

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

MISC. LAND APPLICATION NO. 765 OF 2022
(Arising from Land Case No. 315 of 2022)

VERONICA JOHN SINGANO	1ST APPLICANT
MARIAM IDRISA MWACHAMBO	2ND APPLICANT
ATHUMAN JUMANNE.....	3RD APPLICANT
RAHEL UBISIMBALI	4TH APPLICANT
MOSHI JUMA PAZI.....	5TH APPLICANT
MARIETHA A. MINJA.....	6TH APPLICANT
JOYCE C. MBELE.....	7TH APPLICANT
HASHIMU HAMISI MTANDI.....	8TH APPLICANT
JUMANNE JUMA KHAMISI.....	9TH APPLICANT
MARIAMU OMARI ZIMBWE.....	10TH APPLICANT
RAMADHANI S. KIJAUHAWI.....	11TH APPLICANT
AGRIPINA LUCAS MBENA.....	12TH APPLICANT
KARIMU ISSA SAIDI.....	13TH APPLICANT
SUDDI ISSA GOBERA.....	14TH APPLICANT
CHARLES INOCENT GIKULI.....	15TH APPLICANT
SELEMAN TULLO MDOE.....	16TH APPLICANT
SIRATA NYAMHANGA MCHUNGU.....	17TH APPLICANT
MOHAMED MBOWETO.....	19TH APPLICANT
TRYPHONE FRAIDY MTWEVE.....	20TH APPLICANT
RAMADHANI ABDALAH MAJEMA.....	21ST APPLICANT
JAFARI SHAME ATHUMAN.....	22ND APPLICANT
ALLY HASSAN MAFITA.....	23RD APPLICANT
FATUMA SALEHE ISMAIL.....	25TH APPLICANT
AMINA ABDALLA PAULA.....	26TH APPLICANT
RASHID ATHUMAN MDOTE.....	27TH APPLICANT
SHABAN MOHAMED KIMBWILI.....	28TH APPLICANT
AMOUR HASSAN NGONYAN.....	29TH APPLICANT
HASSAN YUSUF NGONYAN.....	30TH APPLICANT
MARITHA SELESIS MSANGA MBEGO.....	31ST APPLICANT
AINA RASHIDI RUGENGE.....	32ND APPLICANT

MZAFARU ZUBAIL BISHANGA.....33ND APPLICANT
RAMADHANI YAHAYA JUMA KANIKI.....34TH APPLICANT
SELEMANI RAMADHANI SEMGOMBA.....35TH APPLICANT
RAMADHANI SALEHE MSANGI.....36TH APPLICANT

VERSUS

SAMWEL LEWIS KWABU1ST RESPONDENT
JESCA W.L MASSAWE t/a JJ AUCTION MART2ND RESPONDENT

R U L I N G

Date of last Order:23/11/2023

Date of Ruling:14/11/2023

K. D. MHINA, J.

By a chamber summons made under Sections 3A (1) (2), 3B (1) (a) and (c), 95 and Order XXXVIII Rule 1 (a) and Rule 2 (1) and Section 95 (1) of the Civil Procedure Act, Cap. 33 [R. E. 2019] ("The CPC) the Applicants are moving this Court to;

- i. To issue temporary injunction order against the 1st and 2nd respondents restraining the respondents from entering the suit land pending determination of the main case.*
- ii. To issue a status quo.*
- iii. Any other orders or reliefs the Court may deem fit to grant.*

The chamber summons is supported by the s affidavit affirmed by Mtumwa Rajab Kiondo, the counsel for applicants, which expounds the grounds for the application.

The grounds expounded in the affidavit are;

One, there is a pending suit between the parties.

Two, respondents demolished the applicants' houses/ buildings without a notice.

Three, the applicants would suffer irreparable loss.

In the counter affidavit the 1st respondent vehemently objected the application by stating that the land in dispute belonged to him following the decision of this Court in Land Case No. 156 of 2012 and the notice of eviction was duly served to the trespassers.

On her side, the 2nd respondent stated that she was appointed to execute the execution order dated 8 September 2017. It was after the objection proceedings were struck out by this Court.

The application proceeded by way of written submissions. The applicants were represented by Mr. Mtumwa Rajab Kiondo, learned advocate

while the respondents were represented by Mr. Nickson Ludovic, also learned advocate.

In support of the application, Mr. Kiondo submitted that there was a pending suit, namely Land Case No. 315 of 2022, before this court filed by the applicants against the Respondents; therefore, if the application would not be granted, the pending land case would be nugatory.

From above, he narrated that there was a serious question to be tried on the facts alleged and the probability that the applicants would be entitled to the reliefs prayed in the main suit to be declared lawful owners of the suit land as they had documentary material to prove their ownership.

He further argued that, the courts' interference is necessary to protect the applicant from the irreparable loss. The respondents intended to unlawfully and illegally demolish the properties of the applicant created into a suit land. Therefore, there would be hardship and mischief suffered by the applicant from the withholding of the injunction than would be suffered by the respondents from granting the injunction.

Mr. Kiondo submitted further a prima facie case had been established and on balance of convenience, the applicants have filed a Land Case No. 315 of

2022 so as the dispute of ownership can be determined and the same has a high probability of success.

He concluded by submitting that the applicants managed to fulfil the conditions to be granted the relief in accordance with the principles stated in the case of **Atilio vs Mbowe** (1969) HC 284.

In response, Mr. Ludovick submitted that there was no single paragraph in the affidavit which show that if the injunction will not be issued the applicant would suffer irreparable loss. That means that if at all any loss may result such loss can be monetary compensated, hence there is no reason advanced for grant of injunction based on irreparable loss.

According to paragraphs 3 and 8 of the applicant affidavit as well as in paragraph 5 of the amended plaint it was indicated that applicants were already evicted from the suit land and that the suit houses were already demolished. Therefore, Mr. Ludovick argued that in such circumstances that injunction should be rejected because it was not supported by the law and pleading of the applicants.

On the balance of convenience, he submitted that the 1st respondent was the one who would suffer irreparable loss if injunction is granted

because the applicants were not in occupation of the suit land as admitted by the applicant under paragraph 3 and 8 of the affidavit and paragraph 5 of the amended plaint. Thus, the applicants had nothing to lose, if injunction is refused.

Granting of injunction would cause inconveniences to the 1st respondent because he was in occupation of the suit land and would create chaos to the 1st respondent because he got the decree from this court through legal execution. Thus, court granting injunction shall mean rejecting its own order of the execution which removed the applicants from the suit land.

Mr. Ludovick further argued that there was no serious issue to be tried by this court in the main suit for the reason that the 1st respondent had a sale agreement to purchase the suit land which he had occupied for more than 12 years. Further, he had a decree declaring him the lawful owner of the suit land.

He concluded that on the balance of probabilities the 1st respondent stands greater chances of success than the applicants.

In rejoinder, Mr. Kiondo was quick to resort to the principle of overriding objective by submitting that the current position of the law of the land that court should uphold the overriding objective principle and disregard unnecessary legal technicalities to achieve substantive justice.

To substantiate his submission he cited Article 107 A of the Constitution of the United Republic of Tanzania, 1977 and section 6 of the written laws Miscellaneous Amendment Act No. 3 of 2018 and section 3A and 3B of the Civil Procedure Code (Cap 33 R:E 2019)

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the written submission made by both learned counsel for the applicant and the 1st respondents, the issue that has to be resolved is whether or not the application for temporary injunction can be granted.

The entry point in the determination of the issue is the decision of the Court of Appeal in **Selcom Gaming Ltd vs. Gaming Management (T) Ltd and another**, Civil Application No. 175 of 2005 (Unreported) where the Court drew the inspiration in **Hadmor Productions Ltd. & Others v. Hamilton and Another** (1983) 1 AC 191 wherein Lord Diplock stated as under at page 220 that;

"An interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard".

In this application the main prayer by the applicant is the issuance of temporary injunction order against the 1st and 2nd respondents restraining the respondents from entering the suit land pending determination of the main case. That means this Court is requested to issue a prohibitory order to stop the respondents from entering the suit land.

The Court of Appeal of East Africa in **Jayndrakumar Devechand Devani vs. Haridas Vallabhhdas Bhadresha**, Civil Appeal No. 21 of 1971 elaborated the purpose of the temporary injunction. It held that

"In cases of interlocutory injunction in aid of the plaintiff's right all the Court usually has to consider is whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve property without waiting for the right to be finally established but in no case does the Court grant an interlocutory injunction as of course."

In the instant application the applicants in their affidavit specifically at paragraphs paragraph 4 and 8 indicated that they were already evicted from the suit land and that the suit houses were already demolished.

Further, in the Land Case No. 315 of 2022, at paragraph 5 of the plaint, the applicants indicated that they were evicted from the suit land and their properties were destroyed.

In his submission, Mr. Ludovick argued that in such circumstances on balance of probabilities the respondents will suffer more because they were already in occupation of the suit land.

On the other hand, Mr. Kiondo urged this Court to invoke overriding objective in such circumstances.

Having critically analyze, the above scenario and taking into consideration that applicants are praying for this court to restrain the respondents from entering the suit premises, the order sought by the applicants is unmaintainable and meaningless. The reasons are;

One, the applicants are praying to prohibit the respondents from entering the suit premises while the respondents were already entered into

the premises, evicted the applicants and demolished the structures in the execution of the decree in Land Case No. 156 of 2012.

Two, the orders of temporary injunction and maintaining status quo does not mean to reverse an act already done, it is not a reverse gear for the actions which have already took place. The purpose of the orders is to prohibit an act and to maintain status quo as it is.

From the above discussion, this Court cannot order to prohibit an act which has already taken place. Entering into a suit premises had already take place, thus means the prayer had already overtaken by events.

Mr. Kiondo urged this Court in such situation to invoke the principal of overriding objective as provided by Article 107 A of the Constitution and section 6 of the written Laws Miscellaneous Amendment Act No. 3 of 2018 and section 3A and 3B of the CPC. But in my opinion in the circumstances of this application the principle of overriding is not a "helping hand" because;

One, not in all circumstances overriding principle is applicable. Admittedly Courts are enjoined to administer justice according to law only without being unduly constrained by rules of procedure and technical

requirements. But also, the Courts should not turn blind to the mandatory provision of the procedural law, which goes to the root of the case.

Two, overriding principle is applicable when there is application of law and procedures. The Court of Appeal in **SGS Societe Generale de Surveillance SA and Another vs. VIP Engineering & Marketing Ltd and Another, Civil Appeal No. 124 of 2017 (Tanzlii)** held that;

"The amendment by Act no. 8 of 2018 was not meant to enable parties to circumvent the mandatory rules of the court or turn blind to the mandatory provision of the procedural law which goes to the foundation of the case".

In the instant application the discussed issue is not on laws and procedures but it is the prayer which has been already taken by events. Therefore, the principle is not applicable in such circumstances.

Therefore, as rightly argued by Mr. Ludovick, this application does not meet the threshold for this Court to exercise its powers in issuing temporary injunction.

Flowing from above this application is devoid of merits and I proceed to dismiss it with costs.

I order accordingly.



A handwritten signature in blue ink, consisting of several vertical, slightly curved strokes.

K. D. MHINA
JUDGE
14/11/2023