparable injury befalling the plaintiff while the main case is still pending; and*
- 3. That, on the balance greater hardship and mischief is likely to be suffered by the plaintiff if temporary injunction is withheld than may be suffered by the defendant if the order is granted.*

All these three conditions above must be met before a temporary injunction can be granted (see also the cases of **Giella vs. Cassman Brown [1973] EA 420** and **Suryakant D Ramji vs. Savings & Finance Limited & 3 Others, Commercial Case No. 30 of 2000 (HC-Commercial Division, DSM)**(unreported)

I have listened to the parties and have gone through the affidavit and counter-affidavit.. The main issue for determination is whether the applicant has met the three conditions stated above.

In the outset I would wish to point out that the parties being layperson could not address the court on the set conditions as illustrated in the cited cases above. However, the applicant in his oral submissions and in his affidavit stated clearly that the main reason for the application was that there was a pending appeal before this court and further that he was the successful party in the Tribunal. In that regard therefore, there is a prima facie case which has a probability of success as the relief sought at the appeal level is ownership of land which the applicant was awarded at the Tribunal. The first condition has been duly satisfied.

The second condition is that of suffering irreparable injury if the prayer for injunction is refused. There is no dispute that the purpose of granting temporary injunction is to prevent irreparable injury befalling on the applicant while the case is still pending. I am in agreement with the applicant that since he was the successful party at the Tribunal he was, together with his family, the one who was supposed to enjoy the fruits of their judgment. The likelihood of the respondent giving compensation thereafter is far-fetched considering the general denial in his counter-affidavit and the response during oral submissions that he cannot stop the agricultural activities on the suit land without an injunction. Subsequently, I proceed to find that the second condition has been satisfied.

The last condition is balance of convenience. The question is who is going to suffer greater hardship and mischief if the temporary injunction is not granted. I am of the view that the applicant would suffer more. As I have observed hereinabove, the applicant was declared the lawful owner and he is holding the suit land on behalf of the other beneficiaries and practically he was the one who was supposed to be on the suit land instead of the respondent and so the applicant is suffering and he would continue to suffer if an order for temporary injunction is not granted.

In the result I am of the settled mind that the sufficient grounds for granting temporary injunction has been adduced by the applicant and I proceed to grant the temporary injunction restraining the respondents, his agents, servants, workmen or any other person

acting on his behalf, from conducting agricultural activities on the applicant's land pending the hearing and final determination of **Misc. Land Appeal No. 83 of 2018.**

It is so ordered

  
**V.L. MAKANI**  
**JUDGE**  
**27/09/2019**