

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

MISC. LAND CASE APPLICATION NO.167 OF 2022

BERDADETTE J. MSANGA

(Administratrix of the estate of the late

GERNARD IDD MSAMANGA)1ST APPLICANT

VERSUS

DAVID MTIMBI MWAKA.....1ST RESPONDENT

ESOSHI TRADING COMPANY LIMITED.....2ND RESPONDENT

NMB BANK LIMITED.....3RD RESPONDENT

Date of Last Order: 30.05.2022

Date of Ruling: 09.06.2022

R U L I N G

T. N. MWENEGOHA, J.

The application was lodged under Order XXXVII Rule 1(a) of the Civil Procedure Code, Cap 33 R. E. 2019 and supported by the affidavit of Bernadette Josephine Msamanga. The applicant's intention is to obtain a restraining order against the respondents, their agents or legal representatives. She claims that, the respondents are about to alienate the suit property described as Plot No. 132, Block E, Tegeta in Kinondoni Municipal council, Dar Es Salaam, comprised of a certificate of Title no. 43922.

The application proceeded by way of written submissions. The same was heard ex-parte against the 3rd respondent. Advocate Michael C. Lugina

appeared for the applicant. Joyce Kabula Sabasaba, learned counsel appeared for the 1st and 2nd respondents.

Submitting in support of the application, Mr. Lugina relied on the case of **Atilio vs. Mbowe (1969) HCD 284**. He insisted that there is a serious question to be tried in the main suit, of which there is a probability that the plaintiff/applicant in the instant application will be entitled to the reliefs prayed.

Secondly, the interference of this court is necessary to protect the interest of the applicant from any kind of injury that may be irreparable before her legal rights are established. Above all, the applicant has overwhelming chances of succeeding in his suit.

In reply, Advocate Sabasaba for the 1st and 2nd respondents was of the view that, the requirements for injunction as stated in **Atilio vs. Mbowe (supra)**, the respondent's counsel insisted that, the applicant has failed to fulfil all the conditions stated in the said case. That, there is no proof of that respondents are in the process of alienating the suit property from the applicant. There is no need for the court to issue an injunction order under these circumstances.

I have considered the submissions of the parties through their respective counsels. Also, I have gone through the affidavit and counter affidavit as adopted by the parties in their submissions. Further, I perused the records available on particulars of the main suit, Land Case No.73 of 2022. The following are my observations as far as the merit or otherwise of the instant application is concerned: -

a) That, there are triable issues between the parties in respect of the suit property, vide Land Case No. 73 of 2022. It is the

duty of this court to give the parties the right to contest their dispute;

b) The actions complained of by the applicant over the suit land have been supported by the respondents in their counter affidavit and submissions from Advocate Sabasaba. The respondents have insisted that, the property in question was put under a valid mortgage. Although they have insisted that, there is no proof that the respondents are about to alienate the property in question;

c) If the court won't interfere as prayed by the applicant, there is a likelihood that the applicant will suffer irreparable loss if she succeeds in her pending matter.

For the foregoing reasons, I find the applicant to be within the rules given in **Atilio vs. Mbowe case (supra)**. The order of injunction is inevitable to protect the subject matter of the suit from being wasted. Hence the instant application has merits and it is hereby allowed with costs.

Ordered accordingly.




T. N. MWENEGOHA
JUDGE
09/06/2022