

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

MISC. LAND APPLICATION NO. 2572 OF 2024

HAMZA H. KIMBE.....1ST APPLICANT
MAULID ISSAH OMARY.....2ND APPLICANT
HASSAN ISSA OMARY.....3RD APPLICANT
SHARIFU MOHAMED.....4TH APPLICANT
HAMZA MASOUD.....5TH APPLICANT
GEORGE MLIGO.....6TH APPLICANT
HALFANI RASHID7TH APPLICANT
JUZEN MKINI8TH APPLICANT
NASSORO ZUNGU9TH APPLICANT
FADHILI MDUMA.....10TH APPLICANT
SAID RASHID11TH APPLICANT
ABDALLAH BELLA12TH APPLICANT
KASIM ALMASI.....13TH APPLICANT
VITUS CHENGULA14TH APPLICANT
HALID PANGARELI15TH APPLICANT
NASHO NKOLO16TH APPLICANT
ABBAS MALUNDA.....17TH APPLICANT
MSAFIRI M. MATENGA18TH APPLICANT
MAZINDA SELEMAN19TH APPLICANT
JUMA IDRISA20TH APPLICANT
AMINA ELIAS21ST APPLICANT
SHABAN NGWELE22ND APPLICANT
ENOCK KIMWAYEYA23RD APPLICANT

ROZI KINYELA	24TH APPLICANT
JUMA BAKARI	25TH APPLICANT
GEORGE PETER	26TH APPLICANT
BURTON PHILIPO	27TH APPLICANT
FRANCIS YUNUS.....	28TH APPLICANT
WINFRID JOHNSON	29TH APPLICANT
ISIHAKA MLIMBA	30TH APPLICANT
RAHIM FUSI GASSI	31ST APPLICANT
RASHID MOHAMED KALA	32ND APPLICANT
RAMADHANI JADI MBARUKU.....	33RD APPLICANT
HUSSEIN S. KAMBAYA	34TH APPLICANT
MWALIMU ATHUMAN	35TH APPLICANT
ALHAJ Y. MANDIA	36TH APPLICANT
PETER J. MABUKU	37TH APPLICANT
ABEID Z. KIMWEMWE	38TH APPLICANT
SHAFII RASHID	39TH APPLICANT
SHAIBU MANG'ENYA	40TH APPLICANT
ATHANAS K. MNYAVANU	41ST APPLICANT
JUMA I. KIBINDU	42ND APPLICANT
ABDUL KHAN	43RD APPLICANT
ISSA SHARIF	44TH APPLICANT
WILE MTEGA.....	45TH APPLICANT
ISSA CHASAMBA	46TH APPLICANT
CHUZEN MTITU	47TH APPLICANT
AZIZI TWEVE	48TH APPLICANT
JUMA GASSI	49TH APPLICANT
OMARY MGAYA	50TH APPLICANT
HERMAN BONAS CHALLE	51ST APPLICANT

ABDALLAH MAULID NGWELE	52 ND APPLICANT
HAMZA JUMA KIVUGO	53 RD APPLICANT
ALLY HAMIS KIDURA	54 TH APPLICANT
ABUBAKAR RAMADHANI BANGO	55 TH APPLICANT
HASSAN IDD SAUKO	56 TH APPLICANT
UMI RAMADHANI SELEMANI	57 TH APPLICANT
HALIMA SAID AWADHI	58 TH APPLICANT
SEIF DIWA	59 TH APPLICANT
BAKARI MOSHI NGWELE	60 TH APPLICANT
FAHM ALLI MUHSIN.....	61 ST APPLICANT
YUSUPH MOHAMED KINYOGOLI	62 ND APPLICANT
SAID SELEMAN MTIMBO	63 RD APPLICANT
JAMES R. MAJINGA	64 TH APPLICANT
ALLY ODDA KANUNI.....	65 TH APPLICANT

VERSUS

ATTORNEY GENERAL.....	1 ST RESPONDENT
PRESIDENT’S OFFICE, MINISTRY OF REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT.....	2 ND RESPONDENT
UBUNGO MUNICIPAL COUNCIL.....	3 RD RESPONDENT
OFFICE OF THE REGIONAL COMMISSIONER, DAR ES SALAAM REGION.....	4 TH RESPONDENT

RULING

22nd to 27th March, 2024

E.B. LUVANDA, J

This application is made under the enabling provisions of section 2(3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2019 and sections

68(e) and 95 of the Civil Procedure Code, Cap 33 R.E. 2019. Basically, the Applicants above are seeking for two orders: maintaining status quo ante and thereby an interim order directing the Third Respondent to abstain from carrying on any activity/operations relating to the running of, all activities concerning Mabibo Market, commonly known as Soko la Ndizi Mabibo, located at Urafiki Area, Ubungo Municipality, pending the hearing and determination of an application for temporary injunction to be filed after expiry of ninety days statutory notice of intention to sue the Government already issued to the Respondents.

In the joint affidavit in support of the application, the Applicants' cause of action is rooted from the alleged speech of the then President of the United Republic, the late John Pombe Magufuli made on 15/10/2020 during public rally alleged made orders among others that the market activities should be run, conducted and managed by the Applicants themselves without interference from the Municipal, District and Regional Authorities; the Applicants to organize themselves and register into body/organ; exempted them from paying any levy; all collections/monies from vendors and users of the market should be collected by the Applicants themselves.

They asserted to had registered themselves by the name Umoja wa Wafanyabiashara wa Soko la Ndizi Mabibo (UWAMASONDIMA) as per annexure A; they procured Tax Payer Identification (TIN) from TRA; they obtained EFD machines and engaged into borrowing money and invested for improving the market. They stated that to their surprise, on 17/08/2023 the Regional Commissioner visited at the market and directed that the running of the market activities should be under the management of Ubungo Municipal Council, where the Third Respondent deployed SUMA JKT to force them to pay various rates/levies without any justification, which according to the Applicants, prompted the situation of unrest and violence at the place of business. They stated to have instructed their attorney to issue a notice to sue the Government, annexure D. On 22/12/2023 they filed Misc. land Application No. 322 of 2023 which was withdrawn on 23/01/2024. They stated that meanwhile, the Third and Fourth Respondent intensified taking over all operations including collection of all revenues that were ordinarily executed by the Applicants. They stated that the Respondents actions are prone to causing serious loss of business, income and life hardship, indebtness due to failure to do business and paying loans.

In the joint counter affidavit, the Respondents stated that Soko la Ndizi la Mabino does not belong to the Applicants. They stated that the Respondents neither stopped nor ordered to stop the Applicants and other vendors who are more than 4,300 from doing business at Soko la Ndizi la Mabibo. They stated that the Applicant have not disclosed cause of action against the Respondents. They stated that the Third Respondent is collecting levies within its locality which is among the core functions of its establishment. They stated that the Third Respondent's collection of levies does not hinder the Applicants and others from conducting business activities. They stated that if the prayers sought in the chamber summons are granted, it will hinder the core function of the Third Respondent and ability to carry out its statutory duties to the residents within its locality and the general public.

In reply to the joint counter affidavit, the deponent stated that the function of running all the activities in connection to the market at Soko la Ndizi Mabibo are vested under the exclusive mandate of the Applicants, as per the audio clip, the letter from the Third Respondent dated 25/01/2021 and pages 24 and 129 of the report of Tanzania National Business Council of 2021, annexure RA1, RA2 and RA3 to the reply to the counter affidavit.

Mr. Benitho L. Mandele learned Counsel for the Applicants submitted that annexure RA2 to the reply to the counter affidavit which is a letter from the Third Respondent clearly established the facts that: One, the then President of Tanzania the late John Pombe Magufuli handed over all the activities of running the Mabibo Market to the Applicants; Two, the function of collecting all revenues at the market place was vested to all the Applicants; Three, the Third Respondent directed the Applicants to buy EFD machines and open bank accounts necessary for facilitating the collection of such revenue. He submitted that it is averred in the affidavit that the Third Respondent has interfered with the market activities which were put/vested under the powers of the Applicants and that the actions are detrimental to the Applicants who for so many years have invested in their business at the market place, they have serious financial obligations to different financial institutions, individuals and customers. He submitted that the Third Respondent's interference is causing greater inconvenience and hardships to the Applicants, actions which go to the root of the Applicants' right to work and earn living.

In reply, Mr. Boaz Msoffe learned State Attorney submitted that the application has not met the principle in **Atilio vs Mbowe**. He submitted that the Applicants have not demonstrated as to what is their cause of action

against the Respondents. He submitted that they ought to show whether they are owners or tenants, for them to have an arguable case. He submitted that they did not plead as to what they intend to challenge. He cited the case of **Said Hamis vs Kibaha Town Council and Another**, Misc. Land Application No. 382 of 2023. He submitted that on irreparable loss they have not demonstrated any damages beyond repair be it monetary or otherwise. He submitted that if the loss can be repaid by money, argued it cannot be termed as irreparable loss. He submitted that on the balance of convenience it lies with the Respondents, for reason that the Third Respondent is mandated by law to collect revenues within its jurisdiction, citing section 60(1)(g) of the Local Government (Urban Authorities) Act, Cap 288 R.E. 2002, arguing that it's a statutory duty of the Third respondent and not the Applicants. He submitted that in the matter at hand, public interest has to be considered, for reason that the market has more than 4,300 traders, but only 65 Applicants filed this matter, arguing it connote there are others who are not interested in the matter. He submitted that the order will preclude the Third Respondent to execute its legal mandate.

On rejoinder, the learned Counsel for Applicants submitted that all the requirements in **Atilio vs Mbowe** have been established, in the affidavit the

Applicants have demonstrated that the land in issue was given to them by the President of the United Republic of Tanzania and they have stated how they acquired that land and the same facts was acknowledged by the Third Respondent as per annexure RA2 to the reply to the counter affidavit, argued the said letter protect the Applicant in the intended suit. On the question of balance of inconvenience, he submitted that it is stated in the affidavit that the interference by the Third Respondent is causing serious hardship to the life of the Applicants, citing **Agness Kosia & Others vs The Board of Trustees of NSSF & Another**, Misc. Land Application No. 590 of 2016. He submitted that the right to collect revenue at Mabibo Market was vested to the Applicants and the Third Respondent was expressly excluded from that duty as acknowledged by the Third Respondent herself in its letter annexure RA2 to the reply to the counter affidavit. He submitted that there is no any public interest which is likely to be suffered.

It is elementary rule that the three conditions for the grant of interim or temporary injunction in the celebrated case of **Atilio vs Mbowe**, must be met cumulatively.

Herein the sixty-five Applicants alleged that the interference by the Third Respondent in their duty and obligation to collect revenue and levy at the

suit market will cause hardship to them, citing heavy investment and loans borrowed from various financial institutions and individuals, that they ran into a mess of indebtedness, failure to pay loans, their security in danger of being auctioned.

In a letter annexure RA-2 to the reply to the joint counter affidavit, reflect it was addressed to the leadership of Soko la Mabibo. Neither of the sixty-five Applicants introduced as a leader of the said Soko la Mabibo. At paragraph two of the affidavits the Applicants introduced themselves as business men and women carrying on various businesses at Soko la Ndizi Mabibo.

More importantly, in the joint counter affidavit at paragraph seven it is asserted that there are more than 4,300 traders at Soko la Mabibo. In reply to the joint counter affidavit this factual deposition was not attended, remained uncontested. Even on reply submission, the learned State Attorney repeated the same facts, but no rejoinder was forthcoming to either rebut or clarify this fact.

Therefore, granting the sought prayers in favour of only sixty-five Applicants out of 4,300 traders at large, will be detrimental to the public. Profound wisdom dictates not granting the application. This is for obvious reasons that

there is no manifesto or memorandum showing that the alleged 4,300 population had consented to the recourse taken and sought herein.

Importantly, in paragraph seven sub paragraph (b), in paragraph eight of the joint affidavit, the Applicants bragged to have organized and formed an organ styled Umoja wa Wafanyabiashara wa Soko la Ndizi Mabibo (UWASONDIMA) and obtained a formal registration, as per certificate of registration annexure A vindicating it was registered under The Societies (Application for Registration) Rules, of 1954. Surprisingly, the sixty-five Applicants sued under their personal capacity.

I therefore rule that the Applicants have failed to meet the condition for the grant of an interim relief.

The Application is dismissed. The Applicants are spared to foot costs.



E. B. LUVANDA
JUDGE
27/04/2024

Ruling delivered in the presence of Mr. Boaz Msoffe learned State Attorney for Respondents and in absence of Mr. Benitho Mandele learned Counsel for Applicant, (although the learned Counsel was informed by the Court Clerk regarding the rescheduling of the date of the delivery of the Ruling, and the court Clerk informed me that he has conducted the learned Counsel who said he travelled to Arusha to attend a matter under urgency).



E. B. LUVANDA
JUDGE
27/03/2024