

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 259 OF 2023

DENNIS SIARA KESSY.....1ST APPLICANT
THADEUS ALOYCE AMANI2ND APPLICANT
HURUMA SHOMARI LUPANGE3RD APPLICANT
HILDA FRANCIS NYAMBO (*An Administratrix of the Estate of deceased Francis Nyambo*).....4TH APPLICANT
RACHEL NYANGOMA RUTTA5TH APPLICANT
HANS MASAMU.....6TH APPLICANT
HALIMA IBRAHIM ISSA7TH APPLICANT
AMRICK MAMUYA(*the Administrator of the Estate of deceased Asseri Zakayo Mamuya*).....8TH APPLICANT
MARY EPHATA KIMAMBO9TH APPLICANT
MOSHI SELEMANI IGIRO.....10TH APPLICANT
SALEH ALLY SALEH11TH APPLICANT
SEBASTIN NGIMBWA.....12TH APPLICANT
LIGHTNESS WILLIAM MUNGAYA.....13TH APPLICANT
MWINYI SAIDI MWINYI14TH APPLICANT
RICHARD ROMAN KOBELU (*the administrator of the Estate of deceased Roman Saidi*).....15TH APPLICANT
EVANCE ROMAN KAVISHE (the administrator of the Estate of deceased Roman John Kavishe16TH APPLICANT
MONICA ROMAN KAVISHE (the administrator of the Estate of deceased Roman John Kavishe17TH APPLICANT
SHEKHA HILAL AMOUR.....18TH APPLICANT
SULEIMAN KOMBO GHARIB (the Administrator of the Estate of deceased Khalid Kombo Gharib.....19TH APPLICANT
ABDULLAH OTHMAN SHEHE20TH APPLICANT

Atts -

ALLY RASHID DAMIYE21ST APPLICANT
KHAMISI SAIDI KHAMISI22ND APPLICANT
MOHAMED SALEH SULEIMAN23RD APPLICANT
SEIF ABDALLAH KIMBWEMBWE.....24TH APPLICANT
**SKOLA STEPHEN SANGA (the Administrator of the Estate of deceased
Alatwinusa Msigwa).....25TH APPLICANT**
MWANAHAMISI RAMADHANI MTORO.....26TH APPLICANT
LEO ALOIS NINGA27TH APPLICANT
MAIMUNA MOHAMED SULEIMAN.....28TH APPLICANT
**LILIAN TIMOTHY KWEKA(the Administrator of the Estate of deceased
Timoth Kundaseni Kweka).....29th APPLICANT**
**ZIADA OMARY KIMBWEMBWE(the Administratrix of the Estate of deceased
Omari Mohamedi Kimbwembwe).....30th APPLICANT**
LUPINA ELIMELECK LUSANJA.....31ST APPLICANT

VERSUS

DAR RAPID TRANSIT AGENCY (DART).....1ST RESPONDENT
**PERMANENT SECRETARY, MINISTRY OF PRESIDENT’S OFFICE REGIONAL
ADMINISTRATION AND LOCAL GOVERNMENT.....2ND RESPONDENT**
HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

31/07/2023 & 11/08/2023

RULING

A. MSAFIRI, J

This is an application for temporary injunction under certificate of urgency, whereas this Court is moved to grant temporary injunction to prevent the respondent from wasting, damaging, alienating, disposing, removing, or selling the suit land located at Ubungo Kisiwani (Ubungo

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Maziwa area) Ubungo Ward, Ubungo District, Dar es Salaam Region pending the hearing and determination of the Land Case No. 120 of 2023 pending in this Court.

The Application is made under Section 68(e) and Order XXXVII Rule 1 and 2 of the Civil Procedure Code, [Cap 33 R.E. 2019] (the CPC), and other enabling provisions of the law.

On 25/07/2023 when the matter came for hearing, all the applicants were represented by Mr. Chrisant Michael Nyelo and Mr. Jimmy Mabula both learned Advocates, while, the respondents enjoyed the legal services of Mr Mathew Fuko, Ms Caroline Lyimo and Ms Chevawe Mbelesero, all learned State Attorneys.

Mr. Nyelo learned Advocate was the first to kick the ball rolling, whereas, he adopted the filed joint affidavit of the applicants and submitted that, the applicants are seeking for temporary injunction because the respondents have entered the suit land which is the applicants' lawful property and conducted the valuation without observing the procedures laid out in the laws governing valuation. He further stated that the applicants were not involved on the rate used to pay some of the applicants as per each and every square meter. *Adde.*

Mr. Nyelo paraded the three conditions which are mandatory for being granted temporary injunction as set in the case of **Atilio vs Mbowe** (1969) HCD and the case of **Christopher P. Chale vs Commercial Bank of Africa** Misc. Civil Application No. 136 of 2017.

On the first condition, Mr. Nyelo was of the view that the applicants have a prima facie case against the respondents that is Land Case No. 120 of 2023, whereas this Court has to determine whether the respondents have complied with the procedures governing valuation.

On the second condition, Mr. Nyelo was of the view that if this application is denied, the applicants will suffer irreparable loss because if their properties will be demolished, it won't be possible for the valuation to be conducted any more, taking into consideration that the applicants have not been adequately compensated, hence that equitable rate of compensation has to be done considering the current market price and unexhausted improvements.

On the third condition, Mr Nyelo argued that, the applicants are still lawful owners of the suit land, and that applicants are in danger of losing their ownership, as the respondents intend to deprive their ownership without compensation. He added that the applicants are likely to suffer

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more if this Honourable Court does not issue an order for temporary injunction.

In response, Mr. Fuko learned State Attorney started by joining hands with Mr. Nyelo for the applicants on the three conditions set for grant of temporary injunction as set in the cited case of **Attilio vs. Mbowe. (Supra)**.

However, he was of the view that the applicants have not managed to prove the first condition on whether there is a prima facie case because the disputed land has already been acquired by the first respondent and the applicants have been compensated as per Annexure D1 which shows that some of the applicants like the 30th applicant were compensated and sworn the affidavit to confirm that. He argued that since all the applicants were compensated, they have no arguable case as per the first condition.

On the second condition of irreparable loss, Mr. Fuko learned State Attorney contended that irreparable loss must be the one which cannot be atoned in monetary form. Mr Fuko stated that the applicants' claim is monetary in compensation hence that cannot be said to be irreparable loss.

He maintained that the applicants were involved in valuation by signing the Minutes as per annexure D2 and Form No. 69 as annexure *Attilio*.

BLS2 in the affidavit. Mr. Fuko contended that even if the applicants were not involved still applicants can pursue for their rights by way of compensation.

He further stated that the applicants cannot suffer irreparable loss regarding to the nature of their claim against respondents. To bolster the above point he cited the case of **Abdi Ally Salehe vs Asac Care Unit Ltd**, Civil Revision No. 3 of 2012, CAT at page 8.

On the third condition, Mr Fuko stated that the project on the disputed land is fully funded by the World Bank with time frame, whereas the World Bank has already deposited TZS 8 (Eight) Billion and that the project is for the public interest. That, if the Application is granted, the respondents will suffer than the applicants because the Government will have to refund the World Bank on unperformed project.

Finally, Mr. Fuko concluded by stating that the applicants have not advanced any of the three conditions set in the case of **Atilio vs Mbowe (Supra)** for grant of temporary injunction, hence that the application be dismissed with costs.

In rejoinder, Mr. Nyelo reiterated what was submitted in chief and further added that the respondents have not proved as to whether all the applicants were compensated because only few affidavits have been

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attached. Also, the reason advanced by Mr Fuko that the project is funded by the World Bank is a new fact, and was not pleaded hence the same should be disregarded by the Court.

The counsel for the applicants added that the applicants are also part of the said public hence that full and fair compensation is required, and that the valuation report is required.

Mr. Mabula further added that Regulation 12 of the Valuation and Valuers Regulations of 2018 shows the procedures for valuation and compensation and that all the procedures indicated therein were not adhered to by the respondents.

Having gone through the rival submissions of the parties, it is stated in the pleadings particularly the plaint in Land Case No. 120 of 2023, which is the main case that the applicants are occupying the disputed land. This is also admitted by the respondents under paragraph 5 of their joint counter affidavit deponed by Solomon Sambuka Mihayo, Principal Legal officer of the 1st respondent.

Despite the fact that the respondents alleged to have acquired the disputed land upon compensating all of the applicants, however, the respondents did not bother to prove whether all of the applicants were

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compensated, save for the six applicants whom their affidavits have been attached herein.

In that regard, these claims by both sides of the dispute reveal that there is a prima facie case between the applicants and the respondents not only on whether the compensation was fair but whether the applicants were compensated.

On the second condition, since there is no proof of compensation to all the applicants, if this application is denied, it will result in the demolition of the suit properties, whereas, it will not be possible to conduct the valuation of some of the properties which it was not clear as to whether the valuation was conducted.

For that reason, I find it very possible that the applicants will suffer much more than the respondents. I don't agree with Mr. Fuko, learned State Attorney for the respondents that the applicant can still pursue their rights by way of compensation even after the denial of this application. To me I find it not possible for the applicants to pursue their rights where there is no proof of valuation to the applicants.

On the balance of convenience, the respondents had submitted on the loss to be incurred by the Government if the project will not be performed on time, however, the same has been challenged by the

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applicants in rejoinder, that the same was not pleaded hence should be disregarded.

In this, I am highly persuaded by the principle discussed in the case of **YARA Tanzania Limited vs. Charles Aloyce Msemwa and 2 others; Commercial case No. 5 of 2015 High Court Commercial Division DSM** (unreported), where it was held that;

*'it is a cardinal principle of law of civil procedure founded upon prudence that **parties are bound by their pleadings**. That is, it is settled law that parties are bound by their pleadings and that no party is allowed to present a case contrary to its pleadings'.*

In that regard, the new facts not pleaded in the counter affidavit are disregarded. It is my finding that the applicants will suffer much compared to the respondents if this Application is denied.

On that basis I grant the Application. No order as to costs.

It is so ordered.



A. MSAFIRI

JUDGE

11/08/2023

