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

MISC. LAND APPLICATION No. 337 OF 2021

DAR ES SALAAM WATER SUPPLY
AND SANITATION AUTHORITY.....1ST APPLICANT
THE ATTORNEY GENERAL.....2ND APPLICANT

VERSUS

RAYMOND MGONDA PAULA.....1ST RESPONDENT
VICENT BRUNO MINJA.....2ND RESPONDENT
THERESIA PAULA WILLIAM.....3RD RESPONDENT
SHAMIM ABSHIRI MSANGI.....4TH RESPONDENT
BRUNO MTETA PETER.....5TH RESPONDENT
GLADNESS PAULA.....6TH RESPONDENT

Date of Last Order: 10.09.2021
Date of Ruling: 11.10.2021

RULING

V.L. MAKANI, J

This is an application by Dar Es Salaam Water Supply And Sanitation Authority (DAWASA) and the Attorney General.They are applying for the following orders inter-partes:

1. *That this honourable court be pleased to find and issue an interim injunctive order inter-parties temporarily restraining the respondent, its employees, agents, assignees and or workmen or any other person acting under their instructions from*

entering constructing, evicting and/or selling the disputable landed properties namely Plots No. 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126 and 1127, situated at Mikocheni Phase II, Kinondoni Municipality at Dar es Salaam pending hearing and determination of the main application.

2. *Any other relief this honourable court deems fit and just to grant.*

3. *Costs of this suit to be provided for.*

The application is made under Order XXXVII, Rule 1(a) and (b) together with sections 68 (e) and 95 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**), and is supported by the affidavit of Florence Saivoiye Yamat the Principal Officer of the Applicants. To counter the allegations by the applicants, the respondents have filed their counter-affidavits accordingly.

With leave of the court the application was argued by way of written submissions. The submissions by the applicants were filed by Ms. Florence S. Yamat, Advocate and for the respondents the submissions were filed by Mr. Eustace Rwebangira, Advocate.

Submitting in support of the application, Ms. Yamat said according to Order XXXVII Rule 1(a) and (b) of the Civil Procedure Code CAP 33

RE 2019 (the **CPC**), the court has discretionary powers to grant temporary injunction as may deem necessary for the ends of justice. She said the conditions for grant of temporary injunction are enumerated in the case of **Atilio vs. Mbowe (1969) HCD 284** that: There must be a serious question to be tried on the facts alleged probably that the plaintiff will be entitled to the reliefs prayed for, the court interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his alleges rights are established, and that on balance of conveniences there will be greater hardship and mischief suffered by the plaintiff from the withholding of injunction than will be suffered by the defendant from granting it.

Ms. Yamat submitted that there is a triable issue as the court must determine the ownership of the disputed landed property in Land Case No. 97 of 2021. She said the applicants assert ownership by virtue of the **City Plan for Kinondoni Municipal Council at Mikocheni**. She said in that respect there is a strong contention that there is a serious triable issue to be determined by the court.

As for the second condition, Ms. Yamat said the court's interference is necessary to protect the applicants from the kind of injury which

have been perpetrated by the respondents. She said the respondents have unlawfully entered the disputed landed properties and are continuing with massive construction activities at the detriment of the applicants.

As for the third condition on balance of convenience, she said there will be greater hardship and mischief suffered by the applicants as the respondents have nothing to lose neither to suffer as they are continuing with massive construction on an area which was meant for extension and oxidation of ponds for the wider public interests as shown in the city plan. She concluded by praying for the court to grant temporary injunction pending the hearing and determination of Land Case No. 97 of 2021.

In response Mr. Rwebangira started by stating that the applicants have added more ground than stated in the Chamber Summons and affidavit. He said save for the ground of disposal which was pleaded the additional grounds were for court to grant temporary injunction for the purposes of staying and preventing the wasting, damaging, alienations, sell loss in value and removal. He thus said the application

should be dismissed as the applicants are not certain as to what they are applying for.

Without prejudice to the above, Mr. Rwebangira subscribed to the case of **Atillio vs. Mbowe** (supra) and added the cases of **General Tyre East Africa Limited vs. HSBC Bank PLC [2006] TLR 60, SJ3 Iwawa's Company Limited vs. Access Bank Tanzania Limited, Misc. Civil Application No. 387 of 2019 (HC-DSM Registry)** (unreported) and **Kingdom Traders Limited & Another vs. International Commercial Bank (T) Limited, Misc. Land Application No 70 of 2019 (HC-DSM Registry)** (unreported) to support the conditions laid in the case of **Atillio Mbowe**. He said in the affidavit, the 1st applicant stated that she is the legal owner of the disputed plots No. 1116 – 1127 and the proof is City Plan for Kinondoni Municipal Counsel. She said the Plan is not numbered and the plots mentioned in the affidavit are not there. He said this Plan alone cannot confer ownership to any legal entity on the face of it. He went on saying that the ownership of the land of this nature can be proved by grant of the Certificate of Title. He relied on the case of **Amina Maulid Ambali & Others vs. Ramadhani Juma, Civil Appeal No. 35 of 2019 (CAT-Mwanza)** (unreported).

Mr. Rwebangira stated that the applicants have not shown that there is a prima facie case by the City Plan at hand while the respondents have Certificate of Titles on the disputed plots. He further observed that the applicants have not even stated that the said Certificates of Titles were obtained unlawfully. He said based on the face of the affidavit and the annexures, together with the plaint and the relief prayed, the applicant who claim competing interest over the disputed plots, have failed to establish a prima facie case by showing triable issue against the respondents who are the registered owners.

As for the second principle, Mr. Rwebangira said that in determining whether there is a necessity for the court to interfere, one must look at what the applicants are applying for. He said the applicant's restrain order is against entering, construction, eviction and/or selling the disputed plots. He said the applicants have stated in their pleadings that the respondents are already in occupation and carrying on construction, in that regard the applicants have entered, took possession and carrying on construction, he said, which he said, has been termed, massive construction activities. The order against sale is not relevant because there is no proof that the respondents have

attempted to sell the disputed plots. And any injunctive order will change the status as the respondents are already in occupation.

Mr. Rwebangira point out that the said plots are no longer in the status of hazard land but are a housing estate and construction has been blessed by relevant authorities. He said in the application and in the suit the applicants have failed to state when the respondents started to trespass in the disputed plots so as to show the urgency of protecting their interest by way of an injunctive order. He said an employee of the 1st applicant one Jasper Kilango was a witness in Consolidated Land Appeals No. 82.83,84,88,89,101 and 106B which declared the respondents' owners of the disputed plots and nothing has been done by the applicants to complain or appeal against the alleged trespass. Mr. Rwebangira asked why has the 1st applicant taken so long to complain? He, however, observed that the area for sewerage treatment is intact and fenced. He said with the contradictions and confusion there is no irreparable injury that has been alleged and proved to the extent of calling for the intervention of the court.

As for the third principle, Mr. Rwebangira submitted that balance of convenience lies in favour of the respondents who are already in occupation and ownership of the disputed plots registered in their names. He said the applicants can register a caveat, as the construction, according to the respondents is in final stages and this fact has not been denied. He said the respondents are the ones whose hardship is heavier, and they stand a better position to be protected by not issuing injunction order as prayed. He said the respondents have Certificates of Titles, building permits and judgment of the court to declare them legal owners of the respective plots against the 2nd applicant and the 1st applicant whose officer appeared as a witness. He said the applicants are thus estopped by the judgment from a further claim on the same property. He pointed out that the Registered Plan No. 60999 is the currently valid as opposed to **Annexure DAWASA -1.** He prayed for the application to the dismissed with costs.

In rejoinder, the Ms. Yamat reiterated what was submitted in the submissions in chief. She however, put to the court to the attention that though the order for maintenance of status quo has been given but the respondents are continuing with the massive construction in

the disputed plots. She emphasized that Order XXXVII Rule 1(a) and (b) of the CPC read together with the prayers pleaded by the applicants in the chamber summons have got the same gist of asking this court to restrain the respondents from entering, constructing, evicting and/or selling the disputed plots. She said the acts of the respondents continuing with the massive construction is to the detriment of the applicants and the activities have an effect of wasting damaging, alienating, or suffering loss of value. Ms. Yamat submitted that there are competing interests as to who has the right to use the disputable landed properties, an issue which will be determined in Land Case No. 97 of 2021. She said she was wondering where the respondents got Plan No. 60999. She said the disputed plots were developed on an area demarcated for sewage activities as shown in the Master Plan No. 1/628/888 by the name of Msasani Regent Estate and this has never been changed. She said the ownership by certificates of titles is disputed as the area was demarcated for sewarage treatment plant and the applicant were never involved during the survey and granting of the said titles. Ms. Yamat pointed out that Counsel for the respondents has no right to talk about the legality of ownership of the disputed plots at this stage of the application for temporary injunction. This would be addressed at the

hearing of the main suit. She thus concluded that there are triable issues to be determined by this and reiterated her prayers for the application to be granted with costs.

It is now settled law in this jurisdiction that for an injunction to issue three principles apply:

(i) There must be a serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed;

(ii) 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; and

(iii) That on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it.

As pointed out by Counsel for the parties these principles were first laid down in our jurisdiction by the now famous case of **Atilio vs. Mbowe** (supra). These principles as explained will guide me in

determination of this application. It must be noted that the principles must be applied conjunctively.

Now, with the facts and the principles at hand, is this a fit case for temporary injunction as prayed?

As for the first principle, while Ms. Yamat submitted that there are triable issues to be considered by the court as the applicants are the legal owners of the disputed plots and relying on the City Plan For Kinondoni Municipal Council at Mikocheni of the year 1988 – Master Plan No. 1/628/888. On the other hand, Mr. Rwebangira for the respondents has argued in the opposite, that the respondents are lawful owners of the disputed plots with certificate of titles and are already in occupation as was ordered by this court in Consolidated Misc. Land Appeal No.82, 83, 84, 88, 89, 101 and 106B of 2011. Their claim of occupation is also supported by various documents annexed to their affidavits such as the certificates of titles, the judgments of the High Court and Court of Appeal, Plan No. 60999, letters by Kinondoni Municipal Council and from Commissioner for Lands and building permits from Kinondoni Municipal Council.

In determining this principle, I would not dwell into details as doing so would mean deciding the main suit. However, it is trite law that prima facie proof of ownership of registered land is a Certificate of Title (see the case of **Amina Maulid Ambali** (supra). The respondents have shown that they are all in possession of Certificates of Title (**Annexure A** to the counter affidavit) and they have also shown that the Commissioner of Lands recognises them as owners of the disputed plots (see **Annexure I** of the counter affidavit). This court recognises them as lawful owners by virtue of Consolidated Misc. Land Appeal No.82, 83, 84, 88, 89, 101 and 106B of 2011 (**Annexure C** to the Counter affidavit). The applicants have not controverted this fact but relied on the City Plan For Kinondoni Municipal Council at Mikocheni of the year 1988 – Master Plan No. 1/628/888, which in law does not confer a person ownership of a registered land. Since the respondents are the owners of the disputed plots, the issue of trespass as alleged by the applicants is farfetched, and as correctly said by Mr. Rwebangira there are no competing interests as such there cannot be serious triable issues as this court has already decided on the issue of ownership. In that regard the first principle therefore has not been satisfied.

As for the second principle, it is my considered view that the court's intervention is not necessary because the facts reflect that the respondents are the owners of disputed plot and as said above, not the 1st plaintiff. So, in essence the applicants do not need any protection from any injury of properties that do not belong her. In fact, if such protection was necessary, then the applicants would have shown interest way back in 2014 after the decision of this court in Consolidated Misc. Land Appeal No.82, 83, 84, 88, 89, 101 and 106B of 2011 as they were aware of what was going since one of their employees gave evidence. But nothing was done by the applicants from the date of the delivery of the judgment in 24/02/2014 until now. Even the application for revision that was filed in the Court of Appeal was not by the applicants but by individuals Damas and Flora Assey. This means the applicants were not injured and they cannot therefore be seen to argue now that there have interest to protect. This principle has also not been satisfied by the applicants.

The third principle requires an answer to the question: which among the two sides to the dispute, the applicant, or the respondents, is likely to suffer greater harm if injunction is granted. In my considered view and based on the facts, the respondents will suffer greater harm

if an injunction is granted. Firstly, they are already in occupation as owners of the disputed plots, and they initially reclaimed the area and now they are under construction which is a costly exercise. Ms. Yamat said the public would suffer because the sewerage treatment is being interrupted, but she did not go in detail to show how would the respondents cause any suffering to the public as they have all along been on the disputed plots. In this regard, the third principle has also not been satisfied by the applicant.

For the reasons I have endeavored to address, it is the finding of this court that the applicants have failed to satisfy the tests for grant of a temporary injunction as set out in **Atillio vs. Mbowe** (supra). Consequently, the application is hereby dismissed with costs.

It is so ordered.

V.L. MAKANI
JUDGE
11/10/2021