

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

**MISC. APPLICATION No. 80 OF 2022**

**DOREEN ALPHONCE MCHAWA.....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT  
COMMISSIONER FOR LANDS.....2<sup>ND</sup> RESPONDENT  
REGISTRAR OF TITLES.....3<sup>RD</sup> RESPONDENT  
MOHAMED ABILLAH MKANJE.....4<sup>TH</sup> RESPONDENT  
EQUITY BANK TANZANIA LIMITED.....5<sup>TH</sup> RESPONDENT  
LEONIA PAULO LENGWANA.....6<sup>TH</sup> RESPONDENT  
MBUZAX AUCTION MART &  
COMPANY LTD.....7<sup>TH</sup> RESPONDENT**

Date of last Order: 20.06.2022  
Date of Ruling: 25.07.2022

**RULING**

**V.L. MAKANI, J.**

The applicant DOREEN ALPHONCE MCHAWA has moved this court under Order XXXVII, Rule 2(1) and section 68 (e) and 95 of the Civil Procedure Code, CAP 33 R.E 2019 (the **CPC**) seeking among other orders, interim injunction to restrain the respondents, their servants, workmen, agents and or whosoever reports to act on the respondents' behalf from continuing with the auctioning process over the suit premises pending final hearing ad determination of the main suit.

The application is supported by the affidavit of the applicant. The 4<sup>th</sup> and 6<sup>th</sup> respondent did not file their reply to the submission and therefore the matter proceeded ex-parte against them.

Mr. Didace Celestine Kanyambo drew and filed submissions on behalf of the applicant. He prayed to adopt the contents of the applicant's affidavit. He gave a brief background of the matter. He said that the applicant is praying for the order restraining respondents from auctioning the applicant's house that she purchased from one Itaka Mwiseje (the **suit property**) on 4/6/2004 pending final determination of Land Case No.44 2022. He reminded the court that the principle for grant of temporary injunction was stated in the landmark case of **Atilio vs. Mbowe (1969) HCD 284**. That for the orders of temporary injunction to be granted, the following principles must be proved:

- 1. Proof that the applicant will suffer irreparable loss if the application is not granted.*
- 2. Balance of convenience.*
- 3. Proof of existence of prima facie case.*

Mr. Kanyambo did not submit in the order the principles were listed. He submitted that the applicant has already instituted Land Case

No.44 of 2022 which is pending before this court. That there is serious triable issue on the legality and appropriateness of the Certificate of Occupancy that was issued by the 2<sup>nd</sup> and 3<sup>rd</sup> respondent to the 4<sup>th</sup> respondent which was used to secure the loan advanced to the 6<sup>th</sup> respondent. He said this is a serious issue calling for determination by this court and therefore there is a great chance of success of Land Case No. 44 of 2022 pending in this court.

Mr. Kanyambo said the applicant will suffer much hardship if an order of temporary injunction is not granted. He said that the balance of convenience favours the applicant. That the suit property that is intended for disposition by the 7<sup>th</sup> respondent not only belongs to the applicant but also is used as dwelling house by the applicant and her two young issues which she is raising up without any assistance. That in case of disposition the suit property the applicant and her children will be homeless.

On the other hand, he said that the applicant will suffer hardship in case the injunction order is not granted. He said the respondent will not suffer any hardship if this application is to be granted because of the fact that the 5<sup>th</sup> respondent will still have an opportunity to sell

the suit house in case the applicant herein does not succeed in Land Case No.44 of 2022 and also have a chance to recover her money if the applicant succeeds in the said land case.

Lastly he said the respondents herein intend to dispose the suit house that belongs to the applicant and that in itself it amounts to irreparable loss. That in case of disposition the applicant and her children will remain homeless and eventually the children will become street children. The loss is irreparable. He relied on the case of **East Africa Warehousing (T) Ltd and Others vs African Banking Corporation Tanzania Limited, Misc. Commercial Application No.100 of 2020** (unreported). He thus prayed for the application to be granted.

Ms. Lilian Machage, State Attorney drew and filed submission in reply on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents. She prayed to adopt the contents of the counter affidavit. She said the affidavit by the applicant does not suggest that there is serious question of law to be tried by the court. She said paragraphs 1 to 14 of the affidavit narrates a story on how the applicant obtained the suit house and the same was used by the 4<sup>th</sup> respondent to obtain the Certificate of

Occupancy. She said that the 4<sup>th</sup> respondent is the lawful owner of the suit house and has the Certificate of Title. He said that the suit house can be compensated by monetary value thus the injury can be compensated. Ms. Machage stated further that the applicant has failed to demonstrate that she will irreparably suffer if the application is not granted.

On the balance of convenience, she said that it is completely not in favour of the applicant. That if the application is granted, the 5<sup>th</sup> respondent will suffer hardship than the applicant due to the fact that the 5<sup>th</sup> respondent is the holder of public funds which will affect huge number of people. She relied on the case of **Alhaji Muhidin A. Ndolanga and Another vs. The Registrar of Sports Association and Others, Misc. Civil Case No.54 of 2000 (HC-DSM)** (unreported) She prayed for the application to be dismissed with costs.

Mr. Robert Lawrence Mosi, drew and filed submission in reply on behalf of the 5<sup>th</sup> and 7<sup>th</sup> respondents. He said the applicant is not the owner of the mortgaged property subject of this application as the same is owned by the 4<sup>th</sup> respondent. That the applicant loses ground

to support this application. He said that the applicant had also failed to establish triable issues at the District Tribunal and therefore has no clean hand in this application.

On the issue of irreparable loss, he said that, there is no evidence that the suit house is used by the applicant for dwelling as alleged. That it remains a statement from the bar. That it is the 5<sup>th</sup> respondent who stands to suffer the loss by being restrained to recover the money which was entrusted to it by the public. That the borrower has already defaulted to repay the said money and if no appropriate measures are taken the outstanding amount will exceed the value of the security which the 5<sup>th</sup> respondent may fail to recover and hence irreparable. He relied on the case of **Mohamed Igbal Haji & Others vs Zedem Investment Limited, Misc. Land Application No.05 of 2020** (unreported)

On the balance of convenience, he said that, granting the application will cause more inconvenience to the 5<sup>th</sup> respondent as a bonafide lender who has been dragged in court after initiating the recovery process. That to remain in business the 5<sup>th</sup> respondent must have fund to lend which comes from the repaid borrows. That if the

application is granted the 5<sup>th</sup> respondent will become bankruptcy. He insisted that the trite law requires the courts not to grant injunction merely on convenience but on justice. He relied on the case of **Fatuma Mohamed Salum and Another vs Lugano Angetile Mwakyosa Jengela and 3 Others** Misc. Land Application No.90/2015 (**HC-Land Division**) (unreported). He prayed for this application to be dismissed with costs.

In rejoinder submissions, Mr. Kanyambo reiterated his main submission.

The main issue for consideration is whether the application at hand has merit. The three principles stated in the case of **Atilio vs. Mbowe** (supra) have to be cumulatively met before temporary injunction can be granted.

As for the principle which entails establishment of a prima facie case or serious question with a probability of success, the applicant has to show that the relief sought in the main suit is one which the court is capable of awarding. The applicant should at the very minimum show in the pleading that in absence of any rebuttal evidence he is entitled

to the said relief. In the case of **Agency Cargo International vs. Eurafrican Bank (T) Limited, Civil Case No. 44 of 1998 (HC-Dar es Salaam registry)** (unreported) it was stated:

*"It is not sufficient for the applicant to file a suit with claims, the applicant must go further and show that he has a fair question as to the existence of a legal right which he claims in the suit."*

Now, has the applicant in the present application referred the reliefs sought in the main suit in order to see whether the claims made have raised a serious question for determination by this court? In my considered view, the applicant has shown in paragraph 10 of her affidavit a serious question to be determined by this court. That she was not a party to the mortgage or was not made guarantor in the loan issued to the 6<sup>th</sup> respondent. That alone establishes a prima facie case or serious question to be determined by the court. In the result, this condition has been satisfied.

On the point of irreparable loss, the applicant submitted that her children and herself will become homeless when the 7<sup>th</sup> respondent exercises the sale. The question here is who will suffer irreparable



loss between the applicant and the respondents? Since it is an undisputed fact that the applicant was not part to the loan it is therefore the applicant who stands a chance to suffer irreparably. How? If at all her family is rendered homeless, they will be exposed to life disaster. In case life is lost to any member of the family the same can in no way be compensated in monetary terms.

Further, it is also the applicant who will mostly face inconvenience in case the suit house is disposed. The applicant and her children will be forced to find a place to stay, in such instance, they may find themselves in disarray. For example, some may be forced to stay with relatives and others to remain somewhere else with the applicant. In such a situation the applicant may not maintain his way of keeping or rather raising them in a desirable manner she wishes, and that to me is a great inconvenience.

In view of the above, I proceed to hold that this is a fit case for grant of a temporary injunction having found that all the conditions for the said grant have been met.

In the result, the application is hereby granted. For avoidance of doubt temporary injunction is granted pending the hearing and determination of Land Case No. 44 of 2022. The respondents, their servants, workmen, agents and whosoever reports to them are restrained from continuing with auctioning process of the suit premises situate in Zimbili, Kinyerezi area, Ilala District in Dar es Salaam. Costs shall follow event.

It is so ordered



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**25/07/2022**