

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

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 410 OF 2023

(Arising from Land Case No. 207/2023)

ANDREW ANTONY SINDABAHA.....APPLICANT

VERSUS

AKIBA COMMERCIAL BANK.....1ST RESPONDENT

MAJEMBE AUCTION MART.....2ND RESPONDENT

RULING

12th July, 2023 & 15th August, 2023

L. HEMED, J.

In this Application, **Andrew Antony Sindabaha**, the applicant is seeking for an order of this court to restrain the respondents from evicting him from the suit premises situated on Plot No. 1, Block G, Mapinga in Bagamoyo District, pending hearing of Land Case No. 207/2023 on merits. The application is supported by the affidavit deposed by Andrew Sindabaha.

The respondents disputed the application through the counter affidavit deposed by one **David Wasonga**, Litigation Manager of the 1st Respondent. On 12th July, 2023 when the matter was called for necessary

orders, it was directed the matter to be argued by way of written submissions. According to the orders of the court, the applicant ought to have filed his submissions in chief by 26th July, 2023; Reply was to be lodged on or before 2nd August, 2023; and Rejoinder if any was to be presented for filing on or before 9th August 2023.

It should be noted that at all the material time, **Ms. Regina Helman**, learned advocate has been representing the applicant, while the respondents enjoyed the service of **Mr. David Wasonga** and **Ms. Janeth Njombe**, learned advocate. All the aforesaid learned counsel were present on 12th July 2023 when the orders to dispose of the application by way or written submissions were made. However, at the time when the file was brought to me for purposes of composing ruling, only the submission in chief was present in the case file. This ruling is thus based on the submission in chief, the affidavit of the applicant and the counter affidavit.

In determining the application at hand, I will be guided by the conditions to be considered when deciding whether or not to grant the injunctive orders. The said conditions were propounded in the case of

Atilio vs Mbowe [1969] HCD 284, in which his Lordship Georges, C.J stated thus:

- "i. There is a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed.*
- ii. The Applicant stands to suffer irreparable loss requiring the courts intervention before the Applicant's legal right is established.*
- iii. That on the balance, there will be greater hardship and mischief suffered by the defendants from granting of it."*

The question for determination is, therefore, whether the applicant has sufficiently established the existence of the three conditions afore stated to warrant this court exercise its discretion powers to grant the application or otherwise.

To start with the first conditions, I have examined the affidavit deponed to support the application and the submissions thereof and realized that the applicant is challenging the sale of the suit property and the intended eviction. From the contents of the affidavit, it is obvious that there is a *prima facie* case being stated by the applicant. The question whether a good case has been established is not the matter for

determination at this stage. It will be the function of the trial. In short, the 1st condition has been met.

As to the 2nd condition on irreparable loss the applicant has asserted that if the application will not be granted the applicant is likely to suffer economic and mental anguish. I have considered the nature of the dispute and found that, if the application is refused, the applicant is the one who is likely to suffer irreparable loss for he is going to lose the property. In the circumstance of this suit, I find the 2nd condition to fit squarely to the instant case.


With regard to the balance of convenience between the parties, I am of the firm view that the applicant is the one who is likely to suffer more than the respondents if the application is not granted. The applicant will lose the property, while on the other hand, if the application is granted, the respondent will still have the right of action over the mortgage deed.

I have also critically considered the convenience of handling the dispute which is pending in court if the application is refused. It is factual that if the application is not granted the respondent may proceed to dispose of the suit property by sale to third parties. Once the title moves

to 3rd parties then it will inconvenience the determination of the instant suit.

From the foregoing, I find it necessary to grant the application. It is thus granted without costs to the effect that *STATUS QUO* should be maintained on the suit property pending determination of the Land Case No. 207 of 2023. It is so ordered.

DATED at DAR ES SALAAM this 15th August, 2023.




**L. HEMED
JUDGE**