

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**MISC. LAND APPLICATION No.413 OF 2022**

**KESSY KHASIM.....APPLICANT**

**VERSUS**

**TEMEKE MUNICIPAL COUNCIL.....1<sup>st</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>nd</sup> RESPONDENT**

*11/05/2022 & 25/8/2022*

**RULING**

**Masoud, J.**

Brought under Order XXXVII Rule 1, section 68(e) and 95 of the Civil Procedure Code Cap 33 R.E 2019 (Herein after the C.P.C), the Applicant in this application is seeking for injunctive orders to temporarily restrain the 1<sup>st</sup> Respondent or their agents, workmen from continuing to demolish the house located at Nzasa Ward, Temeke Dar es Salaam on plot no. *TMK/CHB/NZS/A22/85/GSR/NH/A/209*, pending determination of the Land Case No.30 of 2021 before this Court. The application is supported by the applicant's affidavit dated 16/07/2022, and is opposed by the respondents as reflected in their counter affidavit filed on 10/08/2022.

The applicant appeared in person while the respondents were represented by Mr. Saleh Manoro, learned State Attorney who was assisted by Mr. S. Mwero, and Mr Peter Mhando, learned State Attorneys.

In support of the application, the applicant said that he is the owner of the house located at Nzasa Ward, Temeke Dar es Salaam on plot No. *TMK/CHB/NZS/A22/85/GSR/NH/A/209* where he is living with his family. He contended further that the house is required to be demolished by the first respondent in the process of implementing her project of constructing and expanding Temeke Road. He is thus praying for an injunctive order so that his premise (house) is not demolished until the suit pending in this court which he filed against the respondent is determined.

When replying, Mr. Manoro started by adopting their counter affidavit for it to form part of their submission. He added that the court is empowered to issue the injunctive orders after satisfying itself that the requisite conditions are met. He said that in the application at hand there are conditions that have not been met. He referred the court to the case of **Christopher P. Chale vs. Commercial Bank of Africa** Misc. Civil Application No.635 of 2017.

Mr. Manoro went further to add that the house in dispute has not been demolished. He submitted that due to the shortage of budget for the project, the road was not expanded. Instead, the project used the original road that was in place. Henceforth, there is no way that the applicant is going to suffer from the said project.

He submitted further that in case the sought order is granted the respondents would suffer more. He attributed his position to the following reasons. **One**, that the project is for the benefit of the community. Therefore, it would affect the community at large. **Two**, the respondents do not intend to acquire or demolish the house of the applicant. Thus, the order will cause financial loss to the government by over paying the contractor executing the project.

When re-joining, the applicant submitted that there was no traditionally road that was originally being used. Rather, what was in place was just a pathway. For the project of expanding the road to be achieved, it needs 16 metres each side. He said further that he was enlisted for compensation and valuation of his premises . But he has to date not been compensation.

Having gone through the parties' submissions and the records of this application, the issue is whether the application at hand is meritorious to warrant the court to exercise his discretion in favour of the temporary injunction sought.

In determining this application, I wish be guided by principles set out in the case of **Atilio vs. Mbowe 1969 HCD 284**. It was held in that case that the applicant has to establish that there is a prima facie case, on a balance of convenience the applicant will be adversely affected in case of denial and that he will suffer irreparable injury if the injunctive orders are denied.

As regard to the first principle of the existence of prima facie case., there must exist a strong probability that the applicant has an ultimate chance of success in the suit. As to the second principle of irreparable loss, there must be material loss likely to be suffered by the applicant, which cannot be adequately compensated. The injury, on the other hand, need not be actual but may be apprehended.

As to last principle of the balance of probabilities, the court is to balance and weigh the mischief or inconvenience to either side before issuing or withholding the injunction. This principle is otherwise expressed by saying that the court is to look at the balance of convenience.

The above principles have been followed in a number of decisions. They include the case of **Gazelle Trucker Ltd v Tanzania Petroleum Development Corporation**, Civil Application No. 15 of 2006, wherein the following was pertinently observed: -

*"...As provided for under Rule 1 Order XXXVII 1966, temporary injunction may be granted where in any suit, the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit. It is therefore clear that injunctive reliefs are according to the law as set out above, generally invoked at the stage where the trial of a suit is in progress or pending."*

Applying the above principles, to the present application, it is apparent there is in the present instance a prima facie case. According to the applicant's affidavit, for the project to be fully completed, his house (premise) has to be demolished. He was enlisted for compensation. And valuation of his premise was done for him to be compensated. However, the first respondent is resisting to compensate him. He has as such

decided to file main suit, Land Case No. 30/2021. I am of the view these constitute triable issues to be determined by this court.

On the second condition, it is my view, on a balance of convenience, the applicant will be more adversely affected than the respondents. Therefore, if the application is denied, the main suit will be rendered nugatory. It was held in **Kibo Match Group Limited vs. HIS Impex Limited. (2001) T.L.R 152** that:

*"The court is satisfied that, unless immediate action is taken the applicant may suffer irreparable damage whether quantifiable or not and further the final decision will be rendered nugatory as a consequence of not granting the temporary injunction."*

Again, if the application is not granted, the applicants will suffer irreparable loss as the family will be rendered homeless following loss of their home.

In the upshot, I find merit in the application at hand and proceed to grant it. Costs to be in the cause.

It is so ordered.

Dated at Dar-es-salaam this 25<sup>th</sup> day of August, 2022.

*B.S. Masoud*  
**B.S. Masoud.**  
**JUDGE**

