

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

MISC. LAND APPLICATION NO. 738 OF 2020
(Arising from Land Case No. 202 of 2020)

ELIZABETH SIMON MWAKAPANGALA *(Suing as the
administratrix of the Estate of the late SAID SHOMARI LOKO)*.....**APPLICANT**

VERSUS

ILALA MUNICIPAL COUNCIL**1ST RESPONDENT**
ATTORNEY GENERAL**2ND RESPONDENT**

RULING.

S.M. MAGHIMBI, J:

The application at hand was lodged under the provisions of Section 51(1) of the Land Disputes Courts Act, Cap. 216 R.E 2019, Order XXXVII Rule (1) (a) and Section 68 (e) & Section 95 of the Civil Procedure Code, Cap. 33, R.E 2019 (The CPC). The application is seeking for the following orders that: -

- a) That, may this Honourable Court be pleased to issue an order that status quo in respect of the occupation and use by the applicant her matrimonial house and the suit property (six acre parcel of land) located at Mgeule Street in Buyuni Ward of Ilala District be maintained pending the hearing and determination of this instant application for maintenance of status quo inter parties.
- b) Any other order(s) this honourable court may deem proper to grant.

INTER PARTIES:

- c) That, may this Honourable Court be pleased to issue an order that status quo in respect of the occupation and use by the applicant her matrimonial house and the suit property (six acre parcel of land) located at Mgeule Street in Buyuni Ward of Ilala District be maintained pending the hearing and determination of the already filed Land Case No. 202/2020.
- d) Any other Order(s) this honourable court may deem proper to grant.
- e) Costs

The application was supported by an affidavit of the applicant dated 22/12/2020. The disposal of this application was done by way of written submissions which were filed accordingly. The applicant's submissions were drawn and filed in gratis by Mr. Daniel Oduor, learned Counsel while the respondents by Ms. Jesca Joseph Shengena, Principal State Attorney with the office of the Solicitor General.

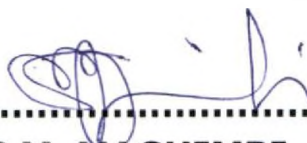
Having considered the applicants submissions, the reply and the circumstances of this case, I find that the applicant has managed to establish the requirements of the conditions set out in the case of *Atilio Vs. MMbowe* cited. This is because she has established the fact that she is residing in the suit property. She also alleges the suit property to be a matrimonial home, a fact which need not be proved at this time. Therefore denial of this application will subject the applicant to more suffering than what the respondent will be subjected to if the application is granted.

Further to that, the applicant will be more inconvenienced if there will be any eviction before the conclusion of the suit. Owing to that, I hereby grant this application as prayed. However, I have noted that the applicant

has pleaded that there are burial activities going on in some portion of the suit property. This order shall not therefore mean to extend to the burial grounds. This is because the dead cannot be uprooted from the ground to pave way for an injunction order. Furthermore, the respondents are in a position to compensate the applicant of that portion of the land if the suit is decided in her favor with regard to the burial area.

Having said that, this application is hereby granted to the extent explained.

Dated at Dar-es-salaam this 22nd day of July, 2021.



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S.M. MAGHIMBI
JUDGE

