

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

**MISC. LAND APPLICATION NO. 236 OF 2022**

**JULIUS JOSEPHAT MINJA** (As personal Legal Representative of Late  
**JOSEPH KHAMIS MINJA**, the Deceased) ..... **APPLICANT**

**VERSUS**

**THE HONOURABLE**

**ATTORNEY GENERAL** ..... **1<sup>ST</sup> RESPONDENT/  
NECESSARY PARTY**

**UBUNGO MUNICIPAL COUNCIL** ..... **2<sup>ND</sup> RESPONDENT**

*Date of Last Order: 27/6/2022*

*Date of Ruling: 13/7/2022*

**RULING**

**A. MSAFIRI, J**

The applicant has instituted this Application under Section 2(1) and 3) of the Judicature and Application of Laws Act, Cap. 358 R.E 2019, Section 68 (2) and 95 of the Civil Procedure Code, Cap. 33 R.E 2019.

He is seeking for order for temporary injunction against the 2<sup>nd</sup> respondent to restrain her and her agents, employees, assignees and any one acting under her instructions from demolishing, or evicting the applicant from the disputed plot described as B 549 located at Mabibo area, Ubungo

*Atts.*

Municipality, Dar es Salaam pending hearing and final determination of the intended suit to be filed in this Court upon maturity of 90 days statutory Notice.

The application was supported by the affidavit of the applicant, while the respondents' joint counter affidavit was filed through Ipyana Adam Mssika, a Principal Officer of the 2<sup>nd</sup> respondent. The hearing of the application was conducted orally and the applicant was represented by Mr. Alex Ballomi, learned advocate and the respondents were represented by Mr. Boaz Msoffe, learned State Attorney.

Before taking off of the hearing, Mr. Msoffe pointed out an error on the name of the 2<sup>nd</sup> respondent where it was filed as "Ubungo Municipality". By leave of the Court, the 2<sup>nd</sup> respondent's name was amended to read "Ubungo Municipal Council".

Mr. Ballomi kicked off the hearing of the application by praying to adopt the affidavit of the applicant as part of his submissions. He submitted briefly that the affidavit cumulatively describe the ingredients in line with the celebrated case of **Atilio vs. Mbowe** (1969) HCD 284. He prayed that the prayers stipulated in the chamber summons be granted.

Mr. Msoffe responded by submitting in opposition of the application. He prayed to adopt the joint counter affidavit of the respondents. He stated that, there is no any imminent danger or threat facing the applicant so as to

*Alle.*

warrant this Court's intervention. He said that, this is so because the applicant is a defaulter who has defaulted to vacate the suit premises ever since he was paid adequate compensation on 17/6/2008. That, the respondent is disputing as to why the applicant is still occupying the suit premises ever since he was paid the compensation. He contended that the applicant has failed to meet the three conditions stipulated in the case of **Atilio vs. Mbowe (supra)**. He prayed for the Court to dismiss the application with costs.

Rejoining, Mr. Ballomi reiterated his main submission. He added that, there is a serious threat whereas the 2<sup>nd</sup> respondent has issued 14 days' Notice to the applicant, intending to demolish the suit property. He contended that, the question of compensation being adequate or not is to be determined during the trial of the main suit and not at this stage. He said that this application has been filed at this time because it is filed by a personal representative of the original owner of suit premises.

It is trite law that the Court's discretionary powers to grant an injunction is predicated upon the applicant meeting the conditions set out in the celebrated case of **Atilio vs. Mbowe**. The conditions has been reiterated in numerous cases, and among them being the Court of Appeal case of **Abdi Ally Saleh vs. Asac Care Unit Limited & 2 others**, Civil Revision No. 3 of 2012 (unreported). *Atle*

In the said case, the Court of Appeal reiterated the said three conditions as thus;

- a) The plaintiff must show prima facie case with probability of success;
- b) The applicant must establish that he will suffer irreparable loss if injunction is not granted, such loss being incapable of being compensated by an award of damages; and
- c) The balance of convenience in favour of the party who will suffer the greater inconvenience in the event the injunction is or is not granted.

These conditions must be met cumulatively and meeting one or two of them cannot be sufficient for the court to grant the sought order. The major issue here is whether the applicant has succeeded to meet those three conditions.

As per the contents of his affidavit, the applicant is a personal legal representative of the late Josephat Khamisi Minja who is purported to be the registered owner of the suit premises which includes a permanent residential house with several rooms which are full rented, occupied by almost 20 family members. That the deceased was in occupation and using the suit property by usufructuary right for forty five (45) years without any formal notification for revocation of his right of occupancy over the same.

The applicant stated that, the said suit premises is subjected to be demolished by the order of the 2<sup>nd</sup> respondent on the claim that the area should be vacant for development of Mpakani Primary School. He averred that the 2<sup>nd</sup> respondent has erroneously allocated the said Mpakani Primary

*Alle.*

School without any regard to the existed Master Plan of the Town and Country planning in connection with the suit premises while the applicant was already in occupation of the same. That, the applicant has not objected to the 2<sup>nd</sup> respondent's plan to establish the said Primary School in the suit premises location but it should be subject to fair and adequate compensation payment.

The applicant said that, he resist the valuation made to the suit premises and resist the payment of compensation of Tshs. 26,900,000/- which was done in 2008 as it was not adequate and fair compensation. He added that, he intends to file a suit against the respondents after his demands and follow ups were all unsuccessful.

The respondents in their joint counter affidavit, have vehemently denied the applicant's claims and stated that the compensation was instantly paid on 17/6/2008 and it was adequate and as per the value of the suit property which was TZS 26,900,000/- by that year 2008.

It is my view that there is a serious question to be determined by this Court when the main suit is instituted. The question is on the compensation demands by the applicant and whether the same was adequate or not. At this juncture, my obligation is to see whether there is a bonafide contents between the parties and the court cannot prejudge the case of either party. Since there is a contest over the valuation of the suit premises and adequacy

*Alle*

or inadequacy of the compensation paid over the same, then it is my finding that the applicant has established the first condition.

On the second condition, as per the affidavit of the applicant, it is stated that the 2<sup>nd</sup> respondent has issued a 14 days' Notice of intention to demolish the suit premises. The same was issued to the applicant on 25/4/2022.

The applicant averred that, he is likely to suffer irreparable loss in the event the respondents are not restrained from demolishing the suit premises without proof of adequate compensation. That, as the applicant was under compensated, he is likely to suffer a substantial loss of his suit property if the Court will not intervene. The applicant has added that under harassing circumstances by the respondents, the applicant and his family members have suffered severe psychological tortures.

Again, I agree with the averments by the applicant that, if the demolition of the suit premises will take effect as intended by the 2<sup>nd</sup> respondent, the applicant will suffer irreparable loss. Since the issue of compensation which is contended by the applicant has not been resolved by the Court, then demolishing the suit premises will render the whole matter nugatory. It is my belief that in the circumstances of the facts of this matter, which has to be proved by evidence before the Court, it will be in the interest of justice to restrain the intended demolition pending the instruction of the main suit. I also find that the applicant has met the second condition. *Alle*

On the third condition, it is my view that the applicant will suffer more in the event application is not granted and the demolition took effect. The 2<sup>nd</sup> respondent being a Government instruction is not in a position to suffer more than the applicant who has told the Court through his affidavit that he has been in lawful occupation of the suit premises and using the same for 45 years. I find that the applicant has also successfully met the third condition.

In the upshot, I hereby allow the application and issue a declaratory order against the 2<sup>nd</sup> respondent to restrain her from demolishing or interfering in any manner on the suit premises as prayed in the chamber summons. The declaratory order is for six months from the date of the delivery of this ruling. I make no order as to costs.

Order accordingly.

Dated and signed at Dar es Salaam this 13<sup>th</sup> day of July, 2022.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

**A. MSAFIRI,  
JUDGE.**