

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 349 OF 2023

JUMA MARO MAKORE 1ST APPLICANT
NEEMA JACOB DAGARA 2ND APPLICANT
SOSPETER FABIAN NYARUBAMBA 3RD APPLICANT
ERNEST YOHANA MSIGITI 4TH APPLICANT
SALMA PETER MBOMBE 5TH APPLICANT
ALI SALUM ALI 6TH APPLICANT
HAMIS MSHAMU KAPINDIJEGA 7TH APPLICANT
RAMADHANI ATHUMANI KONDO 8TH APPLICANT
GODLISTEN LUCAS MUNISI 9TH APPLICANT
ABDALLAH SAD PAZI 10TH APPLICANT
EPHRAIM TADEI SANGA 11TH APPLICANT
MODEST ALOYCE TESHA 12TH APPLICANT
NICHOLAUS ABEL KINYAU 13TH APPLICANT
MARTIN FAUSTINE MARO 14TH APPLICANT

VERSUS

TANZANIA NATIONAL ROAD AGENCY 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT

10/07/2023 & 20/07/2023


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RULING

A. MSAFIRI, J

This is an Application filed by 14 applicants hereinabove on 12.06.2023 under the certificate of urgency. The application is for *Mareva Injunction* as a temporary injunction to restrain the 1st respondent, her workmen and or agents from demolishing, evicting or interfering with the applicants' peaceful enjoyment of suit premises pending expiration of the ninety (90) days statutory notice served to the respondents to file the main suit.

The Application was made under Section 2(3) of the Judicature and Application of Laws Act, Cap 358 [R.E. 2019] and Section 95 of the Civil Procedure Code, Cap 33 [R.E. 2019], (the CPC). The application was made by way of chamber summons supported by joint affidavit of the applicants.

On 10.07.2023 when the matter came for hearing, the disposal of the application took form of oral submissions, whereas, the applicants were represented by Mr. Charles Leonard, learned Advocate while the respondents enjoyed the service of Ms Luciana Kikala, learned State Attorney. 

Mr. Leonard adopted the joint affidavit of the applicants and further stated that, this Court be pleased to grant *Mareva* injunction pending expiry of 90 days' Notice to sue the Government, as it was established in the case of **Mareva Compania Maviera SA vs International Bag Carrier SA** [1988] All E.R, and in the case of **Decent Investment Ltd vs Tanzania Railway Company**, Misc. Civil Application No. 13 of 2023 at page 9.

He stated that the reason for the grant of the application is because the applicants have met all three requirements established in the case of **Atilio vs Mbowe** (1969) HCD where he stated that the three conditions are that;

- i. There must be prima facie*
- ii. That the applicants will suffer irreparable loss*
- iii. That the applicants are at the risk of getting big loss compared to the respondents.*

In proving the first condition, Mr Leonard submitted that, the applicants claims to be the owners of the suit property. In their joint affidavit, the applicants attached the sale agreement of each and every individual applicant to prove ownership of the suit property and that they have been occupying the same since 1980's while the respondents also

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claims that they own the suit property under the Road Act, No. 13 of 2007 and its Regulations of 2009.

He argued that, in such circumstances, it is clear that there is a prima facie case and the triable issue to be determined by the Court.

On the second condition on irreparable loss, Mr Leonard submitted that if the application will not be granted, the applicants will suffer irreparable loss including losing their residences which are erected on the suit property and also lose their income hence endangering their lives. That the irreparable loss is shown clearly in paragraphs 1, 5, and 9 of the applicants joint affidavit.

On the third condition, the counsel for the applicants argued that the applicants are at the risk of getting greater loss than the respondents. And if the respondents will demolish their residences, the applicants will have nowhere to go as they have been living there for about 40 years now. He added that the applicants will lose income by losing business they run on the suit property.

He prayed that the application be granted with costs. *ALLS*

In response, Ms. Kikala learned State Attorney adopted the counter affidavit deponed by Emil Joshua Mkaki, Acting Chief Executive authorised to depone on behalf of the respondents.

Ms Kikala started by admitting the principles established in the case of **Decent Investments Limited** (Supra) which was cited by the counsel for the applicants and which observed that this Court have powers to grant *Mareva* injunction, after fulfilment of the three conditions established in the case of **Atilio vs Mbowe** (supra).

She submitted however, that the applicants have failed to meet the conditions set in the case of **Atilio vs Mbowe** (supra). She contended that the applicants have failed to prove ownership over the suit property. She further stated that the disputed land was declared road reserve since 1930 through the law of Highway Ordinance of 1932, later the Road Act of 2007 and therefore, the applicants are trespassers to the disputed land.

She argued that, in order to establish a prima facie case, the parties have to establish high probability of ownership. That on the evidence in the pleadings, it is the respondents who have established prima facie case since the applicants are trespassers. To bolster her point, she cited the cases of **Trustees of Anglican Church Diocese of Western Tanganyika vs. Bulimani Village Council & 2 Others**, Misc. Civil *Atle*

Application No. 12 of 2022, and **Daniel Zakayo Sule & 2362 Others vs. Attorney General** & 4 others, Land Application No.71 of 2022, HC Tanga, at page 16 & 17.

On the second condition, Ms. Kikala contended that the applicants will not suffer any loss if the application is denied because they are trespassers to the suit land, as the suit land has been declared a road reserve since 1930.

On the last condition on balance of convenience, she contended that the applicants as per paragraph 3 of the joint affidavit, seek for compensation which is monetary, hence that if the decision of the main case will be decided in their favour, the only remedy to the applicants is compensation on monetary form. He cited the case of **Yahaya Hamis Mbonye vs. Tanzania Road Agency & 2 Others**, Misc. Application No.08 of 2022 and **Maliki Omari Hoza vs. Tanzania Road Agency & Another**, Application No. 8 of 2023 at page 10.

She further stated that it is the respondents who will suffer much as there is a project of expanding the road and the presence of the applicants in the disputed area interferes with the project and respondents are likely to endure greater loss than the applicants. Therefore, she prayed that this application be dismissed with costs. *Adle*

In rejoinder, Mr. Leonard for the applicants reiterated what was submitted in chief and further added that the applicants are not claiming for compensation at this juncture but for temporary injunction. And that that at this stage, the Court cannot determine and decide on who is the lawful owner of suit property.

Having gone through the rival submissions of the parties, I agree with both learned Advocates that this Court is vested with power to grant *Mareva* injunction pending the expiration of 90 days' notice to sue the government upon fulfilment of the three conditions established in the case of **Atilio vs. Mbowe** (supra).

In the instant application, it is clear from the facts and pleadings that both applicants and respondents claim lawful ownership of the suit property. The respondents claim to have owned the suit land from 1930 through the law of Highway Ordinance of 1932, where the suit property was declared a road reserve and later through the Road Act of 2007. The applicants also claims to own the suit property and they have attached their sale agreement which shows the applicants to have purchased the suit property from 1980 as per paragraph 2 of the applicant's joint affidavit and attachment SLC CHANIKA-I. *Atilio*

In that circumstances, I find that there is a prima facie case for this Court to determine between the applicants and the respondents.

I feel I should point out that indeed, as correctly argued by Mr Leonard for the applicants, the Court at this stage cannot prejudge the case of either party. The Court is to see only prima facie case, which is one such that it should appear on record that there is a bona fide contest between the parties and serious questions to be tried (see the case of **Abdi Ally Salehe vs. Asac Care Unit Limited & 2 others**, Civil Revision No. 3 of 2012, CAT at DSM (unreported)).


On the second condition, the applicants have alleged to reside in the suit property with their families and to conduct their businesses in the premises. This was not disputed by the respondents. I find that in the circumstances, the applicants are likely to suffer irreparable loss as a consequence of the respondents' action if they will demolish the applicants' houses of residence and that the threatened damage is serious.

In the last condition I find that the applicants will suffer great loss compared to the respondents, if the applicant's residence will be demolished before the rights of any party to the suit has been determined.

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For the foregoing reasons, I find the applicants to have met all the conditions for grant of *Mareva* injunction, and in that regard, the application is granted.

Costs to follow the event.


A. MSAFIRI
JUDGE
20/07/2023

