

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

MISC LAND APPLICATION NO. 502 OF 2022

AKILEY FULANZIS MSIMBE & 130 OTHERS.....APPLICANT

VERSUS

JANE MWAKATUMA (Administratrix of the estate of the late

EMMANUEL EPHRAIM MWAKATUMA.....1ST RESPONDENT

KISHE AUCTION MART CO. LTD.....2ND RESPONDENT

Date of last order: 26/09/2022

Date of Ruling: 26/09/2022

RULING.

I. ARUFANI, J

The applicant filed in this court the present application seeking for an order of the court to grant leave to Akiley Fulanzis Msimbe to represent other 130 applicants in the claim they wish to institute in this court as they have common interest and they are claiming for similar reliefs against the respondents.

The application was made under Order I Rule 8 of the Civil Procedure Code Cap 33 R. E. 2019 and is supported by the affidavit sworn by Akiley Fulanzis Msimbe. Although the respondents filed in the court the counter affidavit to oppose the application but when the matter came for

hearing on 26th September, 2022 the counsel for respondents Mr. Eliezer Kileo told the court they are no longer opposing the application.

After the counsel for the respondents informed the court they are not opposing the application Mr. Nzibila Mtimizi, learned counsel for the applicants prayed the court to grant the application. In addition to the said prayer he prayed the court to grant an interim order to restrain the respondents to evict the applicants from the suit land. He told the court he is making the said prayer under sections 68 (e) and 95 of the Civil Procedure Code.

The said prayer was vehemently disputed by the counsel for the respondents who told the court the order of temporary injunction or interim order is issued under order XXXVII Rule 1 of the Civil Procedure Code and is issued when there is a matter or suit pending in court. The counsel for the respondents argued that, the order of temporary injunction or interim order as sought by the counsel for the applicants cannot be granted where there is no suit pending in court.

He went on arguing that, as up to this moment the applicants have not filed any suit in the court it will not be proper for the court to issue any order restraining the respondent to do anything because if the order will be issued and the applicants failed to institute their claim in the court the respondents will be restrained for unknown period to do what they think is right for them to do.

In his rejoinder the counsel or the applicants told the court that, they are pray for an interim order as there is a dispute between the parties over the land in dispute. He prayed the court to grant the said order for the interest of protecting the right of the parties while awaiting filing of the matter in the court and its determination.

After considering the submission made to the court by the counsel for the parties the court has gone through the chamber summons and the affidavit supporting the chamber summons and find that, as the counsel for the respondents has informed the court the respondents are not opposing the application there is no justifiable reason for the court to refuse or desist to grant leave to Akiley Fulanzis Msimbe to represent other applicants who are 130 and they have listed their names and signed thereon to show they have agreed to be represented in the suit intended to be filed in the court by the said legal representative.

As for the prayer by the counsel for the applicants for interim order or temporary injunction pending filing of the intended suit in the court and its determination the court has found as rightly argued by the counsel for the respondent those orders are granted only when there is a matter pending in court and it cannot be granted when there is no matter pending in court. (See the case of **Agness Simbambili Gabba v. David Samson Gabba**, [2009] TLR 5).

The court has come to the above stated view after seeing that as rightly argued by the counsel for the respondent the sought order is governed by Order XXXVII Rule 1 and 2 of the Civil Procedure Code which states categorically that the order of temporary injunction is granted pending disposal of a suit pending in court or pending further order of the court. That means it cannot be granted where there is no pending matter in the court.

The court has gone through the provision of sections 68 (e) and 95 of the Civil Procedure Code which the counsel for the applicants prayed the court to rely upon to grant the sought interim order but find the said provisions of the law cannot move the court to grant the sought order. The court has arrived to the stated finding after seeing application of the said provisions of the law was clearly considered in the case of **Tanzania Electric Supply Company (TANESCO) V. Independent Power Tanzania Ltd (IPTL) and two others**, [2000] TLR 324 and stated they are only summarizing the general powers of courts in regard to interlocutory proceedings and they cannot be invoked alone to move the court to grant an order like the one the counsel for the applicants is praying to be granted by the court.

In the light of what I have stated hereinabove the court has found there is no way it can be said the court can grant the applicants the order of temporary injunction or any interim order to restrain the respondents

to do anything in respect of land in dispute while there is no matter pending in the court.

Consequently, the application for Akiley Fulanzis Msimbe to represent other 130 applicants listed in the list attached to the affidavit supporting the chamber summons in the suit intended to be filed in this court pursuant to order 1 Rule 8 of the Civil Procedure Code is hereby granted. The prayer for an order of interim order or temporary injunction to restrain the respondents to do anything in relation to the suit land while there is no matter pending in the court is not granted. Each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 26th day of September, 2022



I. Arufani
I. Arufani
JUDGE
26/09/2022

Court:

Ruling delivered today 26th day of September, 2022 in the presence of Mr. Nzabila Mtimizi learned advocate for the applicants and in the presence of Mr. Eliezer Kileo, learned advocate for the respondents. Right of appeal to the Court of Appeal is fully explained to the counsel for the parties.



I. Arufani
I. Arufani
JUDGE
26/09/2022