

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

MISC. LAND APPLICATION NO. 540 OF 2021

**THE REGISTERED TRUSTEES OF
MSIKITI WA IJUMAA TEMEKE (TUNGI).....APPLICANT**

VERSUS

**REGISTERED TRUSTEES OF
EL-MADRASAT TWAYIBAT ISLAMYAT.....1ST RESPONDENT
TEMEKE MUNICIPAL COUNCIL.....2ND RESPONDENT
THE COMMISSIONER FOR LANDS,
HOUSING AND HUMAN SETTLEMENTS.....3RD RESPONDENT
THE ATTORNEY GENERAL.....4TH RESPONDENT**

Date of Last Order: 03.11.2021
Date of Ruling: 12.11.2021

RULING

V.L. MAKANI, J

The applicant is seeking for the following inter-parte orders:

- 1. That the honourable court may be pleased to issue an interim order of maintenance of status quo in respect of Plot No. 105 Block D locate within Temeke Dar es Salaam (the suit land) against the respondents jointly and severally, their workers agents, contractors, assignees and anybody whomsoever working under them or their instructions from any kind of disposition of the suit land pending filing of the intended suit.*
- 2. That the honourable court may be pleased to issue and order of temporary injunction in respect of Plot No. 105 Block D locate within Temeke Dar es Salaam against the respondents jointly and severally, their*

workers agents, contractors, assignees and anybody whomsoever working under them or their instructions from any kind of disposition of the suit land pending hearing of the Chamber Summons inter-parte.

- 3. That the honourable court may be pleased to issue and order of temporary injunction in respect of Plot No. 105 Block D locate within Temeke Dar es Salaam against the respondents jointly and severally, their workers agents, contractors, assignees and anybody whomsoever working under them or their instructions from any kind of disposition of the suit land pending hearing and determination of the intended suit.*
- 4. Costs of this application be provided for.*
- 5. Any other reliefs that the court may deem fit and just to grant.*

The application was under Certificate of Urgency and it was filed under section 2(3) of the Judicature and Application of Laws Act CAP 358 RE 2019 (**JALA**), Order XXXVII Rule 1(a) and (2), section 68 (c) and 95 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). The application was supported by the affidavit of Mussa Rafiki Murua, the Secretary of the Applicant.

The application proceeded ex-parte against the respondents after they failed to enter appearance though duly served.

Mr. Amin Mshana, Advocate for the applicant adopted the contents of the affidavit. He said the application before the court is for Mareva Injunction pending the maturity of the statutory notice for filing a suit against the respondents. He said the reason for the urgency of the matter is that the respondents have registered the suit land in the name of the 1st respondent, and she is about to dispose it while the suit land is owned and developed by both the applicant and the 1st respondent. He said the 2nd respondent was directed by the 3rd respondent to supervise so that the dispute between the applicant and 1st respondent is settled amicably to avoid any conflicts between them. However instead it has been discovered that the 2nd respondent has issued another Certificate of Title No. 1801 in respect of the suit land in the name of the 1st respondent without resolving the dispute.

Mr. Mshana said an order for temporary injunction is granted upon conditions as set out in **Atilio vs. Mbowe (1969) HCD 284**. He said the serious issue to be determined is whether the 2nd respondent was entitled to issue a new Certificate of Title No. 1801 in lieu of the Certificate of Title No. 30440 without having completed the process of amicable resolution which was intended to be co-ownership or partition. He said it is an issue as to whether the 2nd respondent had

any right to disobey the directives of the 3rd respondent who have powers over landed matters. The other issue according to Mr. Mshana is whether the issuance of the new Certificate of Title is shrouded with fraudulent acts and/or misrepresentation. He said there is therefore a prima facie case for consideration.

As for the second condition whether the applicant tend to suffer irreparable loss, Mr. Mshana said indeed that is the case because according to paragraphs 17, 18, 19, 20 and 21 of the applicant's affidavit, the applicant will suffer loss as there is a mosque, madras and a secondary school where both parties benefit in terms of money. He said if the suit land is sold by the 1st respondent then the applicant will have lost a great source of income and if it is left then any money received will be spent and if there is execution there would be no money. He said there will also be a difficulty in extracting money from the government or to attach anything belonging to the 2nd and 3rd respondents or command civil imprisonment against them.

As regards the third condition, Mr. Mshana said balance of convenience have been reflected in paragraph 21 of the affidavit. He said it is convenient that matters be left as they are instead of leaving

things to the whims of the 1st and 2nd respondents as they are currently losing nothing. He said up until the final determination of the suit the applicant will suffer more. He prayed for the grant of the application with costs.

According to the case of **Abdi Ally Salehe vs. Asac Care Unit Limited & 2 Others, Civil Revision No. 3 of 2012 (CAT-DSM)**

(unreported) principles for the grant of temporary injunctions are:

- 1. The existence of a prima facie case.*
- 2. Imminent irreparable loss, incapable of being atoned by way of damages, and*
- 3. Balance of convenience*

These principles were first laid down in our jurisdiction by the now famous case of **Atilio vs. Mbowe** (supra). It must be noted that the principles must be applied conjunctively.

As for the first test, it is apparent that there is a dispute between the applicant and the 1st respondent in respect of ownership of the suit land. While there were efforts between the parties to settle the matter amicably under the supervision of the 2nd respondent who was directed by the 3rd respondent, there were, however, allegations that

the 1st respondent has been granted a new Certificate of Title No. 1801 by the 2nd respondent without the knowledge of the applicant and further that there is an intention by the 1st respondent to dispose the suit land under the new Certificate of Title (see paragraphs 9 and 17 of the applicant's affidavit). It is apparent that there is a cause of action which suffices to be a triable issue for the parties to contest in the main suit. The first condition has therefore been met.

As for the second condition of irreparable loss, I agree that the applicant would suffer more if the suit land is disposed by the 1st respondent alone as the applicant and 1st respondent have expended energy and resources in the construction of madras classes and other structures on the suit plot. In view thereof, a temporary injunction is imminent until the dispute between the applicant and the 1st respondent is resolved. This condition has also been met by the applicant.

The last condition is balance of convenience. This condition 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. What this means is that before granting or refusing the injunction, the court may have to decide whether the applicant will suffer greater injury if the injunction is refused than the respondent will suffer if it is granted. In my considered view and based on the facts, the applicant will suffer greater harm if an injunction is not granted because there is a joint interest in the property and considering the alleged facts on record the balance tilts in favour of the applicant if an order for injunction is not granted. In view thereof, this condition too has been satisfied by the applicant.

In the result and for the reasons I have endeavoured to explain hereinabove, the application for temporary injunction is granted to the applicant, and the respondents jointly and severally, their workers, agents, contractors, assignees, and anybody whomsoever working under them or under their instructions, are hereby restrained from doing any kind of disposition in respect of Plot No. 105 Block "D" located in Temeke Dar es Salaam.

This order for temporary injunction is to remain in force for six months from the date of this ruling. Costs shall be borne by the respondents.

It is so ordered.



V.L. MAKANI
JUDGE
12/11/2021