

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

MISC. LAND CASE APPLICATION NO. 158 OF 2022

JOHN THOMAS..... APPLICANT

VERSUS

TANZANIA RAILWAYS CORPORATION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

R U L I N G

Date of Last Order: 02.08.2022

Date of Ruling: 19.08.2022

T. N. MWENEGOHA, J.

The applicant sought for a Temporary Injunction order against the 1st and 2nd respondents and any person working under their instructions from doing any construction or demolition or otherwise changing the status of the applicant's landed properties located at Miembeni Street Vingunguti Ward Ilala District, Dar es Salaam region, Plot No. 351, Block B and Plot No. 2027, pending the expiry of 90 days' Statutory Notice of intention to sue the government. The order has been preferred under section 2(3) of the Judicature and Application of Laws Act, Cap 384, R. E. 2019, Sections 65 and 95, as well as Order XXXVII Rules 1 (a) and 2(1) of the Civil Procedure Code, Cap 33 R. E. 2019 and supported by the affidavit of the applicant.

The application was heard by way of written submissions. Advocate Amina Mohamed Mshana appeared for the applicant, while Mr. Stanley Kalokola, learned State Attorney represented the 1st and 2nd respondents.

Advocate Mshana in her submissions reminded the court of the nature of the application at hand, that is a Mareva Injunction, aiming to prevent injuries or harm to the applicant before the maturity of statutory notices to sue the respondents herein above. That, the notice to sue the respondents with regards to their actions over the properties in question has already been served to them since the 28th of March, 2022. She went on to argue that, according to the case of **Atilio vs. Mbowe, 1969, HCD 284**, the applicant has met all the conditions required for an order of injunction to be issued in his favour. That, there is a serious question of law between him and the respondents and the applicant stand a chance of succeeding over the intended case. That, the appellant stands to suffer irreparable loss if the order is not given and further, on balance of convenience, the applicant will suffer greater hardship than the respondents if the application is denied.

In reply, the learned state Attorney for the 1st and 2nd respondents maintained that, the applicant has not met the conditions given in the landmark Case of **Atilio vs. Mbowe**, (supra). That, the applicant has no triable issues against the respondents and she stand to suffer no inconveniences compared to the 1st and 2nd respondents if the application is granted. Lastly, on irreparable loss expected to occur on the applicant, it was their argument that in the case at hand, there is no way the applicant stands to suffer any loss that cannot be adequately compensated by monetary value. Above all, the time of the statutory notice issued to the respondents on the 28th March, 2022 has already

expired since the 1st of July, 2022. The applicant was supposed to file a fresh suit as the instant application has already been overtaken by events. Therefore, this application is devoid of merits and has to be dismissed.

In rejoinder, the applicant's counsel reiterated his submissions in chief.

Having gone through the submissions of both parties through their learned counsels, the question for determination is whether the application has merits or not.

As argued by the applicant's counsel, this application is in the nature of Mareva injunction, where the applicant sought to restrain the 1st and 2nd respondents and any person working under their instructions from doing any construction or demolition or otherwise changing the status of the applicant's landed properties located at Miembeni Street Vingunguti Ward Ilala District, Dar Es Salaam region, Plot No. 351, Block B and Plot No. 2027, pending the expiry of 90 days' Statutory Notice of intention to sue the respondents. These facts were not disputed by the learned State Attorney for the 1st and 2nd respondents. However, he was concerned that, the application at hand has already been overtaken by events, owing to the fact that, the notice issued to the applicant has already expired since the 1st of July, 2022.

As per the submissions of the applicant's counsel, the notice in question was served to the respondents on the 28th of March, 2022. Counting from that date, the same expired on the 28th June, 2022. Though if we count from the date the same was received by the respondents', that is on the 1st of April, still, the same has matured since the 1st of July, 2022 as claimed by the learned State for the respondents. It is obvious that the period of 90 days has matured. However, I note the fact that this

application was pending for determination before this Court hence barring the applicant to institute another application lest it be condemned as sub judice. As instance application has merit in the eyes of the law, it would be unfair to reject it simply because the applicant was delayed in Court.

In the upshot, the application is allowed. The applicant is advised to institute his case immediately. He should also file an application for injunction pending the main suit thereafter.

No order as to costs.


T. N. MWENEGOHA
JUDGE
19/08/2022