

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

MISC. LAND CASE APPLICATION NO. 553 OF 2023
(Originating from Land Case No.281. of 2023)

ADAM SAMWEL MIRAMBO.....APPLICANT

VERSUS

PETER PETER JUNIOR.....RESPONDENT

RULING

Date of Last Order: 20.09.2023
Date of Ruling: 19.10.2023

T. N. MWENEGOHA, J.

This Application came under Order XXXVII Rule 1(a), (b), Sections 68 (c) and (e) and 95 of the Civil Procedure Code, Cap 33 R. E. 2019. It was supported by the affidavit of Adam Samwel Mirambo, the applicant here above.

The applicant intends to obtain an Injunction Order against the respondents, their agents or any person working under their directions, from developing, alienating, dividing and disposing off any piece of land, pending determination of the main suit.

The Application was heard by way of written submissions, Advocate Geoffrey Paul, appeared for the applicant, while Advocate Mnyambebe Abedinengo Levi Ng'weli, appeared for the respondent.

Submitting in support of the Application, Mr. Godfrey relied on the case of **Atilio vs. Mbowe (1969) HCD 284**, where the factors to be considered before granting or denying an Application for Injunction have been outlined as below.

First, the applicant must prove the existence of a serious question to be tried by the Court. Mr. Godfrey went on to maintain that, this condition has been met by the applicant. That, there is a pending case, waiting a determination by this Court, vide Land Case No. 281. That, the said case also addresses the crucial points of law which need to be determined by this Court, as stated under paragraph 4 of the applicant's affidavit. That being the case, it is clear that, there is a question of law to be tried by this Court as stated in **Kibo match Group Limited versus H. S. Impex Limited (2001) TLR 152, Tax Appeal No. 34 of 2019**

Second, the interference of this Court is necessary to protect the interest of the applicant from any kind of injury that may be irreparable. Mr. Godfrey insisted that, if the demolition is allowed to proceed, the applicant will have to incur more costs in seeking for other remedies at her detriment.

Last, on balance of convenience, in case the Application is denied, it is the applicant who will suffer more inconveniences than the respondent. That, the respondent being a Pastor, he owns a number of churches and commercial entities, consequently, allowing this Application will create inconveniences on his part.

In reply, Mr. Mnyambele Abedinengo Levi Ng'weli for respondent was of the view that, the requirements for Injunction as stated in **Atilio versus Mbowe** (supra), were not met. The respondent's counsel insisted that, the applicant have failed to demonstrate on the existence of a *prima facie*

case, because the basis of his claim is on an area estimated to have 18 acres as stated in his affidavit, under paragraph 4. That, in reality, the respondent's area covers a total of 17 acres only. That is to say, the land referred to be in dispute is a different land to that of the respondent. That, in other words, the applicant brought a frivolous and vexatious application that lacks merits, as stated in **Cosmos Properties Limited versus Exim Bank Tanzania Limited, Misc. Civil Application No. 584 of 2021, High Court of Tanzania at Dar es Salaam (unreported)**.

Further, the respondent's counsel went on to argue that, the 2nd condition also has not been met by the applicant. That, there is nothing given in the applicant's affidavit suggesting that the applicant is likely to suffer irreparable harm. The applicant has not even provided any proof that he has erected any structure in the land in question. Therefore, it is the respondent who will suffer irreparable harm than the applicant. That, if there is any loss to the applicant, it is capable of being compensated, as stated in **Mariam Christopher versus Equity Bank Tanzania Limited & Another, Misc. Land Application No. 1070 of 2017, High Court of Tanzania, Land Division at Dar es Salaam(unreported)**.

As for the 3rd condition, it was argued that, the same favours the respondent as the applicant did not prove the existence of irreparable loss on his part. He cited the case of **Omary Kilalu & Others versus Temeke Municipal Council & Another, Misc. Application No.458 of 2021, High Court of Tanzania at Dar es Salaam (unreported)**.

I have considered the submissions of the parties through their respective counsels. Also, I have gone through the affidavit and counter affidavit as

adopted by the parties in their submissions. Below observations as far as the merit or otherwise of the instant Application is concerned.

That, there are triable issues between the parties in respect of the suit property, vide Land Case No.281 of 2023. The dispute is on the ownership of land, measuring about 18 acres, located at Mapinga Area, Bagamoyo, where the respondent is said to be a trespasser in it.

The actions complained of by the applicant over the suit land have been supported by the counsel for the respondent in his reply submissions. That, he insisted that, the application at hand, hinders the execution of a valid Court Decree, passed favour of the respondent, vide Land Case No. 233 of 2022. The counsel for the respondent has insisted that, there is no loss likely to occur on the applicant, that cannot be compensated by the respondent in terms of monetary value.

If the Court will not interfere as prayed by the applicant, there is a likelihood that he will lose the property in question and the Decision will be nugatory. Hence, on balance of probability, he will be more inconvenienced than the respondent.

For the foregoing reasons, I find the applicants to be within the rules given in **Otilio vs, Mbowe**, (Supra). The order of Injunction is inevitable to protect the interest of the applicant subject matter of the pending suit between the parties, from being alienated from him. That is why, I find the instant Application to be meritorious and it is hereby allowed with costs. In the event, the respondents, their agents or any person working under their directions, are restrained from alienating, dividing or disposing of any piece of land, in the 18 acres disputed land, located at Mapinga Area,

Bagamoyo, within in Cost Region, pending hearing and determination of the main suit, Land Case No. 281 of 2023.

Ordered accordingly.




T. N. MWENEGOHA

JUDGE

19/10/2023