

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

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO.778 OF 2022

(Arising from Land Case No. 318 of 2022)

SOGA VILLAGE COUNCIL.....1ST PLAINTIFF

KIPANGE VILLAGE COUNCIL.....2ND PLAINTIFF

VERSUS

MOHAMED ENTERPRISES TANZANIA LIMITED.....DEFENDANT

RULING

Date of Last Order: 30.05.2023

Date of Ruling: 28.06.2023

T.N. MWENEGOHA -J

This is an application for injunction, made under **Order XXXVII Rule 1(a) and 4, Order XLIII Rule 2, sections 68(c) and (e) and section 95 of the Civil Procedure Code, Cap 33 R.E 2019.** The applicants have prayed for order, restraining the respondent and any other person working under her instructions, from trespassing into the 5500.519 hectares of land, located at Soga Village, registered under the Certificate of Titles No. 5KBH, Ref. No. KDC/5KBH/1. Also, an order restraining the respondent from trespassing into the land, measuring 2912.656 hectares of land of Kipangege Village, with Certificate of Title No. 3KBH Ref. No. KDC/3KBH/1, pending the final determination of the main suit, Land Case

No.778 of 2023. The Application was supported by two affidavits deponed by Fadhil Hassan Liamba and Alphonse Mohamed Ally.

The same was heard by way of written submissions. Advocate Frank Mwalongo appeared for the applicants. 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, an existence of a prima facie case between the applicants and the respondent. Mr. Mwalongo insisted that, the applicants have an arguable claim against the respondent as stated under paragraphs 3,4,5 of the Affidavit in support of the Application. That, they are the owners of the suit lands, being registered in their names. That, the respondent has trespassed into the applicants' lands, hence they are seeking a declaration against the respondent that is a trespasser. That, such prayer is found in the main suit, hence constituting a prima facie case.

Secondly, he argued that, if the Application is not granted, the applicants stand to suffer irreparable loss. That, they will be deprived their right of ownership of the lands which have been registered in their names and the villagers inhabiting the lands in question will be evicted. Therefore, there will occur a loss of homes to a number of villagers who have been in such lands for over 40 years, long before the two applicants came into existence in 1970's. Therefore, this Court's interference is necessary, as stated in the case of **Abdi Ally Salehe versus Asac Care Unit Limited and 2 Others, Civil Revision No. 3 of 2012, Court of Appeal of Tanzania, at Dar es Salaam (unreported)**.

Thirdly, on balance of convenience and advantage, the Counsel for applicant argued that the applicants will suffer greater hardship than the respondent if the Application is denied. This is because, the lands at issue are used for residential purposes by the villagers. Their eviction will lead to great disturbances to their families. The respondent on the other hand will not suffer any harm even if the Application is allowed.

In reply, Advocate Regina Anthony Kiumba for the respondent was of the view that, the applicants do not qualify to be granted injunction as given in this case were in **Atilio versus Mbowe, (supra)**. That, in this case, each party holds ownership rights for a particular land as described in their Certificates of Titles. That, this court is duty bound to protect them both in the sense that, the applicants should as well be restrained from interfering with the respondent's land. The respondent's counsel cited the case of **Nacky Esther Nyange versus Machenyo Marijani Wilmore and Another, Civil Appeal no. 207 of 2019, Court of Appeal of Tanzania at Dar es salaam.**

In his brief rejoinder, the counsel for the applicants reiterated his submissions in chief and added that, since injunction is an equitable remedy, awarded at the discretion of the Court, the Court should accordingly exercise its powers in favor of the Applicants.

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

Both parties agree in their arguments that, for an Injunction order to be granted, the applicant(s), must fulfill the conditions highlighted in the case

of **Atilio versus Mbowe (supra)**. The question is whether the applicants have fulfilled the said conditions in the instant Application? The answer is in affirmative, they did base on the reasons given below.

One, they managed to prove to the satisfaction of this Court that, they have triable issues between them and the respondent. The same are in respect of the suit lands as described in their plaint, vide Land Case No. 318 of 2022, forming the foundation of this case. Their dispute is on the ownership of the lands in question, each claiming to own them. This fact is proved through the submissions of the respondent's counsel, who insisted that, the applicants also need to be restrained from interfering with the respondent's land, owing the ownership right being vested to her. Therefore, it is evident that, there is a prima facie case existing between the parties in this case.

Consequently, due to the existence of the said case, it just and equitable to protect the interests of the parties, in particular, the applicants in the case at hand, with regard to the ownership of the disputed lands as required in the 2nd condition. If this Court turns a blind eye, while aware of the circumstances surrounding the dispute between the parties, it is obvious that, the applicants may suffer irreparable loss if, the Application is denied. Some of the inhabitants in the two villages if not all, may lose their residence. Hence, on balance of convenient, this Court is satisfied that the applicants are the one who stand to suffer greater hardships than the respondent, if the Application is not allowed.

For the reasons I have given above, I find merits in the Application. The same is allowed. The respondent and any other person working under her instructions, is restrained from trespassing into the disputed lands,

pending the final determination of the main suit Land Case No.318 of 2022. No order as to costs.


T.N MWENEGOHA,
JUDGE,
28/06/2023

