

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 192 OF 2021

OYSTER CAMP LTD.....1st APPLICANT

RAS BAMBA SAILING CLUB LTD.....2nd APPLICANT

RAS BAMBA HOTEL LTD.....3rd APPLICANT

VERSUS

KIGAMBONI MUNICIPAL COUNCIL.....1st RESPONDENT

**COMMISSIONER FOR LAND
(Dar es Salaam and Pwani Zone).....2nd RESPONDENT**

ATTORNEY GENERAL.....3rd RESPONDENT

RULING

6/5/2021 & 20/3/2021

Masoud, J.

The application before me is rooted on the allegation that the applicants are lawful owners of disputed land, which is in the process of being re-surveyed by the respondents, with a view of re-allocation to other persons. Copies of relevant documents, allegedly, evidencing the applicants' ownership of the disputed property are attached to the affidavit supporting the application, including correspondence from the

office of the District Commissioner for Kigamboni, allegedly, evidencing the intention to resurvey and re-allocate the disputed property. There are also copies of notice of intention to sue, allegedly, issued to the respondents.

When the matter came for necessary orders, the applicants through their learned counsel, Mr Pancrasia Protas, moved the court to grant an interim ex-parte order to restrain the respondents from carrying out resurveying and reallocating the disputed land to other persons. The prayer was disputed, Ms Pauline Mndendemi, learned State Attorney, as it was argued that granting the sought order at this stage will render the intended interparte hearing of the application meaningless as the sought interim ex-parte order is the same as the interparte orders sought in the chamber summons.

On the above revelation, the counsel for the applicant invited the court to cause the amendment to be effected alleging that the error was a mere typographical. This move was vigorously opposed by the learned State Attorney. It was generally speaking argued that the prayer was a mere afterthought and should not be entertained at all.

Notably, the learned State Attorney had at least at the stage no issues with the basis upon which the order was being sought other than that there was no proof from the applicants that the re-surveying was actually being carried out at the moment. In this argument, I was considerate of the fact that the learned State Attorney admitted that the government had informed the applicants of the intended re-surveying. As to the intended re-surveying notified to the applicants, the learned State Attorney reasoned that there was nothing suggesting that the intended re-surveying would lead to re-allocation of the disputed land to other persons other than the applicants.

I closely considered the prayers sought in the chamber summons. While I agree that the interim *exparte* orders sought seem to be the same as the orders to be sought in the *interparte* hearing, I note that there is also a prayer, under the *exparte* interim orders sought, for any other remedy or order as the court may find it fit to grant. This prayer reads thus "*any other remedies/order(s) this Honourable court deems fit and just to grant in the circumstances of this stage.*"

With the above consideration and regard being had to the circumstances under which the prayers were made, I am convinced that there are sufficient materials for the court to exercise its discretion, which I am

inclined to exercise in the favour of the applicants. I am in this respect aware that there is no dispute that the government had notified the applicants of the intended re-surveying which is according to the applicants taking place at the moment. Whether or not the re-surveying will not affect the applicants is in my view not relevant at this stage. The intention to carry out re-surveying which is not disputed by the counsel for the respondents at this stage is in itself sufficient to make an order for maintenance of the status quo.

When all is said and done, I hereby grant an order for maintenance of status quo which would see to it that no resurveying is carried out or continued on the disputed property pending interparte hearing of this application. I make no order as to costs in the circumstances.

Ordered accordingly.

Dated and Delivered at Dar es Salaam this 20th day of May 2021.


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B. S. Masoud
Judge

