

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

**MISC. LAND CASE APPLICATION NO. 348 OF 2023**  
(Originating from Land Case No.67 of 2023)

**BAGAMOYO BATTOIR AND  
PROCESSING COMPANY LIMITED.....APPLICANT**

**VERSUS**

**ATHUMAN OMARY SAID.....1<sup>ST</sup> RESPONDENT**  
**KIBAHA REAL ESTATE AGENCY LIMITED.....2<sup>ND</sup> RESPONDENT**  
**APAK STEEL INDUSTRIES LIMITED.....3<sup>RD</sup> RESPONDENT**  
**COMMISSIONER FOR LANDS.....4<sup>TH</sup> RESPONDENT**  
**THE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 27.07.2023*  
*Date of Ruling: 27.07.2023*

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

This is an Application for Injunction Temporary, made under **Order XXXVII Rule 1(a), 2(1), Section 68 and Section 95 of the Civil Procedure Code, Cap 33 R. E. 2019**. The applicant has prayed among others, an interim order, restraining the 3<sup>rd</sup> and 4<sup>th</sup> respondents and any other person working under their instructions, from trespassing and continuing with the illegal construction of Plot Number 1 and 2, Block X, Misugusugu Area, Kibaha Town Council, Coast Region, pending the hearing of the main suit, Land Case No. 67 of 2023. The Application was

supported by the affidavit of Ali Salim Ahmed Bamahriz, the applicant's Principal Officer. The same proceeded by way of written submissions.

Advocate Raya Nassir appeared for the applicant, Advocate Mwangala appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondent, Advocate Lydia Susuma for the 3<sup>rd</sup> respondent and Thomas Mashushi, learned State Attorney, appeared for the 4<sup>th</sup> and 5<sup>th</sup> respondents.

In her submissions in support of the Application, Advocate Raya relied on the case of **Atilio versus Mbowe (1969) HCD No. 284**, where three conditions for granting Temporary Injunction were given. That, the applicant must establish a prima facie case. She insisted that, as per paragraphs 9-11 of the affidavit, the applicant has shown the existence of triable issues, in need of this Court's determination. The dispute is on the suit land, which belongs to the applicant. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have disposed the same to the 3<sup>rd</sup> respondent without any color of right. That, the transaction is tainted with forgery and fraud, hence constituting triable issues worth of the Court's attention. She referred the case of **Abdi Ally Salehe versus ASAC Care Unit Limited, Civil Revision No. 03 of 2012, Court of Appeal of Tanzania, at Dar Es Salaam, (unreported)**.

Secondly, if the Application is denied, the applicant will suffer irreparable loss. That, if this Court will not issue an Injunction order, the applicant will lose her lands permanently without any justifiable cause. That, the 3<sup>rd</sup> respondent will proceed with her constructions on that land, and the applicant's business will be seriously injured. Hence, she needs that protection as stated in **American Cyanamid Co. versus Ethicon Ltd (1975) 1 All ER 504**.

That, on balance of convenience, the applicant will suffer more than the respondents. That, if the construction by the 3<sup>rd</sup> respondent is allowed to proceed, the quality of the land in dispute will be reduced.

In reply, Advocate Mangwala for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, insisted that, the applicant has failed to meet the test for her Application to be allowed as given in **Atilio versus Mbowe supra**. That, there is no where in the affidavit in support of the Application where the applicant shows that she was given the right to own the suit land. Therefore, she does not have any triable issues against the 1<sup>st</sup> and 2<sup>nd</sup> respondents, as the same must be vividly seen in the pleadings. Further, there is nowhere the applicant has provided proof that she will suffer loss that cannot be compensated by monetary value. As she is not the owner of the land and is not paying any tax to the government, unlike the respondents who have complied fully with all requirements for developing the suit land. Hence on balance of convenience, the respondents stand to suffer greater harm than the applicant, if this Application is allowed.

These arguments were supported by the arguments of Advocate Lydia Susuma for the 3<sup>rd</sup> respondent and that of the learned State Attorney for the 4<sup>th</sup> and 5<sup>th</sup> respondents, Thomas Mahushi.

In rejoinder, the counsel for the applicant reitarted her submissions in chief and insisted for the Court to allow the Application for being meritious.

I have gone through the submissions of all parties in this Application, as presented by their learned counsels. Also, I visited the affidavit in support of the Application and the counter affidavits from the respondents. The issues for determination are whether the Application has merits of not.

Both, the applicant and the respondents, have called this Court to be guided by the case of **Atilio versus Mbowe**, (supra), in before deciding to allow or deny the present Application. Their call has been welcomed with open arms. In my opinion, the applicant has met all three conditions. She has managed to show the existence of prima facie case. The parties are competing over the suit land and there is a case already for that, vide Land Case No. 67 of 2027. That, there is a likelihood of the suit land being wasted or damaged or alienated from the applicant if this Application is denied. Therefore, to prevent any irreparable loss to the applicant, the Court need to interfere and prevent more harm on his part.

For the reasons I have given above, I find the application to have merits and allow it accordingly. The respondents are from entering on or doing any activity on Plot Number 1 and 2, Block X, Misugusugu Area, Kibaha Town Council, Coast Region, pending the hearing of the main suit, Land Case No. 67 of 2023.

No order as to costs.



  
**T. N. MWENEGOHA**

**JUDGE**

**27/07/2023**