

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

MISC. LAND APPLICATION NO. 2015 OF 2024

(Arising From Land Case No. 27355 of 2023, Land Division)

**MONICA RAPHAEL KISUMA @
MUNIRA RAFAEL KOSUMA.....APPLICANT**

VERSUS

EQUITY BANK TANZANIA LIMITED.....1ST RESPONDENT

AMALY INVESTMENT COMPANY LIMITED.....2ND RESPONDENT

AMALY MEHTA @ JUMA META KIBONDEI.....3RD RESPONDENT

RULING

14th to 27th March, 2024

E.B. LUVANDA, J

This is an application for temporary injunction made under the enabling provisions of Order XXXVII rule 1(a), and sections 68(c), (e) and 95 of the Civil Procedure Code, Cap 33 R.E. 2019. Basically, the Applicant above is seeking for orders restraining the Respondents and agents from disposing or selling the landed property located at Ilala Sharrif Shamba within Dar es Salaam City on Plot No. 55 Block D with certificate of title No. 57443 (suit property) registered in the name of Amaly Mehta.

In the affidavit in support of the application, the Applicant deposed that she was not aware of the loan borrowed by the Second Respondent and that she did not consent to the mortgage created over the suit property where alleged the Applicant and Third Respondent executed the loan agreement under the capacity of directors of the Second Respondent. The Applicant disowned a signature appearing in the bundle of documents for loan annexure MRK-4, also disowned being a director of the Second Respondent, relied on the extract from search at BREALA annexure MRK-5. The Applicant pleaded that the suit property is a matrimonial home used for his family of six children since 2007, and she attached a marriage certificate annexure MRK-1 vindicating that she lawfully married the Second Respondent on 5/12/2005.

In the counter affidavit by the First Respondent, stated that the Applicant consented vide a consent by spouse to create mortgage annexure EBTL-2, for the Second Respondent to mortgage the suit property as per the deed of mortgage of a right of occupancy annexure EBTL-1. She stated that the Second and Third Respondent had instituted Land Case No. 63 of 2020 in which the First Respondent counterclaimed, having been aggrieved with the decision thereof the former initiated process of appeal, as per annexure

EBTL-5(a), (b), (c). She stated that the dispute over the subject matter is pending before the Court of Appeal.

In reply to the counter affidavit, the Applicant stated that she never executed or signed the purported spouse consent annexure EBTL2 to the counter affidavit. She reiterated to have been acquainted with the existence of the loan sometimes on 18th November, 2023 when carrying out cleanness along her daughter.

Mr. Deus Tarimo learned Counsel for Applicant submitted that there is a triable issue in that in the main cause the Applicant seek legal reliefs for a declaration that the mortgage facility to secure overdraft facility between the First and Second Respondent be declared null and void for want of the Applicant's consent; a declaration that the Applicant is not a shareholder/director of the Second Respondent and an order for discharge of the Applicant from securing the said mortgage facility. He cited the case of **John Pascal Sakaya vs Azania Bank Limited**, Misc. Commercial Case No. 62 of 2018. He submitted that the Respondents stand to lose nothing in case the injunction is granted, while in the event the order is denied, the Applicant will continue to suffer irreparable loss, arguing the Respondent will not suffer any hardships and inconvenience in case the order is granted. On

the balance of inconvenience, the learned Counsel submitted that the suit property is a sole matrimonial home where the Applicant and her family resides since 2007 to date, arguing any act of the Respondent to dispose the mortgaged property will end (sic) the Applicant and her family homeless.

Mr. Tazan Keneth Mwaiteleke learned Counsel for the First Respondent replied that the Applicant is barred from instituting this application and other proceedings in view of the presence of judgment and decree in Land Case No. 63 of 2020 which was in respect of the same subject matter, which was decided against the Second and Third Respondent. He submitted that the same is pending at the Court of Appeal and the Applicant is aware of the said proceedings as deponed in her affidavit. He submitted that the only available remedy is for the Applicant to challenge judgment and decree in Land Case No. 63 of 2020 by filing revision to the Court of Appeal. He submitted that the Applicant is a spouse of the Third Respondent, knows and is familiar with all documents involved for the loan facility agreement, arguing that the Applicant was fully involved by signing the spouse consent, signing loan facility as among the directors of the Second Respondent. He submitted that the Applicant has not shown in the affidavit that if the mortgaged property is attached and sold, they will suffer irreparable loss. He

submitted that the Applicant will not suffer irreparable loss, rather the First Respondent has already suffered when the Second and Third Respondent failed timely to repay the credit facility advanced to the Second Respondent, arguing will continue to suffer more if prayers and orders sought is granted. He submitted that the First Respondent is in good financial position to pay monetary compensation that may be awarded to the Applicant if she succeeds in the main suit, citing **General Tyre East Africa LTD vs HSBC Bank** PLC [2006] TLR 60. He submitted that the balance of convenience is for refusal of the injunction, arguing if the injunction is granted it is the First Respondent who will suffer more by way of penalties and taxes to the Bank of Tanzania, and the amount involved is colossal amount, arguing the bank may become a candidate of insolvent, citing **NBC vs Dar es Salaam Education and Offices Stationery** [1995] TLR 270.

On rejoinder, the learned Counsel for Applicant submitted that the fact that there was a Land Case No. 63 of 2020 between the Respondents is immaterial to this matter and at this stage, arguing it will be determined in the main cause. He submitted that the cause of action herein, the Applicant is challenging the validity and legality of the security used to secure the loan facility, while in Land Case No. 63 of 2020 the cause of action was on the

validity of the loan default notice issued by the First Respondent prematurely and void. He submitted that existence of the notice of appeal and appeal before the Court of Appeal intending to challenge the *ex parte* judgment which declared the Second and Third Respondent being in breach of the loan facility agreement have nothing to do with this matter. He submitted that revision is one of the remedies available for one who was not a party in Land Case No. 63 of 2020, arguing the said remedy is not suitable to this case so far every case will be determined based on its peculiar facts and circumstances.

In the affidavit in support of this application, the Applicant attached a copy of a certificate of title in respect of the suit property, credit facility agreement, board resolution forming part of a bundle of documents annexure MRK-4. However, no explanations were forthcoming from the Applicant whether after seeing those documentations purporting bearing her signature, if she lodged any complaint anywhere regarding those alleged dubious transaction for which she claims non involvement and lack of her consent. The Applicant did not tell whether she had access to the original title deed or the same was kept under top secret by the Third Respondent in the purported safe box, where allegedly on 18/11/2023 she inadvertently

and out of good lucky she found it ajar and loose, and upon peeping inside it revealed having a bundle of documentations attached to her affidavit as annexure MRK-4. The Applicant could not tell as to how and why as from 18/12/2017 where the mortgage deed was executed, she did not notice or learn disappearance of the title deed in respect of the suit property alleged being a sole matrimonial home and established there with her family since 2007.

At any rate a period of six years for the Applicant to assume she was not aware that the title deed was out of reach or disappearance, is beyond imagination.

In the affidavit in support of application, the Applicant pleaded to have not been involved in the transaction, lack of knowledge, disowned signing documentations for the loan and security, dispelled a spouse consent.

But surprising she remained mute for six years without lodging a complain anywhere that the title deed for property used or designated as her permanent matrimonial home is missing, nowhere to be found. Even in this application there is no any lamentation that her title deed went missing. The

only complaint is that she was not involved, she did not sign the spouse consent and facility letter agreement.

In view of the above, it can be hardly impossible to rule that the Applicant managed to meet the minimum threshold for establishing that there is an arguable case in the main cause.

In the affidavit, the Applicant did not demonstrate the actual irreparable loss which is likely to suffer in the event the order sought are withheld. A mere mention that the intended disposition of the suit property will cause severe hardship, sufferings and inconvenience to her, children and family at large, to my view is not enough for purpose of convincing and soliciting grant of the injunction. Those mentioned heading are so common allover whenever injunction is sought. There is no new facts and convincing materials or peculiar circumstances which were established or pleaded by the Applicant herein. No further particulars were given to the said hardship, sufferings and inconvenience. Nor did tell even the age of children, neither mentioned means of living, income and so forth.

I therefore rule that the Applicant have failed to meet the conditions for the grant of an interim or temporary injunction.

The Application is dismissed with costs.



E. B. LUVANDA
JUDGE
27/03/2024

Ruling delivered in the presence of Mr. Deus Tarimo learned Counsel for Applicant, Mr. Ibrahim Kibanda learned Counsel for First Respondent and in the absence of the Second and Third Respondents.



E. B. LUVANDA
JUDGE
27/03/2024