

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

**MISC. LAND CASE APPLICATION NO.731 OF 2023**  
(Originating from Land Case No. 228 of 2023)

**AMIR HAMIS IDD.....APPLICANT**

**VERSUS**

**AKIBA COMMERCIAL BANK .....1<sup>ST</sup> RESPONDENT**

**MAJEMBE AUCTION MART.....2<sup>ND</sup> RESPONDENT**

**LILIAN FRANCIS MBETWA.....3<sup>RD</sup> RESPONDENT**

**RASHID MOHAMED.....4<sup>TH</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 15.11.2023*  
*Date of Ruling: 20.11.2023*

**T. N. MWENEGOHA, J.**

The Ruling emanates from an Application for Injunction, by the applicant above named, made under **Order XXXVII Rule 2(1) sections 68(e) and section 95 of the Civil Procedure Code, Cap 33 R.E 2019**. He wants the 1<sup>st</sup> and 4<sup>th</sup> respondents to be restrained from evicting him from a house, located at Kawe Area, Kinondoni Municipality, with Certificate of Title No. 100986 Plot No.70, Block 18, Mwinyimkuu Street, Magomeni Mapipa Area within Kinondoni Municipality. The Application was preferred, pending the determination of Land Case No. 228 of 2023. The same was supported by the affidavit of the applicant, Amir Hamis Idd. It also proceeded by way of written submissions and *exparte* against the 4<sup>th</sup>

respondents. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents did not contest the Application.

In his submissions in support of the Application, Mr. Thadeus Masawe, the counsel for the applicant relied on the case of **Atilio versus Mbowe, 1969, HCD 284**. He argued that, the applicant has a prima facie against the respondents as he has already filed a case, vide Land Case No. 228/2023. That, if the Injunction is not given, the applicant will suffer irreparable loss as the 4<sup>th</sup> respondent is about to change the ownership of the suit land. If that happens, the applicant stands to suffer greater hardships than the respondents.

Having gone through the submissions of the learned counsel for the applicant and the affidavit in support of this Application, the only question in need of an answer at this juncture, is whether the Application has merits or not.

The rules governing Applications of this nature directs that, for the Application to be allowed, the applicant must show that, he/she has met the conditions set for an Injunction as stated in **Atilio versus Mbowe**, (supra). That, there are triable issues existing between the parties in the Application in question. Further, if the Application is not granted, it is the applicant who stands a chance to suffer irreparable loss. Therefore, the Court's intervention is necessary to prevent it, because, if nothing is done, the said loss will lead to greater hardship on his or her part, compared to the sufferings that are likely to occur on the respondents.

In the present case, the applicant, in my settled view, has managed to demonstrate well the existence of a prima facie case against the respondents above named. The instant Application originates from a

pending suit, Land Case No. 228 of 2023, between the applicant and the respondents respectively. In the said case, the Court is expected to decide on the validity of the Mortgage Agreement entered between the 1<sup>st</sup> respondent and the 3<sup>rd</sup> respondent, in favour of the loan facility, advanced to the 3<sup>rd</sup> respondent by the 1<sup>st</sup> respondent. Also, the Court is invited to check the legality of the sale of the suit land, by auction, done by the 2<sup>nd</sup> respondent. If the Application is denied, it is obvious that the applicant will lose a home which he has been using as his residency throughout. Thus, he is likely to suffer irreparable loss and hardships than the respondents. Therefore, I agree with the applicant, he has satisfied the requirements to be given an order of this Court in her favour.

In the event, based on the aforegiven reasons, I find merits in the instant Application and I allow it accordingly.

Hencefore, the 1<sup>st</sup> and 4<sup>th</sup> respondents, and any other person working under their instructions, are restrained, from evicting, him from a house, located at Kawe Area, Kinondoni Municipality, with Certificate of Title No. 100986 Plot No.70, Block 18, Mwinyimkuu Street, Magomeni Mapipa Area within Kinondoni Municipality. The Application was preferred, pending the determination of Land Case No. 228 of 2023. No order as to costs.

It so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**20/11/2023**