

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 303 OF 2022

ERIC TALEMWA LUGELEKA ..... APPLICANT

VERSUS

UNCICREDICT MICROFINANCE LIMITED ..... 1<sup>ST</sup> RESPONDENT

PAULO EDWARD SHAYO ..... 2<sup>ND</sup> RESPONDENT

LUSEKELO MBWELE ..... 3<sup>RD</sup> RESPONDENT

ECOBANK TANZANIA LIMITED ..... 4<sup>TH</sup> RESPONDENT

THE REGISTRAR OF TITLES ..... 5<sup>TH</sup> RESPONDENT

THE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT

STEAM GENERATION ON RECOVERIES LIMITED .... 7<sup>TH</sup> RESPONDENT

RULING

*Date of last Order: 17.08.2022*

*Date of Ruling: 18.08.2022*

**A.Z MGEYEKWA, J**

The applicant's application is brought under sections 68 (c), (e), and section 95 of Civil Procedure Code Cap.33 [R.E 2019] and section 2 (3) of

the Judicature and Application of Laws Act, Cap. 358 [R.E 2019]. The application was accompanied by an affidavit sworn by Eric Talemwa Lugeleka, the applicant. Opposing the application, all respondents filed counter affidavits.

The application is borne from the fact that the applicant is pleading this court to issue interim orders restraining the 4<sup>th</sup> and 7<sup>th</sup> respondents, their assignees, employees, agents, and associate from involving themselves in evicting, selling or conducting themselves in a manner that will facilitate, necessitate or enable the evicting and selling of the landed property located at Plot No. 2058 Block H situated at Mbezi in Dar es Salaam City in any manner whatsoever which is likely to amount to the disposition of the said property pending the expiry of the statutory notice as well as subsequent Applications or/ suit other order of the court.

When the application was called for hearing on 17<sup>th</sup> August, 2022 the applicant had the legal service of Mr. Marwa Magau, learned counsel, and the 4<sup>th</sup> and 7<sup>th</sup> respondents had the legal service of Ms. Ernestilla Bahati, learned counsel. The 5<sup>th</sup> and 6<sup>th</sup> respondents enjoyed the legal service of Ms. Gatti, learned State Attorney while the respondents enjoyed the service of Mr. Daniel Nyakiha, learned State Attorney.

In his submission, the learned counsel for the applicant urged this court to adopt the applicant's affidavit and form part of his submission. He stated the applicant will file a main suit after the expiration that the 90 days' in 9 days to come. Mr. Marwa submitted that the 4<sup>th</sup> and 7<sup>th</sup> respondents' intended to dispose the suit property thus, the applicant had to file the instant application seeking a temporary injunction to restrain the 4<sup>th</sup> and 7<sup>th</sup> respondents from disposing of the suit property pending the expiring of 90 days' Notice.

The learned counsel for the applicant submitted that it is trite law that for the court to issue an injunction order the applicant must meet the three conditions and the same yardstick guides the court to issue the said order which are prima facie case, irreparable loss, and balance of inconvenience on the applicant favour. To buttress his submission he cited the case of **Atilio v Mbowe** [1969] HCD 284.

Mr. Marwa stated that on the first condition whether there is a prima facie case, he stated that the applicant is claiming that he is the lawful owner of the suit property, and the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents are claiming that they purchased the property from the applicant while the applicant has denied having either sold or have knowledge of disposing the said property to the 3<sup>rd</sup> respondent. To support his submission he referred this court to annexure

V1 and paragraph 6 of the applicant's affidavit. It was his further submission that the applicant is contending that the signature appearing on the sale agreement resembles the one appearing on the transfer document. The learned counsel stated that the court will determine who is the lawful owner of the suit land. Thus, in his view, the first condition is established.

On the second principle, the learned counsel for the applicant submitted that the applicant in his affidavit has proved that he will suffer more loss. To buttress his contention he referred this court to paragraph 8 of the applicant's affidavit where the applicant is claiming that the suit land is a matrimonial home and if the court will not intervene then the applicant and his family will be homeless. He added that the applicant will be required to find a new house and the process cannot be atoned by way of damages.

As to the third condition, Mr. Marwa argued that on the balance of convenience, the applicant stands to suffer more if the injunction is refused because the applicant did not obtain any loan neither is a customer of the 4<sup>th</sup> respondent and he has never been indebted. It was his view that in totality the applicant has exhausted all three conditions as required by the law.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to grant the application based on the prayers stated under the chamber summons.

Responding, the learned counsel for the 4<sup>th</sup> and 7<sup>th</sup> respondents' confutation was strenuous. Ms. Ernestilla urged this court to adopt the 4<sup>th</sup> and 7<sup>th</sup> respondents' counter-affidavits to form part of her submission. Ms. Ernestilla contended that the applicant was required to move this court to grant the temporary injunction based on the three conditions. To bolster her submission she referred this court to the case of **Atilio** (supra).

On the first condition, whether there is a triable issue, Ms. Ernestilla contended that the suit land is registered by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. Fortifying her submission she referred this court to paragraph 9 of the 7<sup>th</sup> respondent's affidavit. She added that the Certificate of Title shows that the land was mortgaged to S. Micro Finance Funds and later was transferred to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. She contended that the applicant in his affidavit has not indicated any tribal issues. She insisted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are the lawful owners of the suit land. To support her submission she cited section 33 (1) of the Land Registration Act. She insisted that the applicant has not proved any illegality.

On the second condition, Ms. Ernestilla contended that the fact of the case is clear that the applicant is not the registered owner of the suit land. She went on to submit that the applicant has failed to show his interest in the suit land in question, thus, in her view there is no loss that will occasion to a person who is not a lawful owner. Supporting her submission, she cited the case of **Rose Nyatega v Yasin Mohamed Ngozi**, Misc. Application No. 3 of 2021. It was her submission that the applicant has failed to establish the second condition.

On the last condition, the learned counsel for the 4<sup>th</sup> and 7<sup>th</sup> respondents submitted that the 4<sup>th</sup> respondent is the *bonafide* purchaser and he took all necessary steps and conducted further diligence in transferring the suit land property. She went on to submit that for the 4<sup>th</sup> respondent to continue to run the financial business requires him to proceed with work. She added that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have assured the 4<sup>th</sup> respondent and he has satisfied himself that the property was owned by the 4<sup>th</sup> and 7<sup>th</sup> respondents. Thus, in her view, the third condition is not met.

On the strength of the above submission, Ms. Ernestilla beckoned upon this court to reject the applicant's application.

Ms. Gatti, learned State Attorney, associated herself with the submission made by Ms. Ernestilla. She urged this court to adopt the 7<sup>th</sup> respondent's counter-affidavit and form part of her submission. Ms. Gatti was brief and focused. She submitted that the applicant has failed to show triable issues worth consideration. She added that the applicant has filed documents that were executed by the Registrar of Title. She added that the applicant on his sound mind transferred the title to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. In her view, the applicant's claims of forgery are an afterthought. She added that the issue of forged signatures is a criminal matter and the applicant has not lodged a criminal case against the respondents.

In conclusion, Ms. Gatti urged this court to disregard the applicant's application for failure to prove the first condition and she conceded with the submission made by Ms. Ernestilla in regard to the 2<sup>nd</sup> and 3<sup>rd</sup> conditions.

In his rejoinder, the counsel for the applicant reiterated his submission in chief. He added that the respondents' counsels in their submissions have proved that there are triable issues since the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are claiming that they are lawful owners of the suit land. He stated that the

application is not an afterthought because the applicant came into his knowledge that there is a transfer after being surprised by a notice of sale.

Having considered the competing submissions, the task ahead of me is to respond to the issue: *whether the Applicants have satisfied the necessary conditions or prerequisites for the grant of a temporary injunction.*

In determining this matter, I will be guided by the principle governing a temporary injunction has been established in various decisions by the Court.

**First, prima facie**, the court must be satisfied that there is a bona fide dispute raised by the applicants and the Court must be satisfied that there is a bona fide dispute raised by the appellant, that there is a strong case for trial that needs investigation and a decision on merits and on the facts before the Court, there is a probability of the applicants entitled to the relief claimed by him. **Second**, an injury the applicants must satisfy the Court that he will suffer irreparably. Injury if injunction, as prayed, is not granted and that there is another remedy open to him by which he can protect himself from the consequences of apprehended injury. **Third**, a balance of convenience which is likely to be caused to the applicants by refusing the injunction will be higher than what is likely to be caused to the opposite party by granting it.



The Courts have tested the above principles in various cases such notable cases include; **Atilio v Mbowe** (1969) HCD 284. **Agency Cargo International v Eurafrican Bank (T)** (HC) DSM, Civil Case No. 44 of 1998 (unreported), and **Giella v Cassama Brown & Co. Ltd** (1973) to mention just a few. Relating the facts before me and the said principle I should take note that at this point I do not have the full evidence before me. The standard of proof required would be somehow below that which is generally required upon full trial. For example, whether the 1<sup>st</sup> applicant is a lawful owner of the suit landed property and whether the respondents are trespasser needs to be proved at the main suit.

On the aspect of triable issue, the applicant' counsel has alleged that there is a triable issue between the applicant and 2<sup>nd</sup> and 3<sup>rd</sup> respondents regarding ownership of the suit land. The applicant in paragraphs 1 and 3 of the applicant's affidavit stated that the applicant is the lawful owner of Plot No. 2058 at Block H situated at Mbezi Beach within Dar es Salaam City. He claimed that he has never sold the matrimonial home to the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents to clear their loan.

In the instant application, the applicant has submitted in length trying to convince this court that there is a triable issue. However, in my considered

view, I have noted that the applicant has not established a *prima facie* case since he has failed to establish a cause of action in the main case. There is no pending suit from which this application arises or is pegged, therefore, the applicant's request of temporary injunction against the respondents is unviable. This fact alone gives a leverage of convenience and tilts to favour of the respondents. The applicant's prayer to grant the application pending the expiration of 90 days' Notice cannot stand. Therefore, the first condition crumbles.

The law requires all three conditions must exist conjunctively for this court to exercise its jurisdiction and grant injunction, as long as the first condition was not meet, then, I hold that this is not a fit case for temporary injunction.

In the upshot, I find no merit in the applicants' application, the applicant has failed to meet the conditions. I find no merit in the instant application which is accordingly dismissed without costs.

Order accordingly.

DATED at Dar es Salaam this 18<sup>th</sup> August, 2022.

  
A.Z. MGEYEKWA  
JUDGE  
18.08.2022



Ruling delivered on 18<sup>th</sup> August, 2022 in the presence of Mr. Marwa Magau, learned counsel for the applicant, and Mr. Richard Mushi, learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondent.

  
A. Z. MGEYEKWA  
JUDGE  
18.08.2022

