

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

MISC. LAND APPLICATION NO. 205 OF 2022

APPLE COMPANY LIMITED.....APPLICANT

VERSUS

**DIRECTOR KIBAHA TOWN COUNCIL.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT**

Date of Last Order: 22.06.2022
Date of Judgment: 08.07.2022

RULING

V.L. MAKANI, J.

This application is for temporary injunction. It has been made under section 2(3) of Judicature and Application of Laws Act, CAP358 RE 2019 (JALA), section 95 of the Civil Procedure Code CAP 33 RE 2019 and any other enabling provisions if the law. The application is supported by the affidavit of Zakaria Atanza Chense, the Director of the applicant company.

The respondents jointly filed a counter-affidavit which was sworn by the Town Planner one Rehema C. Hizah to oppose the application.

According to the affidavit the 1st respondent had given the applicant a piece of land in 20/10/2015 to develop and manage so that it could be used as a Garden. The said piece of land was located at Mailimoja Kibaha opposite the bus stand and the applicant paid rent of TZS 150,000/= per month. The affidavit at paragraph 4 states that on 03/07/2021 there was a further agreement that the applicant would continue to manage the Garden for a further 26 years. However, on 11/04/2022 the applicant was surprised to receive a notice to vacate (**Annexure ACL-1** to the affidavit). The present application is to restrain the 1st respondent from evicting the applicant from continuing to develop and manage the said Garden (the **suit property**).

The application proceeded orally. And Mr. Christopher Singa, Advocate on behalf of the applicant adopted the Chamber Summons and the affidavit by Zakaria Chense. He submitted that the applicant has filed this application because the 1st respondent sent a notice for the applicant to vacate from the suit property whereas there is a lease and the applicant has developed the suit property including land reclamation. He said the applicant would suffer irreparable loss if an interim order were not issued. He said the application has been

brought under JALA because there is no pending suit and according to the Government Proceedings Act there has to be a notice of 90 days of intention to sue a government body. He thus pointed out that this court has jurisdiction to proceed to issue a temporary injunction where there is no pending suit. He relied on the case of **Abdallah M. Maliki & 545 Others vs. Attorney General & Another, Misc. Land Application NO. 119 of 2017, (HC-Land Division)** (unreported) at pages 4,5 and 9. He said the applicant will suffer irreparable loss and he intends to file an arguable case. He prayed for the court to grant the temporal injunctive order pending the filing of the main application or any other order the court may deem fit to grant.

Ms. Hossana Mgeni, State Attorney represented the respondents. She adopted the counter-affidavit to form part of her submissions. She said the guiding case in respect of grant of temporary injunction is **Atilio vs. Mbowe [1969] HCD 284**. She said there are three conditions that are set out in the said case for a temporary injunction to be granted. She said first, there must be a serious question to be tried on the facts alleged and a probability that the plaintiff would be entitled to the relief prayed. She said in this case the applicant has

failed to show serious issues to be tried by this court. She said in paragraph 3 of the affidavit the applicant admits that the land at issue belongs to the 1st respondent and the land was given to the applicant through a lease. She said according to the Annexure to the counter-affidavit, the 1st respondent gave the applicant land on certain conditions and one of them was to vacate when the 1st respondent is in need of the land and further no permanent structures should be erected. She said it was therefore correct for the 1st respondent to issue a notice of 21 days for the applicant to vacate.

As for the second condition Ms. Mgeni submitted that the court's interference is necessary to protect the applicant from injury which is irreparable before his legal right is established. She said in this present case, the applicant has failed to establish the extent of injury she would suffer or has suffered. She said in paragraph 7 of the affidavit the applicant is claiming for compensation of TZS 77,9000,000/= without any explanation or support to the allegations. And in paragraph 4 the applicant has claimed that she has an Agreement of 26 years to continue to develop and manage the suit property, but there is no evidence to support these allegations. She

concluded that the applicant has failed to prove the extent of injury that he has suffered.

The third condition according to Ms. Mgeni is that on balance there would be a greater hardship and mischief suffered by the applicant if the injunction is not granted. Ms. Mgeni said in this condition the 1st respondent will suffer more because the 1st respondent is the owner of the suit property. The 1st respondent has served the applicant with 21 days notice to vacate the suit with the intention that the suit land will be used by investors. And further that the process for calling investors has been commenced and the investors have incurred costs. Learned State Attorney said the applicant has given 90 days' notice for purposes of compensation, in that regard therefore the applicant will pray for damages in the intended suit. She concluded by praying for the application to be struck out with costs for lack of merit.

In rejoinder Mr. Singa said the annexures to the affidavit and counter-affidavit infer that there was an agreement between the applicant and the 1st respondent. He said the annexure to the counter-affidavit gave permission to the applicant to start development of the suit property but later terminated the development of the said property. He said

the 1st respondent indicated that permanent structures were not allowed but the annexure to the counter affidavit allowed the applicant to plant trees and games for children which are permanent. He said the applicant would suffer because he has been investing a number of things and he will suffer about TZS 77,9000,000/= being costs of the investment. He said if the investors come before the 1st respondent is yet to settle the amount claimed then the applicant will suffer irreparable loss as the incoming investor will destroy things invested by the applicant. he reiterated his prayers for temporary injunction before the hearing of the intended case to be filed.

As pointed out by Ms. Mgeni, and correctly in my view, it is now settled law in this jurisdiction that for an injunction to issue three principles apply:

- (i) There must be a serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed;
- (ii) That the Court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established; and

- (iii) That on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it.

These principles were first laid down in our jurisdiction by Georges, CJ (as he then was) in the now famous case of **Atilio vs. Mbowe** (supra). It should be noted that these principles must be applied conjunctively.

As for the first principle Mr. Singa said the applicant had a contract with the 1st respondent for managing the suit property for 26 years, however, the said contract was not annexed to exhibit that indeed there was such a contract. In his submissions Mr. Singa said the annexed letters infer that there was an agreement. Indeed, this may be the case, but the letters do not show and specify the terms of the contract and do not support the validity of the contract to be 26 years as alleged. On the contrary there is annexed to the counter-affidavit a letter from the 1st respondent permitting him to use the suit property but with an observation that he would be ready to vacate at any time he is required to do so (**Annexure KTC** to the counter-affidavit). In the present case the 1st respondent issued a notice of

21 days for the applicant to vacate the suit property (**Annexure ACL-1** to the affidavit). With the facts at hand, it is apparent that there is no serious triable issue which would warrant the applicant a relief because it is evident that the agreement/understanding between the applicant and the 1st respondent was to vacate anytime the 1st respondent so wishes. The first principle therefore fails.

As for the second principle the applicant said he would suffer irreparable loss from his investments which would be destroyed and that he would need compensation to the tune of TZS 77,900,000/=. However, as said by Ms. Mgeni there is no supportive proof of the injury and loss. It is apparent that the applicant's complaints are centred on fair and adequate compensation following the notice to pave way for investors. This is a purely monetary claim, and it can be dealt with even if there is no grant of an injunctive order. At any rate, compensation can be dealt with administratively or claimed as general damages. In the result, the intervention of the court is not necessary as there are alternative remedies open to the applicant. The applicant has therefore not satisfied the second principle in **Atilio Mbowe's Case**.

The third principle is the balance of convenience, that is, which among the two sides to the dispute, the applicant, or the respondents, is

likely to suffer greater harm if injunction is granted. I have given this a keen thought. According to Ms. Mgeni there are already calls for investors and they have incurred costs. Mr. Singa in my view, is not objecting to the project but rather wishes the applicant to be compensated fairly. This clearly means the respondents will suffer more if the injunction is to be granted. Indeed, if the applicant is successful in the intended suit, she will definitely be compensated, but the project of calling investors for development cannot be put to a halt just because the applicant is awaiting payment of compensation. This third principle has also not been satisfied by the applicant.

For the reasons I have endeavored to address, it is the finding of this court that the applicant has failed to satisfy the conditions for the grant of a temporary injunction set out in **Atilio vs. Mbowe** (supra). Consequently, the application is hereby dismissed with costs.

It is so ordered.




V.L. MAKANI
JUDGE
08/07/2022