

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

**MISC.LAND APPLICATION No. 286 OF 2020**  
*(Arising from Land Case Number 95 of 2016)*

**TANZANIA PORTLAND CEMENT CO. LIMITED ..... APPLICANT**

**VERSUS**

**THE TREASURY REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**THE MINISTER FOR WORKS, TRANSPORT AND**

**COMMUNICATIONS ..... 2<sup>ND</sup> RESPONDENT**

**TANZANIA BUILDING AGENCY .....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J.**

The Applicant, Tanzania Portland Cement Company Ltd has moved this Court under the provisions of Order XXXVII Rule 1(a) and 2 (1) of the Civil Procedure Code, Cap 33 R.E 2002 ("The CPC"), seeking for an order of temporary injunction against the respondents restraining the 3<sup>rd</sup> respondent from evicting the applicant and or all its employees from the suit land. There is a further prayer for an alternative order declaring the rights of the parties herein pending the hearing and final determination of the main suit to wit; Land Case No. 95/2016 ("the main suit") pending before this court.

The Application is supported by an Affidavit affirmed by the Principle Officer of the applicant, Robert R. Mwabulambo dated 19/05/2020. Before this Court, the applicant was represented by Mr. Rosan Mbwambo, learned Advocate, while the respondents were represented by Mr. Daniel Nyakiha, learned State Attorney.

On the 09<sup>th</sup> day of July, 2020 when this matter came for hearing, Mr. Mwambo started his submissions by praying that the contents of the affidavit in support of this application be adopted to form part of his submissions. In his brief submission in chief; he identified the suitland as the piece of land on Plots No. 1, 4 and 7 held under certificate of title No. 42336 at Wazo Hill area Dar-es-salaam. He then submitted that the reasons in support of the application are well set out in the affidavit of one Robert Mwabulambo sworn on 19<sup>th</sup> May 2020, particularly 10-16 of the said affidavit. In avoiding to repeat what is already averred in the affidavit, Mr. Mbwambo submitted that the affidavit has demonstrated sufficient reasons warranting this court to allow this application under Order XXXVII Rule 1(a) and 2(1) of the CPC.

In reply, Mr. Nyakiha objected the application on the facts which he pointed to have been deponed in their counter affidavit sworn by one Suzane S. Ulula, the acting director of real estate of the 3<sup>rd</sup> respondent which he prayed to be adopted as part of his submissions. He then submitted that for an application of this nature to be granted, the applicant has to satisfy the court of the existence of certain conditions which were enumerated in the well-known case of **Atilio Vs. Mbowe, 1969 HCD No. 284**. That three conditions were set out in that case, **one**; is that there

must be serious question to be tried on the facts alleged and a probability that the plaintiff or herein the applicant will be entitled to the relief prayed. The second principle is that the court's interference is necessary to protect the applicant from the kind of injury which may be irreparable before his legal right is established and that the third principle is that on the balance of inconvenience, there will be greater hardship and mischief suffered by an applicant if injunction is not granted. He then cited the case of **Chale Vs CBA, Misc. Civil Application No. 635/2017** (unreported) where the High Court indicated that:

*"it is also the law that the conditions set out must all be met. Therefore meeting one or two of the conditions will not be sufficient for the purpose of the court exercising its discretion to grant an injunction"*

He submitted that Mr. Mbwambo has only indicated that there is main suit to which they claimed an ownership thereof and this is the only ground submitted. He then argued that indeed there is a land case to which an ownership of land is at dispute, however, as indicated at para 3 of the respondent's counter affidavit, the ownership of the said land in dispute was transferred to the Government vide GN No. 63 of 2008. That among the things which were transferred are the houses which the 3<sup>rd</sup> respondent has issued a notice to the occupants to pay rent and eviction whereby she exercised her right to collect rent as provided by the law.

On the applicant's contention that they have been paying rents and taxes as per para 6 of their affidavit; Mr. Nyakiha argued that as indicated in their annexure T-1 to their affidavit, the contention is clearly misplaced as

the last time they have paid the land rent and taxes to the Government was in 2015. He concluded that the government has the right to claim for taxes and land rent from the disputed land thereof hence the issuance of the notice to pay rent or eviction if failed.

On 2<sup>nd</sup> principle or irreparable loss, Mr. Nyakiha submitted that the government is the one who stands to suffer irreparable loss if such taxes are not paid, simply because the taxes indicated are used in daily activities of the Government together with the 3<sup>rd</sup> respondent in construction and rehabilitation of the same houses and thus the Government is in a better position to loose if such taxes are not paid. He argued that if we are to assume that the applicant has a legitimate claim, his loss can be compensated by damages, but if the 3<sup>rd</sup> respondent is blocked from collecting taxes, the Government reputation will be tarnished as the money invested is public money which has to be accounted for.

On the last ground of greater hardship or mischief, Mr. Nyakiha submitted that simply submitted that this condition is in favor of the respondents as the 3<sup>rd</sup> respondent and the public at large will continue to suffer from not collecting the said taxes and rents. That failure to collect the rents and taxes create a hardship in rehabilitation and construction of other houses which will be allocated to the large group of community compared to the interest of the applicant if the same is not paid. He concluded that all those conditions have to be met and prayed that this honorable court dismiss the application as it has not met all the conditions set out in the case of Atilio Vs. Mbowe for the court to exercise its discretion to grant the application.

In rejoinder, Mr. Mbwambo submitted that they have pointed out the three conditions in their affidavit. That para 10-16 of the affidavit in support of the application talks of the conditions, identifying that in para 12 specifically the applicant has stated that there is a prima facie case that has been established. He argued that this is a condition that is set in the case of **Atilio Vs. Mbowe**, and that a prima facie case pre-supposes that there is a likelihood of success. Further that when you look through the whole contents of the affidavit, you will find all those probabilities as the irreparable loss is stated in para 14 and balance of convenience is stated in para 10. He emphasized that all the 3 conditions have been met.

On the rent that is being collected by the 3<sup>rd</sup> respondent, Mr. Mbwambo argued that what she is collecting from the applicant is the house rent and not land rent arguing that the same has nothing to do with land rent or property tax. He then submitted that the annexure in their affidavit is to show that the applicant is owning that land and is paying all necessary taxes and rents to the government.

On the conveniences likely to be caused, Mr. Mbwambo submitted that the balance tilts on the applicants as para 15 of the affidavit has said it all. He argued that here we have applicants and its employees occupying these houses from time immemorial and have come before this court challenging the respondent's attempt to evict them; that is a question of contention. That letting them to be evicted while the main matter is not determined will surely cause more inconvenience to the applicants than to the respondents. He concluded that the conditions set in the cited precedent are met and prayed that the application is allowed.

Having gone through the parties' submissions, and the records of this application, I have found that it is undisputed that there is an issue of ownership that is in controversy between the parties. While Mr. Nyakiha argues that the ownership of the said land in dispute was transferred to the Government vide GN No. 63 of 2008, Mr. Mbwambo argues that the suitland falls under the exclusive category of industrial and houses are for industrial objectives. Therefore ownership of the suitland is in contention, hence presence of arguable issues. More importantly so, the applicant's employees are in occupation of the disputed properties and they have so been for a long time, this fact was not disputed by the respondent. This fact established that on balance of conveniences, it is the occupants of the houses that tend to suffer more by eviction if this order is not granted, than what will be suffered by the respondents if the application is granted. Lastly, the applicant is a well-established industry which is up and running, this, coupled with the fact that the 3<sup>rd</sup> respondent's claim against the applicant is of monetary value, then should the main suit end in favor of the respondent, monetary compensation will be sufficient to make good the loss suffered by the 3<sup>rd</sup> respondent and the applicant is an entity with capability to make good this loss.

It is on the above findings that this application is hereby granted. The respondents are hereby restrained from evicting the applicant and its employee from the houses built on piece of land described as Plots No. 1, 4 and 7 held under certificate of title No. 42336 at Wazo Hill area Dar es Salaam until the final disposal of the main suit to with Land Case No.

95/2016 or when this order is otherwise barred by the operation of law.  
Costs shall follow cause in the outcome of the main suit.

***Application Allowed.***

Dated at Dar es Salaam this 27<sup>th</sup> day of August, 2020.



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**S.M MAGHIMBI**  
**JUDGE**