

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

MISC. LAND CASE APPLICATION NO. 350 OF 2022

**LULU GENERAL CO. LTD.....1ST APPLICANT
ISSA BADRU ALLY.....2ND APPLICANT**

VERSUS

**TANZANIA COMMERCIAL BANK.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT**

R U L I N G

*Date of Last Order: 04.08.2022
Date of Ruling: 26.08.2022*

T. N. MWENEGOHA, J.

The applicant sought for a Temporary Injunction order against the 1st and 2nd respondents and any person working under their instructions from revoking, trespassing or transferring ownership of the applicant's landed properties located at Makonde Area, Mbezi Beach, Dar es Salaam region, pending the expiry of 90 days' Statutory Notice of intention to sue the government. The order has been preferred under Section 2(3) of the Judicature and Application of Laws Act, Cap 384, R. E. 2019 and section 95 of the Civil Procedure Code, Cap 33 R. E. 2019 and supported by the affidavit of the applicant.

The application was heard by way of written submissions. Advocate Marietha Loth Mollel appeared for the applicant, while Angelina Ruhumbika, learned State Attorney represented the 1st and 2nd respondents.

In her submission, Advocate Mollel reminded the court of the nature of the application at hand, that is a Mareva Injunction, aiming to prevent injuries or harm to the applicant before the maturity of statutory notices to sue the respondents. That, the notice to sue the respondents with regards to their actions over the properties in question has already been served to them since the 28th of June, 2022 subject to section 6(2) of the Government Proceedings Act.

She went on to argue that, according to the case of **Atilio vs. Mbowe, 1969, HCD 284**, the applicant has met all the conditions required for an order of injunction to be issued in his favour. That, there is a serious question of law between him and the respondents and the applicant stand a chance of succeeding over the intended case. That, the appellant stands to suffer irreparable loss if the order is not given and further, on balance of convenience, the applicant will suffer greater hardship than the respondents if the application is denied.

In reply, the learned state Attorney for the 1st and 2nd respondents opposed the instant application based on two grounds. Firstly, the application has been filed while there is an existing suit before this court, vide Land Case No. 148 of 2022. That, having a pending suit in court disqualifies the applicant from obtaining a Mareva injunction.

Secondly, the learned State Attorney for the 1st and 2nd respondents maintained that, the applicant has not met the conditions given in the

landmark Case of **Atilio versus Mbowe**, (supra). That, the applicant has no triable issues against the respondents and she stand to suffer no inconveniences compared to the 1st and 2nd respondents if the application is granted. Lastly, is on irreparable loss expected to occur on the applicant. That, in the case at hand, there is no way the applicant stands to suffer any loss that cannot be adequately compensated by monetary value.

Having gone through the submissions of both parties through their learned counsels, the question for determination is whether the application has merits.

As argued by the applicant's counsel, this application is in the nature of Mareva injunction, where the applicant sought to restrain the 1st and 2nd respondents and any person working under their instructions from trespassing or transferring ownership of the applicant's landed properties located at Makonde Area, Mbezi Beach, Dar es Salaam region, pending the expiry of 90 days' Statutory Notice. However, as argued by the learned State Attorney for the respondents, there is a pending suit already existing, being filed by the applicant/plaintiff, vide Land Case No.148 of 2022. To her, the existence of the pending suit defeats the instant application. These facts were not disputed by the counsel for the applicant.

In application of this nature, we are usually guided by the jurisprudence developed in the famous English case of **Mareva Companies Naviera SA vs. International Bulkcarriers SA, (1980) 1 All ER 213**. The rules settled with regard to Mareva injunction are that, firstly, the applicant in her affidavit must show her intention to institute the case and has taken steps to do so. Secondly, if it is justifiable and convenient, the court should

allow the application, see **Abdallah M. Maliki & 545 Others vs. Attorney General & Another, Misc. Land Application No. 119 of 2017, High Court of Tanzania at Dar es Salaam, (unreported).**

In my opinion, the applicant has defeated these rules by instituting the land Case No.148 of 2022. For her application to be allowed she was only supposed to take steps towards filling the suit by serving the notice of intention to sue to the respondents. Then wait after expiry of the period given in that particular notice for her to lodge the pending suit. As of now, I find her actions to have rendered the instant application nugatory.

Hence, the same lacks merits and it is hereby dismissed with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
26/08/2022