

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

MISC. LAND APPLICATION NO. 545 OF 2022
(Arising from Land Case No. 235 of 2022)

WALTER C. NGONYANI.....APPLICANT

VERSUS

LETSHEGO BANK (T) LIMITED.....1ST RESPONDENT

BILO STAR COLLECTOR COMPANY LIMITED....2ND RESPONDENT

BILO STAR DEBT COLLECTOR CO. LIMITED.....3RD RESPONDENT

R U L I N G

Date of Last Order: 12.10.2022

Date of Ruling: 24.10.2022

T. N. MWENEGOHA, J.

The application was brought under Order XXXVII Rule 1 (a) & 4, and Section 95 of the Civil Procedure Cap 33 R. E. 2019. It was supported by the affidavit of Walter C. Ngonyani, the applicant here in above.

Basically, the applicant prayed to this court to issue an order of injunction against the respondent, and any person working or acting under his instructions, from interfering in whatever manner the suit premises, Located at Mjimpya & Azimio Kaskazini Streets, Azimio Ward, within Temeke Municipality, District and Dar es Salaam Region, with Residential Licenses No. TMK001619 Parcel No. TMK/AZM/MJP18/500 and No.

TMK0088405, Parcel No. TMK/AZM/AZK-21/92, pending the determination of the main suit.

The application was heard by way of written submissions. Advocate Alex Enock appeared for the applicant, while Mr. Ladslaus Ragwe Muhagachi, learned Counsel, appeared for the respondents.

Mr. Alex in his submissions referred the cases of **Atilio vs. Mbowe, 1969, HCD 284, American Cyanamid Co vs. Ethcon Ltd {1975} AC 396, (1975) 1 ALL ER 504** and **T.A Kaare vs. General Manager Mara Corporative Union (1984) ltd {1987} TLR HC.**

He insisted that, the applicant has met all the conditions required for an order of injunction to be issued in his favour. That, there is a prima facie case with the probability of success as shown in the affidavit at paragraphs 2-18. That, the respondents are about to dispose illegally the lands in question if the order is not granted.

Secondly, there will be irreparable loss. That, he is providing health services to the general public using the suit premises. Therefore, if the respondents are not restrained from selling the premises, the applicant will suffer irreparable loss.

Lastly, on balance of probability, it was argued that, the applicant stands to suffer harm than the respondents if the order is not granted. That, the services offered by the applicant to the general public will be affected.

In reply, the learned counsel for the 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. Further, in the pending case, there is no way

that the plaintiff(applicant) will be entitled to the reliefs sought. Also, there is no any kind of injury that is irreparable that might be suffered by the applicant if the application is granted. And that, the applicant stands to suffer no inconveniences compared to the respondents if the application is granted.

In rejoinder, the applicant's counsel reiterated his submissions in chief.

Having gone through the submissions of both parties through their learned counsels, the question for determination is whether the application has merits or not.

Both counsels have argued for and against this application relying on the **Atilio vs. Mbowe case, (supra)**. Looking on the said arguments from both counsels, I am of the view that, the arguments by the applicant's counsel are praiseworthy. They are in need of consideration. The respondents have not denied any facts argued by the applicant. What they insist is that, they have the right to sale the suit premises owing to the mortgage agreement existing between the parties which the applicant defaulted to honor. This being the case, it is with no doubt that the applicant has met all the conditions given in **Atilio vs. Mbowe case (supra)**. Indeed, there exist triable issues between the parties which need this court's attention to prevent the injury that are likely to appear on part of the applicant if the respondents proceed to sell the properties in question. Above all, as claimed by the applicant that he has been using the said premises to provide health services to the people. It is obvious that on balance of convenience, the applicant will suffer more inconveniences than the respondents.

In the upshot, the application is granted. The respondent, and any person working or acting under his instructions, are restrained from interfering in whatever manner the suit premises, Located at Mjimpya & Azimio Kaskazini Streets, Azimio Ward, within Temeke Municipality, District and Dar es Salaam Region, with Residential Licenses No. TMK001619 Parcel No. TMK/AZM/MJP18/500 and No. TMK0088405, Parcel No. TMK/AZM/AZK-21/92, pending the determination of the main suit. No order as to costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

24/10/2022