

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 124 OF 2022

SACOSSA LIMITED..... APPLICANT

VERSUS

TORODA KIDAWADINA & 16 OTHERS RESPONDENTS

RULING

Date of Last Order: 16.06.2022

Date of Ruling: 20.06.2022

A.Z.MGEYEKWA, J

The applicant has filed an application under the certificate of urgency through Chamber Summons accompanied by an affidavit. The application was brought under section 95 and Order XXXVII Rule 1 (a) and Rule 4 of the Civil Procedure Code Cap.33 [R.E 2019]. The application was supported by an affidavit deponed by Ms. Joyce Sylvester Gadi, the Director of the applicant.

The applicant is seeking an order of injunction to restrain the respondents from Agricultural grazing their livestock in Agriculture Farm with Certificate of Title No.29644 and CT No. 94562 at Pongwe, Kiona Village, cutting trees and establishing livestock stables for their livestock in Agricultural Farm Certificate of Title No.29644 and CT No. 94562 at Pongwe, Kiona Village within Bagamoyo (Now within Chalinze Town Council) cutting trees for building their residential houses, firewood or doing any other activities pending the determination of the main case Land Case which is *sub judice* in this court.

When this Application came for hearing on 5th May, 2022 there was no sufficient evidence of service on record. The hearing was adjourned to 20th May, 2022 with orders that fresh service be effected and clear evidence of service be filed before the Applicant can be heard on an application to proceed ex-parte. Fresh Hearing Notice was issued by the Registrar of this court on the 6th June, 2021, and served to the respondents as evidenced by the affidavit of service sworn by Mbaji Kikwa of service. Thus, I allowed the Application to proceed ex-parte. By the court order, the application was determined by way of written submission whereas the applicant lodged his written submission on 16th June, 2022.

In his written submission the learned counsel for the applicant was brief and focused. Mr. Luguwa urged this court to adopt the affidavit of Joyce Sylvester Gadi to form part of his submission. He submitted that AGV Investment Ltd applied for and was granted a Certificate of Occupancy over two farms with Certificate of Title No.29644 and Certificate of Title No. 94562 at Pongwe, Kiona within Bagamoyo District. He added that AGV Investment Ltd established the jungle into a modern farm whereas he established an office, a camp for employees, and an irrigation water network. He added that in order to revamp his establishment, the applicant borrowed money from banks such as the Bank of Africa (UBA), the Commercial Bank of Africa (CBA), and Tanzania Rural Development Bank later known as CRDB. The applicant bought the suit land from AG Vangilusasi and registered. He went on to submit that later the applicant registered the farm in the name of SACOSSA LTD.

It was his further submission that the respondents are pastoralists who wander around with a flock of thousands of cattle each and they are keeping bringing more herds of cattle in the suit land. He valiantly argued that the number of cattle brought into the area is too many and beyond the carrying capacity of the land unless stopped by restraint order they will turn into a desert.

The learned counsel for the applicant went on to submit that the pastoralists are cutting down trees that are planted in the suit land for establishing cattle stables and firewood. He lamented that the pastoralist are destroying the structures in the area and have set the whole land aflame to promote undergrowth this is done at the outset of the destruction of all bee hives and the intruders are harvesting honey from some few bee hives which have survived the fire.

He added that they have tried to drive them away but they became recalcitrant and pursued the applicant and his workman fiercely by threatening them with their traditional weaponry. They reported the matter to the police station but they were advised to take matters to the court. Mr. Luguwa continued to argue that the matter is going on the rate of destruction is alarming and if unchecked a case will end while there is no single tree, grass, bee hive, or structure standing. He stated that the principle governing courts in considering an application for injunction is laid down in the landmark case of **Atilio v Mbowe** (1969) HCD 284 that the applicant must prove to the satisfaction of the court the existence of three main pre conditions:-

1. There is a serious question to be tried on the facts alleged and the probability that the Plaintiff will be entitled to the reliefs prayed.

2. The applicant stands to suffer irreparable loss requiring court intervention before the applicant's legal right is established.
3. On the balance, there will be great hardship and mischief to be suffered by the Plaintiff from withholding the injunction than will be suffered by the Defendant from granting it.

Mr. Luguwa contended that there is a serious question to be tried on the facts alleged and that there is a probability that the plaintiff will be entitled to the reliefs prayed. He submitted that the Farm comprising of many activities such as horticulture, forestry, beekeeping, and irrigation. The respondents are mere pastoralists who have camped in the area as the jungle and they have no right to graze and keep their cattle on the applicant's land.

He added that the applicant stands to suffer irreparable loss requiring court intervention before the applicant's legal rights are established. He added that the respondents are adding more cattle thus they are destroying the forest by cutting both natural and planted trees and the said trees are a major investment of the applicants. He went on to argue that the respondents have gutted down by fire a good number of wooden bee hives and the water pipes network is uprooted and cut into pieces while the whole vegetation is under the threat of being extinguished. He added that the intruders are threatening the lives of the workman of the applicant. It was

his submission that the loss which is already occasioned is alarming and if an injunction is not issued the applicant stands to suffer irreparable loss. The learned counsel for the applicant submitted that on the balance, there will be great hardship and mischief to be suffered by the Plaintiff from withholding the injunction than will be suffered by the defendant from granting it. He added that if an order is not made the applicant will stand a big inconveniency as there will be no pasture, no bee hives, no trees, and no offices and accommodation, he added that the applicant bought the suit land by borrowing money from the banks thus she is required to pay cash to the said borrower.

On the strength of the above submission, he urged this court to grant the application.

Having heard the submissions of both learned counsels for the applicant and the respondents. In determining this matter, I will be guided by the principle governing a temporary injunction has been established in various decisions by the Court. **First**, *prima facie*, the court must be satisfied that there is bonafide dispute raised by the applicant and the Court must be satisfied that there is a bona fide dispute raised by the appellant, that there is a strong case for trial that needs investigation and a decision on merits

and on the facts before the Court, there is a probability of the applicant entitled to the relief claimed by him. **Second**, an injury the applicant must satisfy the Court that he will suffer irreparably. Injury if injunction, as prayed, is not granted and that there is another remedy open to him by which he can protect himself from the consequences of apprehended injury. **Third**, 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.

The Courts have tested the above principles in various cases such notable cases include; **Atilio v Mbowe** (1969) HCD 284. **Agency Cargo International v Eurafrikan Bank (T)** (HC) DSM, Civil Case No. 44 of 1998 (unreported), and **Giella v Cassama Brown & Co. Ltd** (1973) to mention just a few.

Relating the facts before me and the said principle I should take note that at this point I do not have the full evidence before me. The standard of proof required would be somehow below that which is generally required upon full trial. For example, the ongoing destruction of the suit land needs to be proved at the main suit.

On the first condition, whether there is a *prima facie* case. The applicant in his affidavit specifically on paragraph she is the owner of the suit land and

on paragraph 4, she has asserted that the respondents have shifted with their thousands livestock into the suit land and have camped in the suit land and are harvesting trees and destroying bee hives. The same proof that there is a dispute between the applicants and the respondents therefore I am satisfied that this first condition is met.

As to the second condition, the applicant must satisfy the Court that they will suffer irreparably injury if the injunction, as prayed, is not granted. The applicant has alleged that the respondents have established a camp on the suit land and they have destroyed natural and planted trees and water network. Hence the applicant will suffer irreparable loss in case the Court will not intervene and restrain the respondents from destroying the applicant's farmland. Allowing the respondents to proceed with their activities in the suit land definitely will cause irreparable loss to the applicant. Thus, in my view, the applicant has proved that she will stand to suffer irreparable loss. In my view, this condition is met.

With respect to the third condition, a balance of convenience that 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 fully subscribe to the learned counsel for the applicant's submission that, the applicant will

suffer greater hardship than the respondents because it is alleged that the applicant has bought the suit land after obtaining loans from various bank thus she is required to service the loan. It is my considered view if this application will be denied then it will be difficult for the applicant to service her loan and proceed to develop the suit land as planned. In my view, it will be lesser trouble for the respondent to execute the decree compared to the applicant. Therefore, the applicant has met the third condition.

Having weighed the different probabilities in this application, I am satisfied that failure to grant this application for a temporary injunction will directly affect the merit of the main case. Thus, I find it prudent to restrain the respondents from Agricultural grazing their livestock in Agriculture Farm with Certificate of Title No.29644 and CT No. 94562 at Pongwe, Kiona Village, cutting trees for building their residential houses, firewood, or doing any other activities.

Additionally, the respondents are restrained from cutting trees and establishing livestock stables for their livestock in Agricultural Farm Certificate of Title No.29644 and CT No. 94562 at Pongwe, Kiona Villagewithin Bagamoyo (Now within Chalinze Town Council) pending determination of the main case Land Case No. 61 of 2022 on its merits. Application is allowed. No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 20th June, 2022.



A.Z.
A.Z. MGEYEKWA

JUDGE

20.06.2022

Ruling delivered on 20th June, 2022 in the presence of Mr. Barnaba. Learned counsel for the applicant.



A.Z.
A.Z. MGEYEKWA

JUDGE

20.06.2022