

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

MISC. LAND APPLICATION NO. 461 OF 2023

(Arising from Misc. Land Application No. 370 of 2023)

HENRY BARAKA MUKUNDI APPLICANT

VERSUS

NMB BANK PLC 1ST RESPONDENT

STEAM GENERATION LTD 2ND RESPONDENT

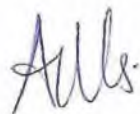
RULING

Date of last Order: 21/9/2023

Date of Ruling: 19/10/2023

A. MSAFIRI, J.

On 27/7/2023, the applicant herein filed this Application under certificate of urgency seeking for temporary injunction order to restrain the respondents from selling in any way a land property described as Plot No. 2607, Block C, Goba, Ubungo Municipality (herein suit premises), pending determination of Misc. Land Application No. 370 of 2023. The Application was brought under Order XXXVII Rule 1(a) and (2) and Rule 2(1), Section 68(c) and (e), and Section 95, all of the Civil Procedure Code, Cap 33 R.E. 2019 (here in the CPC).



The Application was supported by an affidavit sworn by the applicant and contested by the 1st respondent who filed her counter affidavit affirmed by Sharifa Karanda, a Principal Officer of the 1st respondent.

The Application was heard in absence of the 2nd respondent after the Court has received proof that she was duly served and received the Application but for the reasons known to herself, the 2nd respondent chose not to appear in Court.

The hearing was by way of written submissions which the Court ordered on 30/8/2023. The parties complied with the schedule order and by 21/09/2023, the submissions were complete and the Ruling was set to be delivered on 19/10/2023.

The applicant's submissions were drawn and filed by Mr. Omari Kilwanda, learned advocate, while the reply submissions by the 1st respondent was drawn and filed by Ms. Eunice Msami, learned advocate.

Having gone through the submissions, this Court was set to determine the competency of this Application before this Court.

This Application was brought as earlier pointed, under Order XXXVII Rule 1(a) and (2), Rule (1) of the CPC and other enabling provisions.

Alls.

Under the said provisions, the sought temporary injunction cannot be granted without any pending suit before this Court.

I say so for the reasons that this Application initially originated from the Land Case No. 183 of 2021 between the parties whereby the applicant was the plaintiff and the respondents were the defendants respectively.

Along with Land Case No. 183 of 2021, the plaintiff/applicant filed Application No. 607 of 2021 seeking for the temporary injunction pending the hearing and determination of the said main case. However, the said Application No. 607 of 2021 was struck out on 07/12/2021 for reason of fatal defectiveness.

Furthermore, the Land Case No. 183 of 2021 was dismissed with costs for want of prosecution on 06/6/2023 after the plaintiff's failure to appear on various dates set for hearing.

After the dismissal, the applicant/plaintiff sought to set aside the dismissal order and filed Application No. 370 of 2023. Along with the Application, the applicant also filed this instant Application for temporary injunction seeking for interim injunction pending the hearing of the Application No. 370 of 2023.

Alle


Fortunately, or unfortunately, which depends on which side one is in this dispute, both Applications i.e. Application No. 370 of 2023 seeking to set aside the dismissal order, and this instant Application No. 461 of 2023, seeking temporary injunction pending the hearing of Application No. 370 of 2023 were heard almost simultaneously.

Application No. 370 of 2023 to set aside the dismissal order was heard first and was dismissed accordingly. After dismissal of the said Application, this instant Application cannot stand as the main Application which was the base for this Application is no longer pending in this Court.

The Court has called upon the counsels for the parties to address on the competency of the instant Application in the wake of the main Application No. 370 of 2023 being dismissed and they all admitted that this Application has no legs to stand on hence it is incompetent before this Court.

For the foregoing reasons, the Application is dismissed with costs.

It is so ordered


A. MSAFIRI
JUDGE
19/10/2023

