

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

**MISC. LAND CASE APPLICATION NO.111 OF 2023**  
(Originating from Land Case No.31 of 2023)

**IMTIAZ HUSSEIN BHANJI.....APPLICANT**

**VERSUS**

**DILSHAD HUSSEIN BHANJI.....1<sup>ST</sup> RESPONDENT**

**KARIM HUSSEIN BHANJI.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 18.05.2023*

*Date of Ruling: 31.05.2023*

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

This is an Application for Temporary Injunction, made under Order XXXVII Rule 1(a), 2(1) and 3, Order XLIII Rule 2, **Sections 68(e) and 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 persons working under their instructions, from evicting, selling, disposing, alienating the applicant in any manner whatsoever, from the suit property, Plot No. 14, Block 53, located at Kipata Area, Kariakoo, Ilala, within Dar Es Salaam Region, with Certificate of Tittle Number 186107, pending the hearing and determination of Land Case No. 31 of 2023. The application was supported by the affidavit of applicant, Imtiaz Hussein Bhanji.

The same was heard by way of written submissions. The applicant was represented by Advocate Tarzan Kenneth Mwaiteleke, while Advocate Amon Crescent Ndunguru appeared for the respondent.

However, as I was composing this Ruling, I came across an anomaly which in my opinion, touches the competence of this Application. The same is on the chamber summons. That, the enabling provisions used in the chamber summons, do not show exactly what the applicant needs, although both are for injunction. In his application, the applicant has used Order XXXVII Rule 1 (a), 2(1) and Order XLIII Rule 2. Also, section 68 (e) and 95 of the Civil Procedure Code, Cap 33 R. E. 2019. The parties were ordered to address the Court on this issue and they complied.

I appreciate and have considered the arguments of the counsels for the parties regarding the anomaly noted. For the purpose of saving time, I will not reproduce them in this Ruling, though I will take them on board in considering the met of the submissions.

As pointed before, in this Application, the applicant was not specific on the remedy he is seeking before this Court. I will reproduce the provisions used by the applicant in his chamber summons, starting with Order XXXVII Rule 1(a) as follows; -

1. *"Where in any suit it is proved by affidavit or otherwise—  
(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a decree".*

Under this provision, Injunction will be given to the applicant if the suit property is being wasted or damaged, alienated or disposed by the respondent. The Court will interfere to protect the suit property from being suit property until the suit is finalised.

On the Other hand, Order XXXVII Rule 2 (1) is concerned with contracts. It restrains a party from breaching or continuing to breach the agreement between him and the applicant. It reads as here under; -

*2.-(1) "In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right".*

Lastly, Section 68 (e). This one is a general provision, giving discretionary powers to the Court to grant any interlocutory order when necessary for the interests of justice. The same provides as follows;-

*68. "In order to prevent the ends of justice from being defeated the court may, subject to any rules in that behalf-  
(e) make such other interlocutory orders as may appear to the court to be just and convenient".*

The Applicant was supposed to be specific in his application as to what remedy exactly he needs this Court to grant. He ought to have chosen between the reliefs given under Order XXXVII Rule 1(a) or Rule 2(1) supra. His failure to specify as to what he wants, leaves this court in suspense, not knowing what is being prayed for between the two remedies available in the provisions cited above. This is a mistake. A fatal mistake in my settled view. I say so, because a Court cannot decide any matter when it is at a blind sport. Therefore, I find this Application to be incompetent.

Eventually, I proceed to strike it out with no order as to costs.

It is so ordered.

  
**T. N. MWENEGOHA**  
**JUDGE**  
**31/05/2023**

