

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 32 OF 2023

(Arising from Land Case No. 17 of 2023)

ZAIDI BARAKA APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK PLC 1ST RESPONDENT

ADILI AUCTION MART LIMITED 2ND RESPONDENT

Date of Ruling 23/05/2023

Date of the last order 27/04/2023

RULING

A. MSAFIRI, J

This is an application for grant of temporary injunction restraining the respondents, their agents and or workmen from selling the applicant's house with CT No. 55040 located on Plot No. 2 Block E, situated at Sinza, Kinondoni District at Dar es Salaam, pending determination of the main suit.

The application was made by way of chamber summons supported with affidavit of ZAIDI BARAKA (the applicant), it was filed under Order XXXVII

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Rule 1(a)(b), Sections 3A, 3B, 95 of the Civil Procedure Code, Cap 33 R.E. 2019] under the certificate of urgency.

After the Court was satisfied with proof of service that the respondents were dully served through Uhuru Newspaper dated 04.04.2023, it ordered this application to be heard ex-parte in the absence of the 1st and 2nd respondents.

When the matter was called for hearing on 27.04.2023 the applicant appeared in person, he was unrepresented.

On his brief submission, the applicant addresses the Court that, he is the lawful owner of the suit property located at Plot No. 2 Block E Sinza Area, Kinondoni Municipality Dar es Salaam. That, the suit property is likely to be sold in auction on 27.01.2023. That, the officers from the 2nd respondent has advertised that the suit property is be sold by auction following the directives from the 1st respondent.

The applicant submitted further that the suit property belong to him and that he had never entered into loan agreement with the 1st respondent which has ordered the 2nd respondent to sell the suit property by auction.

He contend that, no notice had ever been communicated to the applicant from the 1st respondent showing that the applicant had defaulted the loan.

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Hence, he prayed that this Court be pleased to grant this application for temporary injunction pending the determination of the main suit.

Having gone through the submission of the applicant, in determining the same, I will be guided by the principles established in the case of **Atilio vs Mbowe** (1969) HCD 284 first, that there must be triable issue, 2nd, that the applicant must establish that he will suffer great loss, and 3rd the balance of convenience if injunction will be withheld.


In the instant case the applicant has managed to prove the 1st principle that, there is a triable issue of ownership between the applicant and 1st respondent that need to be determined which is first whether there is contractual relationship between the applicant and the 1st respondent and second is whether the applicant has mortgaged the suit property as a security to the loan by the 1st respondent and third is whether the applicant has entered into loan agreement with the 1st respondent.

The applicant has also managed to establish the 2nd principle that he is likely to suffer great loss because he did not enter into any agreement with the 1st respondent or took any loan from the 1st respondent. *Attilio*

On the part of the respondents as pointed earlier, this application was heard ex-parte against them. It was once established that the position of the law is that where a party fails to file counter affidavit, it means that party has no objection to the application. (see the case of **Asha Ramadhan Mwambala vs. Mselemu Ramadhan Mwambala**, Misc. Land Application No. 219 of 2018 (Unreported), HC Land Division.

For the above reasons, this application is granted. Costs to follow the event.

It is so ordered.


A. MSAFIRI
JUDGE
23/05/2023

