

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 176 OF 2022

ROSE ALOYCE MALLYA APPLICANT

VERSUS

KCB BANK TANZANIA LIMITED RESPONDENT

RULING

Date of last Order: 11.05.2022

Date of Ruling: 11.05.2022

A.Z. MGEYEKWA, J

This application was filed under a certificate of Urgency on 20th April, 2022. Under the provision of Order XXXVII Rule 1(b) and 4 of the Civil Procedure Code Cap 33 [R.E. 2019], pleasing this court to act timely, to issue an interim injunction ex-parte order pending the hearing and final determination of this application inter-party, and inter-party injunction order pending the hearing and final determination of the Land case No. 76 of 2022 between the parties.

The applicant is seeking an order of temporary injunction to restrain the respondent, her agent, or any person working under instructions selling and/or disposing of the Applicant's properties situated in Plot No. 26, Block "B" Kijitonyama area, Kinondoni Municipality, Dar es Salaam with a certificate of title No.41791, and Plot 3, Block "25A", Kinondoni area, Kinondoni Municipality, Dar es Salaam with a certificate of Title No. 97632, pending the hearing and final determination the Land case No. 76 of 2022 between the parties hereto pending before this court.

When the matter was called for hearing on 11th May, 2022, the applicant enlisted the legal service of Mr. Franco Mahenge, learned Advocate whereas the respondent enjoyed the legal service of Ms. Esther Msangi, learned Advocate. Ms. Esther Msangi conceded to the applicant's prayer.

After noting that the application is not contested, this court proceeded to scrutinize the applicant's affidavit to find out whether the applicant has advanced sufficient ground for grant of interim injunction, the principles have been outlined in a famous case of **Atilio v Mbowe** (1969) HCD 286. In which the case of **Atilio** (supra) was referred to in various decisions such as **Dominic Daniel & Another v CRDB Bank PLC Ltd & Another**, Commercial Case No. 39 of 2011, **Valence Simon Matunda (Suing via Power of Attorney of Musa Yusuf Mamuya) v Sallah Philip Ndosy & 2 Others**, Misc. Land Application No.55 of 2019 and **Barretto Haulliers**

(T) Ltd v Joseph E. Mwanyika & Another, Misc. Civil Application No. 253 of 2016 whereas in the case of **Barretto Haulliers** (supra) the court listed three conditions as follows: -

- (i) *There must be a serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the reliefs prayed;*
- (ii) *That the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established, and*
- (iii) *That on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it."*

Starting with the first principle, it would appear to me that there is a triable issue in Land Case No. 76 of 2022 that need to be determined on its finality as to whether there is any breach of the terms and conditions of the loan facility agreement entered between the applicant and the respondent and whether there was any paid-up loan facility to the respondent that was not considered in the demand Notice as per Annexure Rose 4. In my view, I find that the first principle is met.

Getting to the second principle, I reading the applicant's affidavit it is clear that the applicant is likely to suffer injury before her right is legally

established. I am saying so because it is not clear whether the applicant has paid back half of the loan facility as alleged by the applicant in the 19 paragraphs of her affidavit. Therefore, in case this court will not grant the application then, the applicant is likely to suffer twice if the allegation is true.

Concerning the third condition, a balance of convenience, which is likely to be caused to the applicant by refusing the injunction will be higher than what is likely to be caused to the opposite party by granting it. Having determined the first two conditions in favour of the applicant, I find that the applicant will suffer great hardship compared to the respondent, upon disposal of the said properties. Therefore, this last condition has met the test of the application.

In the upshot, I find merit in the applicants' application, the application is allowed without costs.

Order accordingly.

DATED at Dar es Salaam this 11th May, 2022.



A.Z.MGEYEKWA

JUDGE

11.05.2022

Ruling delivered on 11th May, 2022 in the presence of both learned counsels for the applicant and respondent.




A. MGEYEKWA

JUDGE

11.05.2022