

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

MISC. LAND APPLICATION NO. 572 OF 2022

THABITA SIWALE..... APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

**THE PERMANENT SECRETARY, MINISTRY OF LANDS, HOUSING
AND HUMAN SETTLEMENT DEVELOPMENT.....2ND RESPONDENT**

**THE PERMANENT SECRETARY, MINISTRY OF WORKS,
TRANSPORT AND COMMUNICATIONS3RD RESPONDENT**

KINONDONI MUNICIPAL COUNCIL.....4TH RESPONDENT

TANZANIA NATIONAL ROADS AGENCY.....5TH RESPONDENT

R U L I N G

Date of Last Order: 17. 10.2022

Date of Ruling: 14.11.2022

T. N. MWENEGOHA, J.

The Applicant sought for an order of maintenance of status quo, against the respondents who are about to demolish the applicant's property located on claims that, the same is within the road reserve. The application was preferred under Section 2(3) of the Judicature and Application of Laws Act, Cap 384, R. E. 2019 and Section 95 of the Civil

Procedure Code, Cap 33 R. E. 2019 and supported by the affidavit of the applicant.

The application was heard by way of written submissions. Advocate Benard Mbakileki appeared for the applicant while the respondents enjoyed the services of learned State Attorney, Rose Kashamba.

In his submissions, Mr. Mbakileki was of the view that, the applicant intends to file a suit after expiry of 90 days' notice of intention to sue the government. That, the applicant's needs to be heard on his course to avoid any irreparable sufferings to occur on her part. Mr. Mbakileki insisted that, for the ends of justice to be met, this court needs to grant the interim injunction order of maintenance of status quo as prayed in the chamber summons. He cited the case of **Tanzania Sugar Producer Association versus The Ministry of Finance of the United Republic of Tanzania & Another, Misc. Civil Application No. 25 of 2003 (unreported)**, citing the case of **Nicholas of Nere Lekule vs. The Independent Power (T) Ltd & Another, Misc. Civil Case No. 42 of 1998, High Court of Tanzania (unreported)**.

In reply, the learned state Attorney for the respondents maintained that, for the applicant to invoke the provisions of Section 2(3) of the Judicature and Application of Laws Act, it must be proved that our laws are silent on the matter at hand. In this application, this condition was met. The applicant wants to be granted a Mareva injunction instead of proving his course is within the rules given in the land **Mark Case of Atilio vs. Mbowe, (1969) HCD No. 284**. In this application as per he said case, the applicant has no triable issues against the respondents and she stand to suffer no inconveniences compared to the respondents if the

application is granted. Lastly, is on irreparable loss expected to occur on the applicant, in the case at hand, there is no way the applicant stands to suffer any loss that cannot be adequately compensated by monetary value. Therefore, this application is devoid of merits and has to be dismissed.

Having gone through the submissions of both parties through their learned counsels, the question for determination is whether the application has merits or not. Before I proceed to discuss the merit or otherwise of the application at hand, I have to say that I'm confused by what the applicant exactly wants this court to do for her in this application.

In the submissions in support of this application if read together with the enabling provisions available in the chamber summons, it seems that the applicant applied for a Mareva Injunction. That, she seeks to restrain the respondents from demolishing the suit premises, pending the expiry of 90 days' Statutory Notice of intention to sue the Government. However, in her chamber application, the applicant has sought an order of maintenance of *status quo* over the premises, pending the determination of the intended application to be filed after the expiry of 90 days' statutory notice of intention to sue the Government. She did not mention an order of injunction as argued in the submissions by her learned counsel. This fact has left this court in suspense, not knowing what to deal with in favour of the applicant. Should the court treat the instant application as a Mareva injunction or an application for an order of maintenance of *status quo*. She is not specific as to what she wants. Hence the court cannot give any order under this circumstance, rather it finds the application at hand to be incompetent.

The same is hereby struck out with no order as to costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

14/11/2022