

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 529 OF 2022

*(Arising from Land Case No. 133 of 2022 before Hon. Mgeyekwa, J)*

LANDEV COMPANY LIMITED ..... APPLICANT

VERSUS

DAR ES SALAAM WATER SUPPLY

AND SANITATION AUTHORITY (DAWASA) ..... 1<sup>ST</sup> RESPONDENT

ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT

RULING

*Date of last Order: 03.10.2022*

*Date of Ruling: 06.10.2022*

**A.Z MGEYEKWA, J**

The applicants' application is brought under Order XXXVII Rule (1) (a) of Civil Procedure Code Cap.33 [R.E 2019]. The application was accompanied by an affidavit sworn by Noel Peter Mabuga, the Principal Officer of the applicant. Opposing the application, the respondents filed a joint counter-

affidavit sworn by Mr. Amos Enock Masala, Principal Officer of the 1<sup>st</sup> respondent.

The application is borne from the facts that, there is a pending Land Case No. 113 of 2022 before this court whereas the applicant is praying for this Court to issue temporary injunction to restrain the respondents, their agents, servants, workmen or any other person working under their instruction from further alienating, damaging by way of installation of water pipes and/ or anyhow interfering with the applicant's peaceful enjoyment of the land pending determination of the main suit.

When the application was called for hearing on 3<sup>rd</sup> October, 2022, the applicant enlisted the legal service of Mr. Joseph, learned counsel and the respondents enjoyed the legal service of Mr. Edwin, learned State Attorney assisted by Ms. Leonia, learned State Attorney.

In support of the application, Mr. Joseph submitted that the applicant is seeking an injunctive order to restrain the respondents, agents, workman, or any other person working under the instruction of the respondents from further continuation, further alienation, or damage by way of installation of additional water pipes or any interference with the applicant use of land pending the determination of Land Case No. 133 of 2022 before this Court.

The counsel for the applicant also urged this Court to issue an order of maintenance of status quo pending the determination of the main suit. Mr. Joseph fully adopted the applicant's affidavit and form part of his submission.

The learned counsel for the applicant went on to submit that the principles of the temporary injunction are listed in the case of **Atilio v Mbowe** [1969] HCD 284. He added that the three conditions must be met to warrant the Court to grant the applicant's application whether there is prima facie case, irreparable loss, and balance on inconvenience. On the first condition, the applicant's counsel contended that there is a triable issue in that one alleges, she has a Certificate of Title issued by the Government, and other parties allege that the said land is a road reserve. He believed that the matter is triable and worth it for this Court to grant the order.

On the 2<sup>nd</sup> condition, the learned counsel submitted that the application spent a collared amount of money purchasing the land in dispute. Mr. Joseph asserted that the applicant has also procured a building permit No. BAG/PER/2019/2020/0045 from Bagamoyo District Council for the construction of a warehouse and immediately after obtaining the building permit the applicant started to construct a building, hence the respondent interfered with the suit land and halted the activity of building. Mr. Joseph

argued that if a temporary injunction is not issued the applicant will suffer loss since the monetary injected into the said business and all the improvements made therein will not be easily recovered. He went on to submit that assuming the applicant is compensated then the respondent will do what they want to the applicant since the applicant will not be in bargain position because he will have nothing empowering them in the bargaining table. Mr. Joseph stressed that unless the respondents are restrained then they will see the importance to sit with the applicant in bargaining and they will compensate him and the applicant will continue to possess the land.

The counsel for the applicant did not end there, his second ground is predicated on compensation. Mr. Joseph argued that if the temporary injunction is not issued and the respondent possesses the land then the applicant worries the respondents will delay compensating her. He valiantly submitted that the Government issued a Certificate of Title and at the same time declared that the suit land is a road reserve, thus, in his view, there is no guaranteed that compensation will be timely made.

On the balance of inconvenience, the counsel submitted that the applicants stand a greater chance than the respondents because in the final determination the respondents will be fully implementing what they are doing

now and the applicant cannot in any way reclaim the exhausted land and develop because by the time applicant will not reclaim.

The applicant's counsel went on to submit that he has already placed building materials in the suit land and the building process was ongoing. For those reasons the counsel for the applicant contend that, if the injunctive order is not granted then the applicant will suffer greater compared to the respondents. Mr. Joseph stressed that the respondents will forcefully evict the applicant without compensating her, hence will render the main suit impracticable. The counsel for the applicant was certain that they have met the three conditions as stipulated in the landmark case of **Atilio V Mbowe** (supra).

To wind up his submission, the counsel for the applicant urged this Court to grant temporary injunction pending the determination of the main suit.

Responding, the learned counsel for the respondents' confutation was strenuous. Mr. Edward started by highlighting the governing principles as far as the interim injunction is concerned. The learned State Attorney subscribed to the three conditions which need to be considered before granting temporary injunctive; prima facie case, Irreparable injury likely to be suffered, and the balance of convenience, i.e. the comparative mischief or

inconvenience likely to be caused from withholding injunction will be greater than by granting it. Reliance was placed in the case of **Christopher P Chale v Commercial Bank of Tanzania**, Misc. Civil Application No. 635 of 2017.

The learned State Attorney opted to start submitting on the third ground, balance inconvenience. Mr. Edwin submitted that this condition favours the respondents and not the applicant. He asserted that if the injunction is refused the inconvenience to the applicant will be balanced and if the injunctive order is granted, the respondents inconvenience suffering is greater compared to that of the applicant. The learned State Attorney went on to submit that the water pipes were installed by the respondents and the same is supplying water to the residents who are living nearby the suit land. He stressed that if an order of temporary injunction is granted then the public at large stands to suffer more than the applicant.

The State Attorney went on to submit the installed water pipes are for the benefit of the public at large and that in case of any accident such as a burst of a water pipe, the residents will be affected because the 1<sup>st</sup> respondent will not have access in the suit land to remedy the situation. Mr. Edward submitted that were the public is involved, the Court should restrain from granting an injunction. To fortify his position he referred this Court to the

case of **Alhaji Muhindini Ndolanga & another v The Registrar of Sports and Sports Association & others**, Civil Caus No. 54 of 2000. He went on to submit that the respondents have laid down the water pipes in the suit land and the same are supplying water to the public. Mr. Edwin insisted that the matter at hand involves public interest, therefore, the balance of inconvenience serves the public at large.

On the 2<sup>nd</sup> ground, is irreparable loss, the learned State Attorney contend that the Court has stated several times for an injury to be irreparable, the applicant must clearly show that he cannot be compensated in terms of damages. To buttress his contention, Mr. Edwin cited the case of **T. A. Kaare v General Manager – Mara Cooperative Union (1994) Ltd** TLR (1987) 17.

The learned State Attorney stressed that Court interference is necessary to protect the plaintiff from kinds of injury which are not irreparable where money will not be adequate. The learned State Attorney asserted that as long as the counsel for the applicant has conceded that the applicant can be compensated then there is no any irreparable injury the applicant stands to suffer.

The learned State Attorney went on to submit that in case the main suit will be decided in favour of the applicant, then, the Government will compensate or allocate her with an alternative plot. He added that the alleged ongoing

improvement can be compensated in monetary terms. Mr. Edwin went on to argue that if this Court will issue an injunctive order, then, the respondent will suffer more than the applicant for the main reason that the respondents will not be able to repair the water pipes. He stressed that the public at large will suffer more injury more than the applicant.

The learned State Attorney continued to submit that the applicant has not proved whether she obtained a building permit and started to construct a fence. Mr. Edwin went on to submit that the purported attached building permit was issued to Mr. Abdallah Huwel and not the applicant. Therefore, in his view, the allegations that the applicant's claims that she will suffer irreparable loss is not substantiated by any document.

On the strength of the above submission, the learned State Attorney urged this Court to dismiss the application.

In his rejoinder, Mr. Joseph reiterated his submission in chief. He contend that the respondents entered the suit land without following proper procedure. He forcefully argued that allowing the respondents to maintain the water pipes is a continuation of illegality. The learned counsel for the applicant lamented that in the entire counter affidavit there is nowhere the respondents have committed themselves to compensate the applicant



whether or allocate her a different plot. He valiantly argued that the respondents redeemed the land without compensating the applicant. Mr. Joseph argued that unless this Court restrains the respondents from further alienation of the suit land then, they will compensate the applicant. Otherwise, the counsel was certain that there s no guarantee that the respondents will compensate the applicant.

In conclusion, the learned counsel for the applicant urged this court to issue the injunctive order pending the determination of the main suit.

Having considered the competing submissions, the task ahead of me is to respond to the issue; *whether the Applicants have satisfied the necessary conditions or prerequisites for the grant of a temporary injunction*. I am going to test the three principles mentioned in Atilio's case to find out whether the three principles in this Application were met or otherwise.

The question whether the applicant has demonstrated a prima facie case with a likelihood of success. From the submissions of counsel and perusal of the applicant's affidavit specifically paragraphs 3, 4, and 6, I find that the applicant has claimed that she is the lawful owner of the suit plots. The applicant alleged that the respondents earmarked the suit land for public utilization and then due process for acquisition of the said land by way

of compensation. The applicant also alleged that the respondents illegally invaded the suit's land without paying any compensation.

In my considered view, I find that the applicant has demonstrated to warrant this Court to believe that there is a triable issue. The controversy, however, is whether they have been able to demonstrate the other two aspects i.e. that they will suffer irreparable loss and that of the balance of convenience.

On the second principle, irreparable loss, the applicant who claims to be on the brink of suffering irreparable injury is duty-bound to demonstrate that, the kind of injury to be suffered cannot be atoned through monetary means.

In the matter at hand, the applicant in paragraph 11 of her affidavit has demonstrated in length the issue of illegal invasion and alleged that the monetary investment so far injected in the suit land is the construction of a warehouse, bricks fence, and other improvements.

I have read the applicant's affidavit and this Court is in the firm view that the applicant has tried to prove that there is ongoing construction in the suit land. However, the issue of ongoing construction is not proved as rightly stated by the State Attorney that the applicant has attached a building permit containing the name of Abdallah Thabit Huwel on 12<sup>th</sup> May, 2020. The applicant was required to convince this Court in case the injunctive order is

not issued, she will suffer irreparable loss. Again, the money spent for the acquisition of the land in dispute is not substantiated by any document. In my view, the applicant's allegation that there is an ongoing construction does not prove any irreparable loss, therefore, the second condition is not met.

As to the third principle, a balance of convenience which is likely to be caused to the applicant by refusing the injunction will be higher than what is likely to be caused to the opposite party by granting it.

In determining whether the application has met the required conditions for its grant, a conclusion is drawn from the affidavit that supports the application. In paragraph 12 of her affidavit, the applicant alleged that the ongoing building of a warehouse will be decayed, wasted, and left in danger of being stolen. As pointed out earlier the applicant has failed to prove if the applicant has developed the suit land, therefore, in my considered view, this ground crumbles. However, this court considered the fact that the respondents have installed water pipelines in the disputed land thus, the applicant cannot in any way reclaim the exhausted land by excavating those water pipes. Therefore, this condition is met.

Having weighed the different probabilities in this application, it appears that the applicants have met the first and third conditions, the application was bound to fail on the second condition.

In the upshot, I find no merit in the instant application which is accordingly dismissed without costs.

Order accordingly.

DATED at Dar es Salaam this 6<sup>th</sup> October, 2022.



  
A.Z. MGEYEKWA

**JUDGE**

06.10.2022

Ruling delivered on 6<sup>th</sup> October, 2022 in the presence of Mr. Joseph, learned counsel for the applicant, and Mr. Edwin Webiro, learned State Attorney for the respondents.



  
A.Z. MGEYEKWA

**JUDGE**

06.10.2022