

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 577 OF 2022

1. HASSAN ABDALLAH KITIGI 1ST APPLICANT
2. UWESU ABDALLAH MOHAMED..... 2ND APPLICANT
3. SELEMAN JUMA SALAMBA 3RD APPLICANT

VERSUS

1. TEMEKE MUNICIPAL COUNCIL 1ST RESPONDENT
2. ATTORNEY GENERAL 2ND RESPONDENT

RULING

Date of last Order: 03.11.2022

Date of Ruling: 07.11.2022

A.Z MGEYEKWA, J

The applicants' application is brought under the Certificate of Urgency. The application is brought under section 2 (3) of the Judicature and Application of Laws Act, Cap. 358 and sections 95 of Civil Procedure Code Cap.33 [R.E 2019]. The application was accompanied by a joint affidavit sworn by Hassan Abdallah Kitigi, Uwesa Abdallah Mohamed,

Fatuma Said Waziri, and Seleman Juma Salamba, the applicants. The application encountered preliminary objection from the respondent's counsel that;

The application is bad in law for failure to comply with the requirement under Order I Rule 8 of the Civil Procedure Code Cap. 33 [R.E 2019].

As the practice of the Court has it, we had to determine the preliminary objection first before going into the merits or demerits of the appeal. That is the practice of the Court founded upon prudence which we could not overlook.

When the matter came up for orders on 3rd November, 2022, the applicants had the legal service of Mr. Nassoro, learned counsel, and the respondents had the legal service of Mr. Elias Mwendwa, learned Advocate.

Submitting in support of the objection, Mr. Elias submitted that the application is bad in law for failure to comply with the requirement under Order I Rule 8 of the Civil Procedure Code Cap. 33 [R.E 2019]. He stated that the application involves more than one person, and the applicants in the second paragraph, last paragraph of their affidavit stated that other applicants have consented to the filing of the suit against the respondents. To support his submission he referred this Court to annexure 'A'. He contended that Order I Rule 12 of the Civil Procedure Code Cap.33 is related

to the representative suit, whereas the applicants could appear in Court and represent others. Mr. Elias stated that the applicants did not comply with Order I Rule 12 of the Civil Procedure Code Cap.33. To support his submission he cited the case of Christopher Kasper & others v Tanzania Urban Authority [1997].

In conclusion, the State Attorney urged this Court to dismiss the application with costs.

In response, Mr. Nassoro submitted that the matter before this Court is related to injunctive order made under Order 2 (3) of the Judicature and Application of Laws Act Cap. 358. Mr. Nassoro submitted that the instant application is a Mareva application pending the expiration of 90 days and filing of the suit. He submitted that under Order XXXVII Rule 1 of the Civil Procedure Code Cap.33, an application is filed pending the determination of a suit, in his view, the circumstance in the matter at hand is quite different whereas the applicant has no any pending suit. The counsel went on to argue that Order I Rule 8 of the Civil Procedure Code, Cap. 33 is related to a representative suit.

He stressed that in our judicial system we have adopted the common law procedure of Mareva injunction, an application can be filed where there is no any pending suit. He distinguished the cited case of **Christopher** (supra), he stated that the Court in the cited case discussed a

representative suit in contravention of Order 1 Rule 8 of the Civil Procedure Code Cap.33 while in the instant application the matter is not related to a representative suit.

On the strength of the above submission, Mr. Nassoro beckoned upon this Court to disregard the preliminary objection raised by the respondents.

In his rejoinder, the State Attorney for the respondents reiterated his submission in chief. Mr. Elias argued that it is not correct to say that there is no any pending suit while the applicants have filed an application which is also a suit. Stressing on the point of representative suit, Mr. Elias argued that a Mareva application must comply with the procedure of the law stated under Order I Rule 8 of the Civil Procedure Code Cap.33. Ending, he urged this Court to dismiss the instant application.

I have carefully gone through the respective submissions of both learned counsels at length, the affidavit filed in support of the application, and given them the due respect as deserve. I should state at the outset that the main issue for determination is *whether the objection is meritorious*.

It is common ground that the interim injunction is sought before the institution of the suit. I understand that a person can file an interim injunction order preceding the institution of a suit or Mareva injunction, it

is a common law remedy developed by the courts of England.

I have gone through the applicants' application and the joint affidavit, the applicants are applying for a temporary injunction against the respondents from renting, demanding, or collecting rent in the disputed business frames/ shops cages pending the expiration of 90 days' Notice and filing of the suit. I have perused the applicant's affidavit and as rightly stated by the State Attorney the applicants specifically in paragraphs 1 and 2 of their joint affidavit stated that they are the applicants together with their fellows' businessmen.

Moroover, in paragraph 2, the applicants are referring to annexure 'A' and they have attached a copy of the advertisement and list of their fellow applicants' businessmen names who consented to the filing of the suit against the respondents collectively that means their fellow businessmen are part of the instant application. And they consented to the applicants to insitute the matter at hand against the respondents. To support their consent they attached a list that contains 14 other businessmen's names implying that the applicants are representing their fellow businessmen.



I understand that the application is not a representative suit, however, the instant Mareva application involves parties who are not properly represented by the applicants. As rightly argued by learned counsel for the respondents the applicants ought to have filed a representative suit

application before lodging the present application accompanied by a joint affidavit comprising three applicants only, while in reality, other businessmen are interested in the matter at hand. Thus, in my considered view, in the circumstances of the matter at hand the applicants were required to comply with the requirement under Order I Rule 8 of the Civil Procedure Code Cap. 33 [R.E 2019].



Having said so, I find merit in the respondent's preliminary objection and I hereby strike out the application without costs.

Order accordingly.

DATED at Dar es Salaam this 7th November, 2022.

 
Z. MGEYEKWA
JUDGE
07.11.2022

Ruling delivered on 7th November, 2022 via video conferencing whereas the applicants and Mr. Peter, State Attorney for the respondents were remoted present.

 
A. Z. MGEYEKWA
JUDGE
07.11.2022