

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

**MISC. LAND APPLICATION NO.625 OF 2022**

**MUSTAFA SEIF NGANE.....1<sup>ST</sup> APPLICANT**

**ABUSHEKHE SEIF NGANE.....2<sup>ND</sup> APPLICANT**

**HUSNA ABDULRAHMAN HASSAN.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**THE REGISTRAR OF TITLES.....1<sup>ST</sup> RESPONDENT**

**THE COMMISSIONER FOR LANDS.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

7<sup>th</sup> & 16<sup>th</sup> November 2022

**L. HEMED, J.**

On the 5<sup>th</sup> day of October, 2022, the applicants herein presented the application at hand in this Court under section 2 (3) of the Judicature and Application of Laws Act [Cap.358 R.E 2019] seeking for the following orders among others thus: -

*" I. This court be pleased to grant an order that, status quo in respect of the certificates of Titles No. DSMT 1001859, DSMT 1001676, DSMT 1000990 and DSMT 1000991 respectively, which is the status appeared on the 12.08.2022 when the*

*notices of rectification bearing reference numbers 22081228214, 22081228239, 22081228254 and 22081228260 were issued to the applicants, be maintained pending the hearing and determination of the application for injunction set to be filed by the applicants as against all respondents upon expiry of the statutory 90 days communicated in the notice to sue served upon all respondents.*

*II....*

*III..."*

The application was heard orally. The applicants were represented by Mr. Denis Tumaini learned advocate while the respondents enjoyed the services of Ms. Leonia Maneno, learned state attorney.

Arguing in support of the application, Mr. Tumaini stated that the application is prompted by the Notice of rectification served to the applicants on the 12th August, 2022 by the 1<sup>st</sup> Respondent which have the effect of cancelling the names of the applicants herein and replace thereto with the name of her excellence president of the united Republic of Tanzania. He invited this Court to grant the application on

the ground that the applicants have demonstrated clearly that there is a *premafacie* case to be argued before the Court.

He submitted further that the applicants have met the requirements set in the case of **Atilio vs Mbowe** (1969) HCD 284 as they have shown that there is a serious question to be tried regarding the suit properties. He also stated that the circumstance of the present case calls for the interference of the Court for purposes of protecting the applicants from any the kind of injury before their legal rights are established. According to the applicants, if the order will not be granted and the rectification is made, then the applicants will loose the suit lands before their rights are determined.

On the balance of inconvenience he submitted that if the rectification will be effected the applicants will suffer greater hardship than the respondents. He prayed the Court to grant the application because he was of the opinion that the applicants in the main suit have high probability of success. He called the Court to look at affidavit which support the application showing clearly how the applicants acquired the disputed landed properties.

It was submitted that, the applicants served the respondents with 90 days' Notice trying to demonstrate that there are triable issues which need to be determined by the Court. As far as 2<sup>nd</sup> principle on whether the applicant will suffer irreparable loss, in paragraph 23 of the affidavit of the applicant they stated that the applicants stand to lose the mentioned pieces of land which only connect them with their late father. According to the applicants, losing the said land would constitute irreparable loss if the rectification is effected.

In reply thereof, Ms. Leonia adopted the counter affidavit and submitted that the principles that guide the Court to grant temporary injunction were laid down in the Case of **Atilio vs Mbowe** (supra). She submitted that there must be a serious question to be tried; that the applicant will suffer irreparable loss which cannot be compensated; and the balance of convenience.

She was of the view that the applicants showed no irreparable loss because the alleged loss can be compensated in monetary terms or relocation to another place. Ms. Leonia stated that the applicants did not meet the 2<sup>nd</sup> principle laid down in **Atilio vs Mbowe** as they

did not state in their affidavit how they are going to suffer loss. In her opinion, losing their names in the Titles is curable as they can be relocated and granted other titles.

As regard the 3<sup>rd</sup> principle on balance of convenience, she submitted that having found that the applicants may be compensated in monetary or relocation terms, it is the respondents who will suffer more than the applicants if the application will be granted. She cited the case of **Mwakeye Investment Ltd. vs Access Bank Tanzania**, Misc. Land Application 654 of 2016 and that of **Gwabo Mwansasu and others vs TANROAD and Attorney General**, Misc. Land Application No.72 of 2020 to cement her arguments. She asserted further that the conditions in **Atilio vs. Mbowe** must be fulfilled collectively and not in alternatively. According to her, the applicants in this matter did not meet the said principles. She prayed for the Court to dismiss the application.

In rejoinder, Mr. Tumaini reiterated his submissions in chief and added that in paragraph 23 of the affidavit supporting the application, it has been stated that the disputed property has sentimental value

connected to the communities' traditions. He stated that the intended rectification is geared at favouring an individual one Jovin Lyimo and not the public. He also stated that the respondents have not shown the extent of loss they are going to suffer if the application is granted.

He distinguished the case of **Mwakeye** (supra), where he stated that the applicant in this case was indebted and was trying to take leverage of court as hiding bush. The case of **Gwabo Mwansansu** (supra) was a matter where the land was acquired for public interest and the applicants were to vacate the suit land subject to compensation, while in the case at hand we have an individual who is trying to use the public offices to protect his interest.

Having heard the submissions made by the parties let me now turn to determine as to whether the application has merits. This is a *mareva* application where by the applicants are seeking for an injunctive order to maintain the *status quo* on the suit landed properties pending expiry of 90 days' notice served to the respondents.

I am aware of the principles which were set in the case of **Atilio vs Mbowe** (1969) HCD,284 to be considered by the Court when

determining applications for injunctive orders. The Court did set three conditions which must be met before granting the applications. The said principles are as follows:

*"(i). There must be serious questions of facts or issues to be tried and likelihood of the applicant to succeed.*

*(ii). The applicant will suffer irreparable loss which cannot be adequately remedied or attained by damages.*

*(iii). Balance of inconveniences; that the applicant will suffer greater loss than the respondent if an order for temporary injunction is not granted".*

On the first principle the applicants have argued that there is a serious question of facts or issue to be tried. I have noted from the affidavit which supports the application that the applicants are challenging the intention of the registrar of titles and the commissioner for lands to make rectification in the titles in question which currently are in the names of the applicants. It is my firm view that the intended

rectification of certificate of title raises a serious question of facts which needs to be tried. The question of likelihood of success will depend on the evidence that will be adduced during the trial. As to whether the applicants will suffer irreparable loss which cannot be adequately remedied or attained by damages, the subject matter of these cases are the pieces of land whose ownership are at the stake of being changed. The question is what will happen if the application is not granted. The answer is straight forward that ownership of the suit landed properties will change from the applicants to other persons. It is definitely the applicants will lose the ownership of the suit land.

As to the balance of inconveniences, I have noted that the respondents are government institutions, which in one way or the other they participate in land allocation process. The applicants are individuals who are the registered owners of the suit landed properties. In the circumstance of this case, the applicants whose registration over the suit landed properties is about to be rectified will suffer greater loss than the respondents will if an order for temporary injunction is not granted.



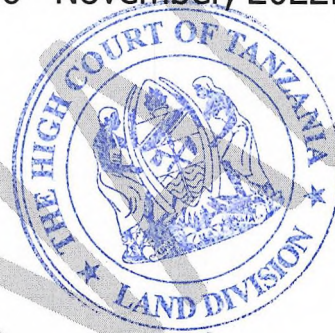
In the upshot it is inevitable to grant the application. Application is thus granted with no order as to costs to the effect that **STATUS QUO** to be maintained pending expiry of 90 days' notice. It is so ordered.

**DATED at DAR ES SALAAM this 16<sup>th</sup> November, 2022.**



L. HEMED

**JUDGE**



**COURT:** Ruling is delivered this 16<sup>th</sup> day of November, 2022 in the presence of Mr. Geraldin Paul advocate for the applicant and Ms. Careen Masonda & Ms. Kause Kilonzo for the Respondents. Right of Appeal explained.



L. HEMED

**JUDGE**

16/11/2022