

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

MISC. LAND APPLICATION NO. 724 OF 2021
(Originating from Land Case No.238 of 2021)

AKONGO MASOUD HASSAN.....APPLICANT

VERSUS

JUMBE MOSHI SINGILIMO (Administrator of the Estate of the late
Moshi Selemani Singilimo)**1ST RESPONDENT**

SIJA SELEMANI SINGILIMO (Administrator of the Estate of the late
Moshi Selemani Singilimo)**2ND RESPONDENT**

R U L I N G

Date of Last Order: 12. 05. 2022

Date of Ruling: 30. 05. 2022

T. N. MWENEGOHA, J.

The applicant, here in above is seeking among others for an injunction order. He intends to restrain the respondents, their workmen, agents, officers or legal representatives, workers, employees, assignees and any other person acting under power, order, direction or authority from the respondents, from disposing off by sale, lease or mortgage to any person or changing tittle, ownership, transfer, occupation or business of the suit property, constituting a petrol station at Chanika Mwisho, on Plot No. 41 Block "G", Chanika Area, Ilala Municipality with Certificate of Tittle No.143241, pending hearing of the Land Case No.238 of 2021.

The application is brought under **Sections 68 (c), (e) and 95, also Order XXXVII Rule 1(a) and Rule 2(1) and 4 of the Civil Procedure Code, Cap 33 R. E. 2019** and supported by the Applicant's affidavit.

The application was heard through written submissions. Advocate Mohamed Tibanyendera appeared for the applicant while the respondents were represented by Advocate Dismas E. Mbandu.

Submitting in support of the application, counsel for the applicant relied on the case of **Atilio vs. Mbowe (1969) HCD 284**, in which introduced three conditions to be met before granting the temporary injunction order.

The first condition is the existence of a serious question to be tried by the court of law. That, as per the plaint in Land case No. 238 of 2021. The said case involves issues of fraudulent sale of the deceased landed property by administrators without having powers to do so.

Secondly is that the applicant will suffer irreparable loss if the application is not granted. The applicant's counsel was of the view that, the court's interference is necessary because the applicants will suffer irreparable loss, as the respondents have been disposing off assets and distributing the assets without the consent of the applicant who is among the beneficiaries to the estate of the late Moshi Sleman Singiliano

On the third principle that is based on the balance of convenience, it was argued by counsel for applicant that, the applicant stand to suffer greater hardships if the reliefs sought in the chamber summons are not granted unlike the respondents who have nothing to lose if the orders sought are granted.

In reply Mr. Dismas Mbando also relied on the case **Atilio vs. Mbowe, (supra)**. That, the 1st condition has not been met. In her Affidavit the applicant has stated that, the respondents are no longer administrators of the estate of the late Singiliano. Hence, they cannot dispose any property under the eyes of law. The applicant has never shown any fact proposing the attempt by the respondents as assign of selling the property in question.

On the second ground, the respondents' arguments were that, there is no irreparable injury likely to be suffered by the applicant. That, the Probate and Administration Cause No. 198 of 2019 has already been closed and the administrators have discharged their duties by filing form No. V and VI. Hence there is no way that they can dispose the suit property.

Lastly, the respondent's counsel maintained that, since the respondents are no longer administrators of the estate, they cannot dispose anything. Hence no loss is likely to occur on part of the applicant.

I have considered the submissions of both parties through their respective Advocates. I have also gone through the affidavit and counter affidavits as adopted by the parties through their submissions. The issue of determination is whether the application at hand has merit.

I agree with the parties that in granting an order for injunction, the court ought to focus on the rules laid down in **Atilio vs. Mbowe (Supra)**. The applicant has the duty to prove that she or he is within the rules stated in the above-mentioned case. The instant application was brought under Order XXXVII Rule 1(a) and Rule 2(1) and 4 of the Civil Procedure Code, Cap 33 R. E. 2019. However, looking at the arguments of the applicant's counsel and the affidavit in support of the application, I have found

nothing material to show the instant application has merits. The affidavit in support of the application, particularly on paragraphs 11, 12 shows that, the applicant has filed the instant application based on suspicions or out of fear that the property in question may be alienated or sold by the respondents.

There is no tangible evidence to show that, the respondents are about to dispose the suit property. The applicant as per the two paragraphs admits that she doesn't even know the buyer. Now, the purpose of injunction is to preserve the property when it is in danger of being wasted or alienated. This is according to Order XXXVII Rule 1(a) of the Civil Procedure Code, Cap 33 R. E. 2019 which states; -

1. Where in any suit it is proved by affidavit or otherwise;

(a) "that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a decree."

As I have already explained here in above, there is nothing suggesting that the suit property is in danger of being wasted or damaged or alienated by the respondents. Therefore, there is nothing to protect in the first place.

On the other hand, the other provisions cited by the applicant are not applicable in the circumstances at hand. However, to appreciate what they say as far as injunction is concerned, I will reproduce them as follows.

Order XXXVII Rule 2(1) of the Civil Procedure Code, Cap. 33 R. E. 2019 provides that; -

2.-(1)" In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right."

And Order XXXVII Rule 4 of the Civil Procedure Code, Cap 33 R. E. 2019 says:-

4. The court shall in all cases, before granting an injunction, direct notice of application for the same to be given to the opposite party, except where it appears that the giving of such notice would cause undue delay and that the object of granting the injunction, would thereby be defeated.

Having so observed, I'm of the settled view that, the instant application is devoid of merits and it has to be dismissed accordingly. Costs to follow the event

Ordered accordingly.




T. N. MWENEGOHA
JUDGE
30/05/2022