

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.86 OF 2023
(Arising from Land Case No.35 of 2023)

VERONICA REVOCATUS MBUYA (Also suing as legal

Representative of REVOCATUS THOMAS MBUYA APPLICANT

VERSUS

THE COMMISSIONER FOR LAND 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

KHALID KIBWANA SINGANO 3RD RESPONDENT

RULING

Date of last Order: 21.04.2023

Date of Ruling: 21.04.2023

A.Z. MGEYEKWA, J

The applicants' application is brought under the Certificate of Urgency. The applicant seeks to move this Court to grant a trio of interlocutory orders by

restraining the respondents from demolishing, evicting the applicant, and occupying and developing or disposing of the plot in dispute; Plot No. 280 Block B Tegeta at Dar es Salaam.

The application is made under Order XXXVII Rule 1 (a) and sections 68 (e) & 95 of the Civil Procedure Code, Cap. 33. [R.E 2019]. The application is supported by an affidavit sworn by Veronica Revocatus Mbuya, the applicant and it contains grounds on which the prayers sought are based. The contention by the applicant is to the effect that she is the lawful owner of the suit land but the 1st and 2nd respondent issued a Certificate of Title to the 3rd respondent while her application for obtaining a Certificate of Title is pending before the 1st respondent's office. The application has been valaintly opposed by the respondents whereas all respondents filed counter affidavits.

When the application was called for hearing on 21st April 2023, the applicant enlisted the legal service of Mr. Juma Nassoro, counsel and the 1st and 2nd respondents enjoyed the legal service of Ms. Debora Mcharo, learned State Attorney. The 3rd respondent did not appear in court. Therefore the hearing proceeded *ex parte* against him.

In his oral submission, the counsel for the applicant urged this Court to adopt the applicant's affidavit to form part of his submission. With regard to the

prayer for injunctive orders, the view held by Mr. Nassoro is that all conditions set out in *Atilio v Mbowe* (1969) HCD 284 had been fully complied with. Regarding the triable issue, the argument is that there is no dispute that the applicant is the lawful owner of the suit land and she is processing a Certificate of Title, Mr. Nassoro added that the applicant's application for obtaining a Certificate of Title is pending before the 1st respondent, surprisingly she realized that the 1st respondent issued a Certificate of Title to the 3rd respondent while she and her husband are the ones who developed the suit land and living in there.

Mr. Nassoro was certain that there was an arguable case and the issue of whether the applicant is the true owner or not and whether the grant of Title Deed by the 1st respondent to the 3rd respondent is lawful or not are matters of evidence and thus these are triable issues.

The learned counsel for the applicant continued to argue that the 3rd respondent in his counter affidavit specifically paragraph 4 stated that he bought the suit land in 1996 while the record from the 1st and 2nd respondents shows that the 3rd respondent wrote a letter to the 1st respondent saying that she occupied the suit land since 1990. To support his argumentation, Mr. Nassoro referred this Court to annexure KKK2 attached in the 3rd

respondent's counter affidavit. He valiantly argued that the 3rd respondent contradicted himself thus it is proof that there is a triable issue.

On irreparable loss to be suffered, Mr. Nassoro submitted that the applicant is in occupation of the suit land thus if the Temporary injunction is not issued, the applicant will suffer irreparable loss because there is a greater chance that the applicant will be evicted from the suit land and they will demolish or dispose of the suit premises. In his view, the applicant is favoured by the balance of inconvenience to have an injunctive order to pave the way for a hearing of a main suit.

On the strength of the above submission, Mr. Nassoro beckoned upon this Court to allow the application with costs.

In her rebuttal submission, Ms. Debora took a swipe at the applicants' counsel submission. While praying to adopt the contents of the first and second respondents' joint counter-affidavit, she held the view that the applicant's claims of ownership are not well featured in her affidavit and the fact that she is in occupation of the suit land does not suffice to prove that she is the owner of the suit land. Ms. Debora contended that saying that the applicant was the first one to apply for a Certificate of Title does not move

the Commissioner to grant her the Certificate of Title because she did not show any proof of ownership.

Ms. Debora submitted that the Court in the case of **Atilio v Mbowe (supra)** set conditions in whether or not to grant an injunctive order but the applicant has not met the conditions. Ms. Debora went on to submit that on the first condition; the applicant has not raised any triable issue that is of significance. She took the view that the applicant in her affidavit did not establish any *prima facie* case to move this Court to issue an injunctive order.

On the contention that the applicant will suffer irreparable loss; Ms. Deborah contended that there is no any irreparable loss. She submitted that in case it will appear that the Commissioner wrongly issued a Certificate of Title to another person, then the Commissioner is in a position to compensate and allocate the applicant a new plot.

On the balance of inconvenience, Ms. Debora's take is that the applicant will not suffer greater hardship because she has occupied the suit land, and there is no any evidence that she is evicted or that her property is demolished. Ms. Deborah contended that no danger might occur to the applicant. Ms. Deborah made a reference to the case of **Christopher Chale v Commercial Bank of Africa**, Misc, Civil Application No. 635 of 2017 in which it was held that in granting an injunctive order the applicant is required

to establish the existence of all three conditions. In conclusion, Ms. Deborah contended that since the principles in *Atilio v Mbowe* (supra) have not been cumulatively met, the application should be dismissed with costs.

Submitting in rejoinder, Mr. Nassoro reiterated his submission in chief. Stressing on the first condition, he argued that the applicant has established a prima facie case. To buttress his contention he referred this Court to paragraph 3 of the applicant's affidavit, the applicant proved that she is the owner of the suit land. He added that neither the 1st nor 2nd respondents contested that she is the lawful owner of the suit land. Mr, Nassoro further submitted that the applicant sufficiently proved that she will suffer loss in case this Court will not grant an injunctive order. He valiantly argued that the State Attorney's argument that the 1st respondent might allocate the applicant another plot is baseless because the applicant has developed the suit land the applicant is not interested being allocated a new plot.

Mr. Nassoro continued to argue that the applicant proved the last condition, balance on inconvenience; that she is in occupation of the suit land while the respondent is not in the suit land and has not developed it. Supporting his submission he referred this Court to the case of **Christopher P. Chale** (supra), the Court cited with approval the case of *Hotel Tilapia Ltd v*

Tanzania Revenue Authority, Commercial Case No. 2 of 2000 (unreported) wh in which the Court held that the object of a temporary injunction is to protect teh Plaintiff against injury.

In conclusion, the learned counsel for the applicant urged this Court to maintain the status quo pending the determination of the main suit by granting injunctive orders.

Having considered the competing submissions, the task ahead of me is to respond to the issue; of *whether the applicants have satisfied the necessary conditions or prerequisites for the grant of a temporary injunction*. I am going to test the three principles mentioned in **Atilio v Mbowe** [1969] HCD to find out whether the three principles in this Application were met or otherwise. In the case of **Barretto Haulliers 2 (T) Ltd v Joseph E. Mwanyika & Another**, Misc. Civil Application No. 253 of 2016, the Court listed three conditions to grant an injunction as follows:-

- (i) *There must be a serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the reliefs prayed;*
- (ii) *That the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established, and*

(iii) *On the balance, there will be greater hardship and mischief suffered by the Plaintiff from the withholding of the injunction that will be suffered by the defendant from the granting it.*

As to the first condition, whether there is a *prima facie* case, without wasting the time of the Court I am satisfied that this condition is established. Reading the applicant's affidavit specifically paragraphs 3 and 6 shows clearly that there is a question of ownership to be tried by this Court the applicant claims that she is the lawful owner of the suit land but the 1st respondent issued a Certificate of Title to the 3rd respondent. Ms. Deborah on her side, contended that the applicant has failed to establish a *prima facie* case. I am in accord with Mr. Nassoro that the applicant's claims of ownership and that the Commissioner for Land registered and issued a Title Deed to the 3rd respondent suffice to prove that there is an arguable case before this Court

As to the second condition of irreparable loss. The applicant in paragraph 5 of her affidavit contended that the 3rd respondent after obtaining the said Title deed started to threaten to forcefully evict the applicant and demolish her house. It is my considered view that in case the order sought is not granted then the applicant will suffer irreparable loss since they have developed the suit land forcing them out from the suit land will render them homeless.

Therefore the second condition is met.

Concerning the third condition, a balance of convenience that 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. It is my considered view that since the applicant has proved that if this Court will not grant an injunctive order, she will suffer an irreparable loss which means the loss incurred by the applicant will be higher compared to the respondents because the applicant has developed the suit land and she is residing in the suit land to date while to the contrary the third respondent is not in occupation of the suit land. This fact alone gives leverage of convenience in favour of the applicant. This means that the balance of convenience factor is parallel and tilts to the favour of all parties involved, if the prayers sought, are to be granted.

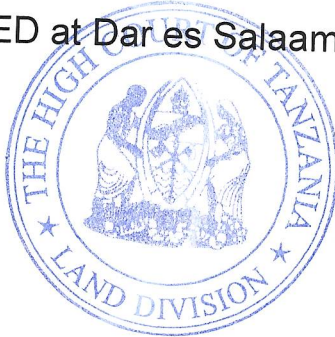
Given the above considerations, I am of a firm view that the issue regarding whether the applicant has satisfied the necessary conditions or prerequisites for the grant of a temporary injunction or not, has been responded to affirmatively.

Consequently, this Court proceeds to grant the applicant's prayers sought and the respondents are restrained from demolishing, evicting the applicant,

occupying, developing, or disposing of the suit plot pending the hearing of Land Case No. 35 of 2023. Application is allowed. No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 21st April 2023.




A.Z.MGEYEKWA
JUDGE
21.04.2023

Ruling delivered on 21st April 2023 in the presence of Mr. Juma Nassoro, counsel for the applicant, and Ms. Debora Mcharo, learned State Attorney for the 1st and 2nd respondents.




A.Z.MGEYEKWA
JUDGE
21.04.2023