

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

**MISC. LAND APPLICATION NO. 729 OF 2022**

**BAGAMOYO ABATTOIR AND MEAT  
PROCESSING COMPANY LTD ..... APPLICANT**

**VERSUS**

**ATHUMAN OMARY SAID ..... 1<sup>ST</sup> RESPONDENT**

**KIBAHA REAL ESTATE AGENCY LTD ..... 2<sup>ND</sup> RESPONDENT**

**APAK STEEL INDUSTRIES LTD ..... 3<sup>RD</sup> RESPONDENT**

**COMMISSIONER FOR LANDS ..... 4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

*Date of last Order: 09.03.2023*

*Date of Ruling: 15.03.2023*

**A.Z MGEYEKWA, J**

The applicant's application is brought under Order XXXVII, Rule 2 (1) and sections 68 (e) and 95 of Civil Procedure Code, Cap.33 [R.E 2019] and

section 2 (3) of the Judicature and Application of Laws Act, Cap. 358. The Application is premised on the grounds appearing on the Chamber Summons together with the supporting affidavit of Mr. Ali Salim Ahmed Bamahzir, the Director of the applicant sworn on 10<sup>th</sup> November, 2022 which the applicant is pleading this court to issue temporary injunctive orders exparte against the 4<sup>th</sup> and 5<sup>th</sup> respondents, its agents' workmen servant or any other person arising on its behalf be stopped from issuing a Certificate of Title on the disputed premises or registering ownership of Plot No. 1 and 2, Block X Misugusugu Area, Kibaha Town Council, Coast Region in a favour of the 3<sup>rd</sup> respondent pending lapse of the 90 days statutory of intention to sue the 4<sup>th</sup> and 5<sup>th</sup> respondent pending the application for injunction inter parties.

The Application is contested. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a joint counter affidavit of Athuman Omary Said, Principle Officer of the 2<sup>nd</sup> respondent affirmed on 23<sup>rd</sup> November, 2022, the 3<sup>rd</sup> respondent filed a counter affidavit deponed by Shishay Brhanemeskel Abrha, Director of the 3<sup>rd</sup> respondent sworn on 25<sup>th</sup> November, 2022. The 4<sup>th</sup> and 5<sup>th</sup> respondents have not filed any counter affidavits.

When the application was called for hearing on 9<sup>th</sup> March, 2023, the applicant had the legal service of Ms. Raya Nassoro, counsel, 1<sup>st</sup> and 2<sup>nd</sup> respondent

had the legal service of Mr. Henry Mwangala assisted by Mr. Halid, Advocates. The 3<sup>rd</sup> respondent enjoyed the legal service of Mr. Joseph Kipeche, counsel and the 4<sup>th</sup> and 5<sup>th</sup> respondents had the legal service of Thomas Mahushi, State Attorney.

Before I get to the substance of the Application, it is apposite that I should address the issue raised by the 3<sup>rd</sup> respondent's counsel in his reply to the Application, Mr. Joseph raised a point of law that the 90 days' Notice lapsed hence the instant Mareval application is overtaken by the event.

The learned counsel for the 3<sup>rd</sup> respondent urged this court to consider the provision of law cited in Chamber Summons and the prayer claimed in interparties. He came up forcefully and contended that there is no any pending suit before this Court, therefore, in his view the cited provisions are irrelevant. He went on to submit that the nature of the prayer sought is a temporary injunction pending the determination of the intended suit. He referred this Court to section 2 (3) of the Judicature and Application of Laws Act, Cap.358 [R.E 2019] and paragraph 18 of the applicant's affidavit. He stated that the applicant pleads that he has served 90 days to the Government on 10<sup>th</sup> of November, 2022. And he intends to file a suit after the lapse and 90 days expired on 10<sup>th</sup> of February, 2023.

Mr. Joseph continued to submit that to date no suit has been filed. He lamented that the applicant has not shown any seriousness in prosecuting the suit which was intended to be filed.

On his side, Mr. Thomas Mshushi **supported the submission made by Mr. Joseph. Stressing on the issue** of 90 days' notice, Mr. Thomas contended that this application was filed as a Mareva injunction but at this moment the 90 days lapsed so this application is overtaken by the event. Hence, there is no application before this Court. Ending, he urged this Court to strike out the application.

In her reply, Ms. Raya valiantly contended that the counsels have raised new issues without following proper procedure in raising a preliminary objection. She submitted that the instant Application was filed on 17<sup>th</sup> November, 2022 and there were certain anomalies at our first appearance, they prayed for another hearing date and the hearing was scheduled on 17<sup>th</sup> February, 2023 unfortunately, the court diary was full hence the Application was set for hearing today. She complained that they are not the ones to be blamed and they could not file any other Application since the same instant Application was pending before this Court hence barring them to institute another Application since it would have been condemned *sub judice*. To fortify her

submission, she referred this Court to the case of **John Thomas v Tanzania Railways Cooperation & AG**. Misc. Land Application NO. 158 of 2022.

Having considered the competing submissions, I have found it is important first to address the point of law raised by Mr. Joseph, counsel for the 3<sup>rd</sup> respondent since this court has a duty to take judicial notice of matters relevant to the case even when the matter is not raised in the memorandum of appeal. The Court of Appeal of Tanzania in the case of **Adelina Koku Anifa & another v Byarugaba Alex**, Civil Appeal No. 46 of 2019 (unreported) that:-

*"...the court cannot justifiably close its eyes on such glaring illegality because it is his duty to ensure proper application of the laws by the subordinate courts and/or tribunals."*

The facts of the instant application correspond well with the authority above and in case the point of law could not have been raised by the learned

counsel for the 3<sup>rd</sup> respondent then this court could have raised or the same could have been raised in a later stage.

It is worth noting that a Mareva application serves a purpose in a situation where the 90 days' Notice is not matured. The record shows that the instant application was filed on 17<sup>th</sup> November, 2021. Counting from the date when the 90 days' Notice was issued on 10<sup>th</sup> November, 2022 to date it shows that the 90 days matured on 17<sup>th</sup> February, 2023.

The applicant's counsel has not disputed the fact that the statutory notice of intention to sue the respondents ended before the hearing of this application. I am in accord with Mr. Joseph Kipeche, counsel for the 3<sup>rd</sup> respondent, and Mr. Thomas, State Attorney that once the 90 days' Notice expires, this Court cannot proceed to determine a Mareva application. In the situation at hand, it is clear that the application before this Court is overtaken by the event, hence, this court has no jurisdiction to determine the instant application.

For the sake of clarity, I have read the case of **John Thomas** (supra) cited by Ms. Rayan. In **John Thoma's** case, the issue for discussion was similar to the one at hand, a Mareva application was overtaken by the event. I am not bound by the findings of the cited case. For that reason, I have come up with a different view, that once a Mareva application is overtaken by the

event, then the Court's power to determine such kind of application ceases. The issue of *res sub judice* is applicable in the matter at hand because the instant application is of no use, the applicant was required to pray this Court to strike it out.

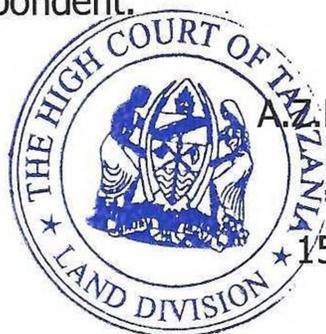
In the upshot, I sustain the point of law raised by Mr. Joseph Kipeche, counsel for the 3<sup>rd</sup> respondent and I proceed to strike out the instant application without costs.

Order accordingly.

DATED at Dar es Salaam this 15<sup>th</sup> January, 2023.

 A.Z. MGEYEKWA  
**JUDGE**  
15.03.2023

Ruling delivered on 15<sup>th</sup> January, 2023 in the presence of Mr. Ally Ismail, learned counsel for the applicant and Mr. Joseph Kipeche, learned counsel for the 3<sup>rd</sup> respondent.

 A.Z. MGEYEKWA  
**JUDGE**  
15.03.2023