

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 474 OF 2022

REBECCA JOHN GENYA APPLICANT

VERSUS

TANZANIA AIRPORTS AUTHORITY 1ST RESPONDENT

MWIJUMA SEKE 2ND RESPONDENT

MARIAM MLYANGA 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

RULING

Date of last Order: 19.10.2022

Date of Ruling: 21.10.2022

A.Z MGEYEKWA, J

The applicant filed the instant application under a Certificate of Urgency. The application is brought under Order XXXVII Rule (1) (a) and 2 (1), 68 (c), and section 95 of Civil Procedure Code Cap.33 [R.E 2019]. The application was accompanied by an affidavit sworn by Rebecca John Genya, the applicant. Opposing the application, the 1st and 4th respondent filed a counter affidavit sworn by Ms. Edith Naftali Gari, the Land Officer.

The 2nd respondent filed a counter affidavit deponed by Mwijuma Seke, the 2nd respondent, and the 3rd respondent filed a counter affidavit deponed by Mariam Mlyanga.

The applicant is seeking an order of injunction to restrain the respondents, assignees, agents, workmen, or any other person working on their behalf from continuing with valuation reports at the plot with code Number PTT North 9239920- East 520503, PT2 North 9239956- East 520500, PT3 North 9239953 – East 520511, PT4 North 9239998- East 520509, PT5 North 929990- East 520441, PT6 North 9239943- East 520443, PT7 North 9239944 – East 520452 and PT8 North 9239900 – East 520470 sq meters 3806 at Kipunguni 'A' area, Ilala Municipality with City of Dar es Salaam pending filing and determination of the main suit.

When the application was called for hearing on 3rd October, 2022 the applicant had the legal service of Mr. Mathew Nganga, learned counsel. The 1st and 4th respondents enjoyed the service of Ms. Narindwa Sekimanga, learned State Attorney, and the 2nd and 3rd respondents appeared in person, unrepresented.

In his submission, the counsel for the applicant submitted that the applicant has filed an application for a temporary injunction to restrain the respondents from continuing with the valuation process of the suit plot. Mr. Methew urged this court to adopt the applicant's affidavit and form part

of his submission. The learned counsel went on to submit that there is a landed property in dispute and in case the injunctive order is not issued then the property might be disposed of. He submitted that in granting temporary injunction this Court in the case of **Atilio v Mbowe** (1969) HCD held that established three principles. Mr. Mathew went on to submit on the first principle, the applicant is required to establish whether there is prima facie case. The applicant's counsel submitted that she is the lawful owner of the suit land located at Kipunguni A area.

The learned counsel for the applicant went on to submit that in paragraph 7, the applicant stated that she has a letter that indemnifies her as the lawful owner of the suit land he added that the applicant's claims are related to the division of the area made by Amos Moriba who is the lawful owner and he is the late husband of the applicant. He added that other owners were compensated but the 2nd and 3rd respondents opposed the valuation and compensation process. Thus, the learned counsel for the applicant believed that there is a prima facie case worth it for this Court to grant the order. To buttress his contention, Mr. Mathew cited the case of **Salimu Mbaruku Mohamedi t/a v The Registered Trustees of Islamic Culture School**, Misc. Land Application No. 633 of 2021.

On the 2nd condition, the learned counsel for the applicant submitted that if a temporary injunction is not granted then the applicant will suffer

irreparable loss. Mr. Mathew asserted that the applicant will suffer loss if the 1st respondent will not compensate her within time. He stressed that the applicant will suffer irreparable loss because she will permanently lose her rights. To fortify his submission he cited the case of **Salum Mbarouk** (supra) and **Hashim Ibrahim Lema v Maxcom Africa Ltd & 2 others**, Misc. Land Application No. 457 of 2021. The learned counsel for the applicant urged this court to intervene before the 1st respondent compensates other people.

On the balance of inconvenience, the counsel submitted that the applicants will suffer more loss if this Court will not grant a Temporary Injunction compared to the respondent. He submitted that in case this Court will not grant the applicant's application and the valuation process takes place then; firstly, the respondents will not have another chance to evaluate the applicant's residential premises. Secondly, the applicant will be evicted from her own land while the 1st respondent will only waste their time since they will halt the process pending the determination of the main case on merit. To bolster his submission he cited the case of **Halima Ahmad Fadhili v M/S Zamzam Farm Ltd & 2 others**, Misc. Land Application No. 876 of 2017.

To wind up his submission, the counsel for the applicant urged this Court to grant the applicant's application as stated in the Chamber Summons.

Responding, the learned counsel for the respondents' confutation was strenuous. Ms. Narindwa 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 **Atilio Mbowe**, (supra).

On the first condition, the learned State Attorney asserted that if the person who raised the claims must prove her allegations. She argued that in the matter at a hand the applicant in paragraphs 1 and other paragraphs simply submitted that she is the lawful owner of the suit land without attaching any document such as a right of occupancy or residential license. Ms. Narindwa went on to submit that in paragraph 7 of the affidavit the applicant stated that the Municipality issued a letter recognizing the applicant as a lawful owner of the suit land but the said letter is not attached to her affidavit. To support her submission she cited the case of **Mohamed S. Ghona v Mohamed Mwemus Chotikungu**, Land Case No. 42 of 2015. She spiritedly contended that the applicant has failed to prove if she is the lawful owner of the suit land. Ms. Narindwa submitted that the

area is among the planned area for valuation and the valuation took place, thus, it was her view that the matter has been overtaken by the event.

Ms. Narindwa went on to submit that the applicant claimed that she is the wife of the late Amos but she did not tender any evidence such as Marriage Certificate. She claimed that the applicant's claims are mere allegations the same should not be regarded by this Court. To fortify her position she seeks refuge in the case of **Dar es Salaam Water Supply & Sanitation v Attorney General v Tabu Hassan & Another**, Misc. Land Application No. 247 of 2021.

Ms. Narindwa did not end there, she contended that the 2nd and 3rd respondents are alleged to have restricted the valuation and compensation process, while the 1st respondent is the one responsible in the valuation and compensation process. She distinguished the cited cases of Mr. Mathew in the sense that the applicant failed to establish that there is a triable case because she failed to prove her ownership hence she failed to prove that she will suffer irreparable loss.

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

The 2nd respondent had not much to say. He contended that the 1st respondent conducted the valuation and 801 residential areas were identified and there was no any objection. He added that the 1st

respondent proceeded to divide the plots and Amos was allocated and compensated. The 2nd respondent went on to submit that he was instructed to control the invaders whereas the applicant claimed that she is the owner of the suit plots but she was not able to show them documentary evidence. He urged this Court to disregard the applicant's claims.

The 3rd respondent was brief and straight to the point. She argued that the applicant's documents show that the valuation was done and it was revealed that Amos Moriba was the owner of the suit plots and he was compensated. She argued that the applicant has never written any complaint letter. Ending she urged this Court to dismiss the applicant's application.

In his rejoinder, Mr. Mathew reiterated his submission in chief. He asserted that there was no need to include conclusive evidence. Supporting his stand he referred this Court to **Salimu's** case. He insisted that the process of valuation is ongoing because they are not evicted from the suit land. Mr. Mathew argued that the 2nd respondent in her submission did not attach any supporting documents. He argued that the 2nd respondent has no legal right to establish the issue of ownership. The learned counsel for the applicant asserted that the 3rd respondent cannot

claim that the applicant has failed to establish her ownership while they are the ones who restrained her to prove her claims.

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 Applicant has satisfied the necessary conditions or prerequisites for the grant of a temporary injunction*. I am going to test the three principles tested by this Court in various cases such notable cases include; **Atilio v Mbowe** (1969) HCD 284, **Agency Cargo International v Eurafrikan Bank (T)** (HC) DSM, Civil Case No. 44 of 1998 (unreported), and **Salum Mbaruku** (supra) to mention just a few.

Relating the facts before me and the said principle I should take note that at this point I do not have the full evidence before me. The standard of proof required would be somehow below that which is generally required upon full trial. For example, the issue of proof of ownership, whether the process of compensation is overtaken by the event needs to be proved at the main suit.

The question for determination is whether the applicant has demonstrated a *prima facie* case with a likelihood of success. From the submissions of the counsel for the applicant. State Attorney and the 2nd

and 3rd respondents and perusal of the applicant's affidavit specifically paragraphs 2, 4, 5, 6, and 7, and, I find that the applicant claimed that she is the lawful owner of several pieces and parcels of land. The applicant alleged that she is among the people who will be affected by the process of expansion of the airport done by that the 1st respondent. The applicant claims that the 1st respondent is ongoing with the valuation process but has eliminated the applicant in the process of valuation and compensation.

The learned State Attorney valiantly contended that the first principle is not met because the applicant has not proved that she is the lawful owner of the suit land since the lawful owner is Amos Moriba. As I have pointed out earlier, at this juncture, the issue of ownership, compensation, or whether the matter is overtaken by the event requires evidence. As stated by my learned Brother Arufani, J in the case of **Salimu Mbaruku** (supra), such kind of issues can only be determined after receiving evidence in the full trial, the same cannot be determined in the instant application. Therefore, in my considered view, I find that the applicant has demonstrated to warrant this Court to believe that there is a triable issue. Therefore, the first principle is established.

As to the second principle, irreparable loss, the applicant who claims to be on the brink of suffering an irreparable injury is duty-bound to

demonstrate that, the kind of injury to be suffered cannot be atoned through monetary means. In the instant application, the applicant in paragraph 8 of her affidavit has convinced this court to believe that in case an injunctive order is not issue and the 1st respondent proceed to compensate the affected people then the applicant will suffer irreparable loss because she might permanently lose her properties. Therefore, the second condition is met.

For the sake of clarity, I have read the case of **Mohamed S. Ghona** (supra). In **Ghona's** case, the issue for discussion was based on land ownership. In my view, **Ghona's** case is distinguishable from the instant case as in the present application the issue of ownership requires evidence. As pointed earlier, in temporary injunction application, the standard of proof required is below compared to the one required upon full trial.

There is no long argument to establish the same. However, as pointed earlier the Court of Appeal of Tanzania will have time to investigate the allegations and remedy the alleged illegalities.

In sum, based on the foregoing analysis I am

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 and submission made by Mr. Methew that the applicant will suffer more compared to the respondents because in case, the 1st respondent evicts the applicant from her suit land then she will not have any other forum to raise her claims. Therefore, in my view the last principle is met.

Having weighed the different probabilities in this application, I proceed to Allow the applicants' application pending the determination of the main case on merit. No order as tot costs.

Order accordingly.

DATED at Dar es Salaam this 21st October, 2022.




A.Z.MGEYEKWA

JUDGE

21.10.2022

Ruling delivered on 21st October, 2022 via video conferencing whereas Mr. Mathew Ngaga, counsel for the applicant was remotely present




A.Z.MGEYEKWA

JUDGE

21.10.2022