

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

MISC. LAND CASE APPLICATION NO.196 OF 2022
(Originating from Land Case No. 91 of 2022)

AFRA UPENDO (MAGDALENA ALOIS HAULE).....1ST APPLICANT
MICHAEL HAULE.....2ND APPLICANT

VERSUS

**BEATA LUCAS HAULE (As a legal representative of the late
ALOIS LAWRENCE HAULE).....1ST RESPONDENT**

PRIMI ALOIS MUSHI.....2ND RESPONDENT

Date of Last Order: 01. 06.2022
Date of Ruling: 20.06.2022

R U L I N G

T. N. MWENEGOHA, J.

This is an application for a temporary injunction. It follows the respondents' actions or intention to demolish a suit property, located at Kijitonyama/Mwenge area, Plot No. 1021, Block 43 with Certificate of Title No. 128965. The applicants want this court to issue an order to restrain the respondents, their agents, workmen, assignees and any person acting on their behalf from demolishing the suit land, or disturb the tenants residing in the suit premises or to do any act that affects the peaceful habitation of the suit land, until the determination of the main suit, vide Land case No. 921 of 2022. The application was enabled by Order XXXVII Rule 1(a) and 4, and Section 68(c) and (e) of the Civil Procedure Code, Cap 33 R. E. 2019. The same was also supported by the

joint affidavit of Afra Upendo Haule (Magdalena Alois Haule) and Michael Alois Haule, the applicants here in above.

The application proceeded by way of written submissions, Advocate Ambroce Menance Nkwera appeared for the applicants while Eliphafra Ally, learned counsel appeared for the respondents.

Submitting in support of the application, Mr. Ambroce relied on the case of **Atilio vs. Mbowe (1969) HCD 284**, in which three conditions for consideration prior to granting of the temporary injunction order were given as follows: -

Firstly, there must exist a *prima facie* case to be tried by the court of law. It was submitted by the learned counsel for the applicants that, the applicants as legal heirs and beneficiaries of the estate of their late father, Alois Lawrence Haule, have filed before this court a land matter, registered as Land Case No. 91 of 2022. The same has triable issues as the respondents have entered into an illegal contract in respect of the suit property which affects the interests of the applicants as co-owners of the said property. Therefore, both parties need to be heard by this court in order to resolve the conflict so far present in respect of the property in question.

Secondly, if this order is not given, the applicants will suffer irreparable loss. The applicants have been collecting rent from tenants since 2014 after the death of their late father. That, so far, the rent for the year 2022 has already been collected by the applicants. Further, their lives and the lives of their families depend on such collection for their survival.

On the balance of inconveniences issue, it was maintained that the respondents have nothing to lose neither to suffer irreparable loss as compared to applicants' sufferings. That as stated here in above, not only

the applicants who are likely to suffer if the order is not issued, but also their defendants, as their lives are likely to be affected by the demolition of the suit land.

In reply, the respondents counsel cited the case of **Christopher P. Chale versus Commercial Bank of Africa, Misc. Civil Application No. 635 of 2017**, High Court of Tanzania at Dar es Salaam, where it emphasized on the conditions given in **Atilio vs. Mbowe (supra)** and further observed that;-

“It is the law that the conditions set out must all be met and so meeting of one or two conditions will not be sufficient for the purpose of the court exercising its discretion to grant an injunction.”

The respondents counsel insisted that, the applicants have no chance of succeeding in their pending matter, vide Land Case No. 91 of 2022 as they have no interest whatsoever in the suit property. Hence there are no triable issues being established by them in this case as against the respondents. As for the 2nd condition, it was submitted that, the court has nothing to intervene. That, large part of the property has already been demolished. The tenants have all vacated the premises. Therefore, there is no rent to collect.

Lastly, on the 3rd condition, it was submitted that, the suit property is not part of the applicants' inheritance. Therefore, on balance of probability, the respondents are the one to suffer than the applicants.

In his brief rejoinder, the counsel for the applicants reiterated his submissions in chief.

I have considered the submissions by parties through their respective counsels. Also, gone through the affidavit in support and the counter affidavit against the application at hand. The issue for determination is whether the application has merits. I will start my analysis of the issue at hand, by reproducing the enabling provisions used in this application, in particular Order XXXVII Rule 1(a) of the Civil Procedure Code, Cap 33 R. E. 2019 as follows; -

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."

Based on the reply submissions by the respondents' counsel, the suit property is in danger of being wasted or damaged by the respondents. The respondents' submissions have proved this fact as it was argued by the respondents' counsel that, this court has nothing to intervene as large part of the property has already been demolished. By this statement "*.....large part of the property has already been demolished*", it means that, the property in question still exists though only part of it. Hence this court is asked to prevent the total waste of the suit property by allowing the instant application. I am of the view that, the applicants have managed to prove that they deserve the decision of the court in their favour in this application. They showed the existence of triable issues between them and the respondents. The existence of the Land Case No. 196 of 2022 pending in court proves the existence of a *prima facie* case between the parties to this application.

Moreover, based on the fact that the applicants are beneficiaries of the estate of their late father, they deserve a protection of the court as far as the property in question is concerned until the dispute between them and the respondents has been resolved. Their beneficial interest will be affected irreparably if the order is not issued.

Further to that, on balance of probability, the applicants stand to suffer greater hardships than the respondents if the order is not given. Therefore, the rules given in **Atilio's' case** (supra) are all in favour of the applicants as explained already herein above. In my settled opinion, I find this application to have merits.

Eventually, the same is allowed accordingly. As the case involve family members, I give no order as to costs.

The respondents, their agents, workmen, assignees and any person acting on their behalf are restrained from demolishing the suit land located at Kijitonyama/Mwenge area, Plot No. 1021, Block 43 with Certificate of Tittle No. 128965, or disturb the tenants residing in the suit premises or to do any act that affects the peaceful habitation of the suit land, until the determination of the main suit, vide Land case No. 921 of 2022.

Ordered accordingly.




T. N. MWENEGOHA
JUDGE
20/06/2022