

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

**MISC. LAND CASE APPLICATION NO.63 OF 2023**  
(Originating from Land Case No. 26 of 2023)

**JAMILA MAHMOOD DAGAN.....APPLICANT**

**VERSUS**

**THE COMMISSIONER FOR LANDS, MINISTRY OF LAND, HOUSING  
AND HUMAN SETTLEMENT  
DEVELOPMENT.....1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF TITLES, MINISTRY OF LAND,  
HOUSING AND HUMAN SETTLEMENT  
DEVELOPMENT.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**HALIMA STAUBMANN.....4<sup>TH</sup> RESPONDENT**

**STEPHEN KUFFAR.....5<sup>TH</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 10.03.2023*

*Date of Ruling: 31.03.2023*

**T. N. MWENEGOHA, J.**

This is an application for injunction, made under **Order XXXVII Rule 1(a) and (b) and Section 95 of the Civil Procedure Code, Cap 33 R. E. 2019.**

The Applicant has prayed among others, an interim order, restraining the respondents and any other person working under their instructions, from interfering, revoking, cancelling or removing the name of the Applicant from

the land register, and also from evicting the applicant from the suit property, pending the final determination of the main suit (Land Case No. 26 of 2023). The application was supported by the affidavit of the applicant, Jamila Mahmoud Dagan.

The same was heard by way of written submissions. Advocate Paschal Kamala appeared for the applicant. His arguments were guided by the case of **Atilio versus Mbowe, (1969) HCD 284**, where it was emphasized that for Injunction order to be given, the applicant must meet three conditions as follows.

Firstly, there must be a *prima facie* case between the applicant and the respondents. Mr. Kamala insisted that the applicant has a good arguable claim against the respondents as stated under paragraphs 2,3 and 5 of the Affidavit in support of the application. She is the owner of the suit premises, being registered in her name by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. She has a digital certificate from the 1<sup>st</sup> respondent proving her ownership over the suit land, hence she needs a legal protection over the same against all other persons including the respondents.

Secondly, if the application is not granted, the applicant stands to suffer irreparable loss. The Applicant argued that, she will be deprived her right of ownership of the property which she has been registered in her name. That, if the title is cancelled and registered in the name of the 5<sup>th</sup> respondent, the latter might transfer the same to the 3<sup>rd</sup> parties. This will lead to endless litigation, which is against the spirit of the law and objectives of establishing this court.

Lastly, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have no direct interest in this application, rather the 5<sup>th</sup> respondent. Either, the 5<sup>th</sup> Respondent has not objected to this application and that proves on balance of convenience and

advantage, the applicant will suffer greater hardship than the respondents if the application is denied.

In reply, Rose Kashamba, learned State Attorney for the respondents relied on the case of **T.A Kaare versus General Manager Mara Cooperative Union (1984) TLR 17**. The principles given in this case were borrowed in **Atilio versus Mbowe, (supra)**. She insisted that, the applicant has failed to prove that she is within the conditions stated in the **T.A Kaare vs. General Manager Mara Corporative Union (Supra) and Atilio versus Mbowe (supra)**. That, the applicant has no triable issues against the respondents. As per the official search, the suit land is owned by the 4<sup>th</sup> respondent who sold it to the applicant with ill motive. The applicant has not made any development into the suit land and she is not residing there. Therefore, her claims can be litigated even if the order of injunction is denied.

On the second ground of irreparable injury, it was argued that, the Applicant will not suffer any irreparable harm. That irreparable harm is that which cannot be compensated by monetary damages. In this case, since the applicant purchased the suit land from the 4<sup>th</sup> respondent, she can be compensated.

On the last ground, it was argued by the learned State Attorney that, on balance of convenient, there will be greater hardships and mischief suffered by the respondents specifically the 5<sup>th</sup> respondent in this matter if the Application is allowed, compared with the hardships to be experienced by the applicant if the same is denied.

Having gone through the submissions of the parties through their learned counsels, affidavit and counter affidavit for and against the Application, the question for determination is whether the Application has merits or not.

Both parties have relied their arguments on the case of **Atilio versus Mbowe (supra)** which was also quoted in **T.A Kaare vs. General Manager Mara Corporative Union (supra)**. In my opinion, the applicant has satisfied the Court to be within the rules governing the grant of an injunctive relief. She has managed to prove the existence of a triable case between her and the respondents. The same is in respect of the suit property as described in the plaint, vide Land Case No. 26 of 2023 which is the foundation of this case. That, the parties' dispute in the said case is on the ownership of the land in question.

Due to the existence of this suit, I see it just and equitable to protect the interests of the parties including the applicant in the case at hand, with regard to the ownership of the disputed land. It is on this basis, the 2<sup>nd</sup> ground comes into play, that the applicant may suffer irreparable loss if the Application is denied. Moreover, on balance of convenient, it is the applicant who stance to suffer greater hardships than the respondents, if the Application is not allowed.

For the reasons I have given above, I find merits in the Application. The same is allowed. The respondents and any other person working under their instructions, are restrained from interfering, revoking, cancelling or removing the name of the applicant from the land register, and also from evicting the applicant from the suit property, pending the final determination of the main suit Land Case No. 26 of 2023.

No order as to costs.

  
**T. N. MWENEGOHA**  
**JUDGE**

**31/03/2023**

