

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

MISC. LAND APPLICATION NO. 291 OF 2022

(Originating from Land Case No. 129 Of 2022)

ASSEY ALEMYO MURO (suing under Power of Attorney of
GEOFFREY WILSON MURO).....**APPLICANT**

VERSUS

MY SPACE..... **RESPONDENT**

Date of Last Order: 11.07.2022
Date of Judgment: 12.07.2022

RULING

V.L. MAKANI, J

The application before the court is for temporary injunction pending the hearing and determination of the main suit namely Land Case NO. 129 of 2022. The application is made under Order XXXVII Rule 1(a) and sections 68 (e) and 95 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**) and is supported by the affidavit of Asseny Alemyo Muro who is acting on behalf of Geoffrey Wilson Muro under Power of Attorney.

The respondent was served by way of publication in Mwananchi Newspaper as their offices were closed and their directors were not available. In the premises, the application proceeded ex-parte.

The applicant was represented by Mr. Frederick Ododa who adopted the affidavit of the applicant. He said the applicant and respondent had entered into an agreement of sale where the applicant sold six plots of land namely Plots No. 175 to 180 on Block "S", Goba Kunguru, Ubungo (formerly Kinondoni) Dar es Salaam (the **suit plots**). He said one of the conditions in the agreement was for the respondent to refrain from developing the suit plots until the purchase price, that is, TZS 360,000,000/= is paid in full. He further said the respondent has paid TZS 124,819,600/= only but thereafter the respondent company has not been cooperative as their offices are closed, and the directors are nowhere to be found. He thus prayed for an interim injunction pending the hearing of the main suit because there are houses being built on the suit plots and the developments are at a very speedy rate.

The principles regarding temporary injunction in our jurisdiction are found in the case of **Atilio v. Mbowe (1969) HCD 284** where conditions were set for the court to exercise its statutory discretion

where the applicant is seeking for a temporary injunction. The conditions are:

- 1. Existence of serious question to be tried on the facts alleged with the probability of success in the suit.*
- 2. Demonstration that, the applicant stands to suffer irreparable loss requiring the courts intervention before the applicant's legal right is established.*
- 3. Proof of greater hardship and mischief suffered by the applicant if injunction is not granted than the respondent will suffer if the order is granted (Balance of convenience).*

It is also the requirement of the law that the conditions set out herein above must all be met, as meeting one or two of the conditions will not be sufficient for the purpose of the court to exercise its discretion to grant the injunction order (See: **Christopher P. Chale vs. Commercial Bank of Africa Misc. Civil application No. 635 of 2017** (unreported)).

As for the first condition it is apparent from the affidavit of the applicant that the main complaints are that the respondent has not paid the full purchase price of the suit plots and that despite the failure to make the payment, developments on the said plots are continuing and at a very speedy manner. The applicant is claiming further that the respondent is not available and there is no cooperation from them whatsoever. In such

circumstances therefore it is obvious that the applicant would suffer more as he has not been fully paid and if the suit plots get into the hands of third parties it would become even more difficult for him to claim the purchase price or evict them. In that respect, there is a prima facie case to be determined by the court and thus the first condition has been satisfied.

The second condition is who is going to suffer irreparable loss if the court does not intervene. As said above, the applicant is to suffer more if the injunctive order is not granted because the suit plots are being developed without the applicant being paid fully and the respondent has decided to make herself unavailable. Consequently, if the plots are taken over by third parties, the applicant will suffer irreparably. This second condition is also satisfied.

The last condition is balance of convenience, which is well illustrated in the case of **Salehe vs. Asac Care Unit Limited, Avoub Salehe Chamshama and Kenya Commercial Bank, Civil Revision No. 3 of 2012, DSM (CAT-DSM)** (unreported) at page 9 where it was stated:

"And on the question of balance of convenience, what it means is that, before granting or refusing the injunction,

the court may have to decide whether the plaintiff will suffer greater injury if the injunction is refused than the defendant will suffer if it is granted."

The above quote means which among the two sides to the dispute, the applicant, or the respondent, is likely to suffer greater harm if injunction is granted. I have given the facts in this case a keen thought and according to Mr. Ododa, the suit plots are already in development and the applicant has not been paid fully and further the respondent is nowhere to be seen. This clearly means the balance leans in favour of the applicant that he will suffer more if an injunction order is not granted.

In the result and for the reasons I have endeavoured to explain hereinabove, temporary injunction is granted to the applicant; and the respondent is hereby restrained from further developing the applicant's six plots of land under the Survey Plan No. 79272, Plots 175 to 180, Block "S" located at Goba Kunguru Area, Ubungo (formerly Kinondoni) in Dar es Salaam, pending the hearing and determination of Land Case No. 129 of 2022. Costs shall follow events. It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
12/07/2022