

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

ATA DAR ES SALAAM

MISC. LAND APPLICATION NO. 74 OF 2023

ATHUMANI RAJABU MGAMA.....APPLICANT

VERSUS

CHALINZE DISTRICT COUNCIL.....1ST RESPONDENT

HONORABLE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

22nd & 24th March 2023

L.HEMED, J.

ATHUMANI RAJABU MGAMA the Applicant, lodged this application under section 2(3) of the Judicature and Application of Laws Act, [Cap.358 R.E 2019] and section 95 of the Civil Procedure Code [Cap.33 R.E 2019], seeking against the Respondents, **CHALINZE DISTRICT COUNCIL** and **HONOURABLE ATTORNEY GENERAL**, for the following orders:-

" a.That this Honorable Court be pleased to grant an order to restrain the First Respondent, his agents, or anyone acting on their behalf; from demolishing the buildings of the Applicant located at

Ubena Zomozi, within Chalinze district, in Coast Region, pending the expiry of ninety (90) days statutory notice to sue the Government, filing the main case and the determination thereof.

b. Any other reliefs(s) (sic) which this honorable court may deem fit and just to grant.”

The application is buoyed by the affidavit deponed by one **ATHUMANI RAJABU MGAMA**. The respondents confronted the application by filing two counter affidavits, the Counter affidavit deponed by one **HAPPYPHANIA ERICK LUENA**, the legal officer of the 1st Respondent and the supplementary counter affidavit deponed by one **DEBORA MCHARO**, a State Attorney from the office of the Solicitor General.

The application was heard orally. During hearing, one **Mbwana Chipaso** learned advocate duly represented the applicant, while Ms. **Debora Mcharo**, learned State Attorney appeared to represent both respondents.

Submitting in support of the application, Mr. Chipaso prayed the Court to issue an order for maintenance of the Status Quo on the ground that the 1st respondent is in the process to demolish the structures erected in the applicants piece of land. He asserted that since there is a triable issue which is to be determined in the main suit the application be granted. In his opinion, if the application will not be granted and the respondents proceed to demolish the structures in the suit landed property, the applicant will suffer irreparable loss. He cited the decision in **Kurindo Bunyiriko vs Tanzania Forest Services Agency & Attorney General**, Misc. Land Application No.28 of 2022, **MEK One Industries Ltd vs Rungwe District Council & the Attorney General**, Misc. Civil Application No.08 of 2020 to fortify his arguments. Mr. Chipaso concluded his submissions in chief by stating that if the injunctive order will not be granted, the determination of the main case will be a mere academic exercise.

Replying to the applicants' submissions, Ms. Debora contended that the applicant while praying for injunctive orders has claimed to own the suit land without proof thereof. She was also of the view that the

applicant's assertion of threats of the 1st respondents over the suit landed property have not been substantiated by any proof.

She submitted further that the applicant has not met the conditions laid down in the case of **Atilio vs Mbowe** (1969) HCD 284 to warrant the Court grant the application for injunctive orders. In the opinion of Ms. Debora, the applicant has not stated the existence of triable issue or *prima facie* case. She averred that it was necessary for the applicant to prove ownership of the suit landed property in establishing *prima facie* case. She cited the case of **Hotels and Lodges Tanzania Ltd vs Conservation Commissioner & 2 others**, Misc. Commercial Application No.136 of 2021 to cement her arguments.

It was also argued by the learned state attorney that the applicant has not demonstrated the irreparable loss he might suffer if the application is not granted. The decision in the case of **Christopher P Chale vs Commercial Bank of Africa**, Misc. Civil Application No.635 of 2017 was cited to cement her arguments on the need to show irreparable loss.

On the balance of convenience, Ms. Debora submitted that the respondents are the ones to suffer much if the application will be granted

as the suit land may be acquired and be used for public interests. She concluded her submissions by praying the Court to dismiss the application.

In his brief rejoinder, Mr. Chipaso stated that facts establishing *prima facie* case of ownership over the suit landed property has been stated in the applicant's affidavit in paragraph 2 by showing his interest over the suit land. He concluded by distinguishing all decisions cited by the learned state attorney, Ms. Debora.

From the submissions made by both counsel, I am at one with Ms. Debora, the State Attorney that in every application for injunction, the conditions under which the Court base in determining application for injunctive orders, are as they were set in **Atilio vs Mbowe (1969)** HCD n. 284. The known principles or conditions are:

"1. That, on the facts alleged, there must be a serious question to be tried by the Court and a probability that the plaintiff will be entitled to the reliefs prayed for (in the main suit).

2. That the temporary injunction sought is necessary in order to prevent some irreparable

injury befalling the plaintiff while the main case is still pending.

3. That on the balance of convenience great hardship and mischief is likely to be suffered by the plaintiff if temporary injunction is withheld than may be suffered by the defendant if the order is granted."

In the present matter, there is no pending suit instituted by the applicant in respect of the suit landed property against the respondents herein. The application at hand is one of **Mareva** lodged under section 2(3) of the Judicature and Application of Laws Act, as the alleged 90 days' statutory notice served to the respondents is yet to expire.

Let me start to address on the matter as to whether the applicant has demonstrated a prima facie case to warrant grant of the application. I have gone through the affidavit deposed by the applicant and in paragraph 2 he has stated to be the lawful owner of the suit land estimated to be 20 acres of the farm which he allegedly, acquired it before operation *vijiji*. From the submissions and the affidavits, one of the issues in contest in the

intended suit will be on the ownership of the suit landed property. What matters at this stage, is not that the applicant has the good case, rather there is a serious and genuine case to be determined by the Court. I have noted from the affidavit of the applicant, *vide* Annexure "MG1," that the matter was in 2017, inquired and decided by the Ward Tribunal for Ubena Zomozi in SHAURI No.10/2017 before its decision being quashed by the District Land and Housing Tribunal for Kibaha in Land Appeal No.44 of 2017, for having included *Serikali ya Kitongoji cha Visakazi* which had no *locus standi*. From the foregoing, I am satisfied that the applicant has established that there will be serious issues of facts and law for determination by the Court.

As to whether the applicant may suffer irreparable loss in the event the application is not granted, the applicant has stated in his affidavit in paragraph 9 that the 1st respondent is threatening to evict him from the suit premises. In paragraph 14, he has stated that he will suffer greater inconveniences, disturbance, substantial and irreparable losses in even the application is not granted. In **Kaare vs General Manager Mara Cooperation Union (1924) LTD** [1987] TLR 17 , it was stated thus in respect to irreparable loss:

" The court should consider whether there is an occasion to protect either of the parties from the species of injury known as " irreparable" before his right can be established...By irreparable injury it is not meant that there must be no physical possibility of repairing the injury but merely that the injury would be material e.g one that could not be adequately remedied by damages."

In the present case, the injury that the applicant has stated to suffer is eviction and loss of his property. It is my firm, view apart from loss of property, there are other invisible injuries associated with eviction, such as mental anguish and loss of dignity. The said injuries cannot be easily be compensated by financial means. I am firm to hold that the applicant has managed to demonstrate to suffer irreparable loss in event the application is not granted.


The last condition is the balance of convenience; greater hardship is likely to be suffered by the applicant if the application is not granted than may be suffered by the defendant if the same is granted. I have deeply


digested the submissions made by the counsel together with the contents in the affidavits, I am convinced that since the applicant has stated to have been living in the suit piece of land for more than 50 years, if evicted will suffer more than the respondents who are contemplating of acquiring the land for public interests.

In the final analysis, I am aware that in **Rornuald Andrea vs Mbeya City Council and 18 others**, Misc. Civil Application No.32 of 2021 it was held that the conditions set in the case of **Atilio vs Mbowe (supra)**, must co-exist for injunctive orders to be issued. In the present case, the applicant has managed to fulfill all the three conditions.

From the foregoing, I find the application worth of being granted. The respondents, their agents, or any one acting on their behalf are hereby restrained from evicting the applicant or demolishing the buildings in the suit landed property located at Ubena Zomozi, within Chalinze District, in Coast Region, pending the expiry of the 90 days statutory Notice. In the circumstance of this case, each party to bear its own costs. It is so ordered.

DATED at **DAR ES SALAAM** this 24th day of March 2023.


L.HEMED
JUDGE



COURT: Ruling delivered in the presence of **Mr.Mbwana Chipaso** learned advocate for the Applicant and in the absence of the respondents this 24th March 2023. Right of appeal explained.


L.HEMED
JUDGE
24/3/2023

