

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 3630 OF 2024

NEEMA YONA MTAHUBA 1ST APPLICANT
ENOCK KAMAFU 2ND APPLICANT
HAMDANI ALLY RAJABU 3RD APPLICANT
LUSIANA J. KYAMUHANGA 4TH APPLICANT
NASSORO AHMED DARWESH 5TH APPLICANT
GRACE KIGUA 6TH APPLICANT
RICHARD E. MARANDU 7TH APPLICANT
GEORGE S. MGULLU 8TH APPLICANT
MARIAM IDD SAJITI 9TH APPLICANT
SHANESTAR I. MLAY 10TH APPLICANT
DEDAN MOSES 11TH APPLICANT
FRANCIS E. MWAMBA 12 APPLICANT
AGNESS MAKULE 13TH APPLICANT
SHOSE MAKULE 14TH APPLICANT
ADDY MWALONGO 15TH APPLICANT
NEEMA MSUMI 16TH APPLICANT
AUGUST S TEMU 17TH APPLICANT
GRACE NSANYA 18TH APPLICANT
AGRIGOLA A. MAGOHO 19TH APPLICANT

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ABDALLAH MHAGAMA 20TH APPLICANT
DANIEL NGOVI MAKANGE..... 21ST APPLICANT
PRISCA SANGA22ND APPLICANT
STEPHANIA TEMU23RD APPLICANT
ANNA MBILU24TH APPLICANT

VERSUS

TANZANIA NATIONAL ROADS AGENCY (TANROADS) 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT

04/4/2024 & 08/4/2024

RULING

A.MSAFIRI, J

This is a ruling on an application for mareva injunction. The applicants herein above have moved this court seeking for interim injunction order against the 1st and 2nd respondents, from demolishing, removing or destroying the applicants' structures and properties from the applicants' land pending institution of a suit after the expiry of a period of demand notice issued to the respondents.

The application was brought by way of chamber summons supported with an affidavit deposed by Sylvester Frederick Aligawesa, the applicants' advocate. It was contested by the respondents who filed their counter affidavit deposed by Japherson Michael Nnko, a Principal Officer (Acting

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Chief Executive) of the 1st respondent dully authorised to swear and affirm on behalf of all respondents.

The hearing of the application was conducted orally. The applicants were represented by Mr. Aligawesa, and Mr. Victor Mhoro, learned advocates. Mr Aligawesa started his submissions by praying to adopt the contents of the affidavit in support of the application. He submitted that this Application is for mareva injunction pending the expiry of the 90 days' Notice. That the mareva injunctions originates from the case law as per the case of **Mareva Compania Naviera vs International Bulkaries SA** [1980] 1 All ER.

He said that for this kind of application to be granted, the applicant has to demonstrate a strong arguable case. He said that the applicants have legal impediment against the respondents. That the respondents are the Government institutions which cannot be sued until the lapse of the 90 days statutory notice. That the applicants have issued 90 days' notice, but before the expiry of the said notice, the respondents have issued demolition notice to the applicants and they are threatening to demolish the applicants' properties as per the attached Annexure AP2.

He further submitted that the applicants are not objecting or obstructing the road project for road extension development but they are

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seeking for their right to be compensated as the owners of the disputed property.

Mr Aligawesa averred that there has been confusion on the issue of compensation since 2017 up to today as it is not clear as to who is the owner of the disputed land among the TANROAD, TARURA and Ubungo Municipal Council. He said further that, the extent of expansion of the road as per the law requirement is not clear and that even the Notice of demolition did not specify the extent of expansion.

Mr Aligawesa believes that the applicants have triable case to be determined by this court and therefore, the conditions for mareva injunction have been met. In support of his averment, he cited the cases of **Mujibu Islam Mutanda & Another vs Wilson Christian Sekulo & 3 Others**, Misc. Application No. 112 of 2022 and **Decent Investment Ltd vs TRC & 3 Others**, Misc. Civil Application No. 13 of 2023 HC Tabora.

He prayed that the application be granted so as to pave the way for the parties to resolve the matter amicably within the statutory 90 days.

On reply, the respondents were represented by Mr. Elias Mwendwa and Mr Baraka Maugo, State Attorneys. Mr Mwendwa adopted the contents of the counter affidavit of the respondents to form part of his submission and further stated that the grant of this application is not

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automatic but that there are three conditions to be met as were set in the famous case of **Atilio vs Mbowe (1969) HCD** also referred in the case of **Mwakeye Investment Ltd vs Access Bank Tz Ltd**, Application No. 654 of 2016 at page 4 where by three conditions were set which are existence of prima facie case, sufferance of irreparable loss, and balance of convenience and that the said conditions have to be established cumulatively.

He submitted that the applicants have failed to establish all three conditions hence that the Application cannot be granted. He admitted that the applicants might have established the existence of a prima facie case but they have failed to establish the other two conditions. He pointed that the Applicants are seeking for compensation in terms of monetary as per paragraph 8 of their affidavit. Hence, there is no irreparable injury because even if the temporary injunction is not granted, the injuries are reparable in terms of money.

On the third condition that, Mr Mwendwa submitted that it is the respondents who will suffer much compared to the applicants if this application is granted because it will stop the Government project and obstruct development of the other citizens living in the immediate and surrounding areas as the Project is for the public interest.

Atilio

He added, that the applicants have nothing to lose because they have trespassed on the road reserve contrary to G.N. No. 11 of 2013 and, that all road reserves are under TANROADS and not the Local Government.

He maintained that the application should not be granted as the applicants have failed to meet the above three conditions and should be dismissed with costs.

On rejoinder, Mr. Aligawesa reiterated what was submitted in chief and further contended that the conditions set in **Atilio vs Mbowe** (supra) cannot be applied in mareva applications like the one at hand because the said conditions are applicable where the main case is pending in court, filed under the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC) and not under the Judicature and Application of Laws Act, Cap 358 R.E 2019 (JALA).

He argued that the referred cases by the counsel for the respondents are distinguishable from the instant application because in those cases there were pending main cases in court which is different from the application at hand where there is no pending suit in court.

On the other hand, Mr. Mhoru added in rejoinder that the three conditions set in the case of **Atilio vs Mbowe** were met and further

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added new fact that on the balance of convenience the applicants will suffer more.

Having carefully considered the submissions and pleadings filed by both parties, the issue for determination is whether the application is meritorious.

Mareva injunction is a common law remedy developed from the case of **Mareva Compania Naviera SA vs International BulkCarriers SA (supra)**. In our jurisdiction, the Court has jurisdiction to hear and determine such kind of application under Section 2(3) of the JALA which supports the application of common law and the doctrine of equity.

Mareva Injunction is usually granted in a situation where the Court is satisfied that there is no pending suit. It is an application pending obtaining a legal standing to institute a suit. It may be applied in circumstances where the applicant cannot institute a suit because of the existing legal impediment, for instance, where the law requires that a statutory notice be issued before the institution of the suit.

In the application at hand, the applicants have established that, there is an existing legal impediment which is the 90 days' notice of intention to sue the respondents which expires after 90 days and it has not yet expired. *AMs-*

However, I am not in agreement with Mr Aligawesa's averment that three mandatory conditions which were set in the case of **Attilio Mbowe** are not applicable in the applications for interim injunctions famously known as mareva injunctions. Mareva injunction is a specie of a temporary injunctions, therefore the principle set in temporary injunction applications are also applicable to mareva injunctions. This means that the applicants have to establish all three conditions as set in the case of **Attilio vs Mbowe**.

As previously observed, mareva injunction like other injunctions is an equitable remedy whose object is to preserve the pre dispute state until the trial or until a named day or further order (see the case of **Abdi Ally Salehe vs Asac Care Unit & 2 others**, Civil Revision No. 3 of 2012, CAT at DSM (Unreported). In the referred case, the Court of Appeal observed that in deciding such applications, the court is to see only prima facie case, that there is a bona fide contest between the rival parties.

In the instant application, the court is satisfied that the applicants have managed to establish that there exist a bonafide contest between them and the respondents. The applicants claim to be the lawful owners of the suit premises which are in threat of being demolished by the respondents before the expiry of the statutory 90 days. The applicants believe that they have a right of compensation on the suit premises, while the

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respondents claims that the applicants have no any right over the suit area since they are trespassers on the road reserve.

I find that the applicants have managed to establish the first condition that there is a prima facie case to be determined by the court after the expiry of 90 days.

In the case of **Abdi Ally Salehe vs Asac Care Unit & 2 others,(supra)**, the Court of Appeal went on to establish that once the court finds that there is a prima facie case, it should then go on to investigate whether the applicants stands to suffer irreparable loss, not capable of being atoned for by way of damages. The court observed further that;

"There, the applicant is expected to show that, unless the court intervenes by way of injunction, his position will in some way be changed for worse; that he will suffer damage as a consequence of the plaintiff's actions or omission...."

In the instant application, at paragraph 12 of the affidavit in support of the application it shows that the applicants have invested a lot in the suit premises and if the 1st respondent is not stopped in effecting the road project without paying them, it will cause substantial and irreparable injuries and loss, psychological torture and negative results. *Alle.*

However, the applicants through their counsels failed to demonstrate how the acts of the respondents will cause irreparable injuries, psychological torture and negative results. There was no elaboration of those negative results. The counsel kept on insisting on the rights of the applicants to be compensated which I find that cannot be termed as irreparable loss.

On that, I find that the applicants have failed to establish the second condition which is sufferance of irreparable injuries.

On the third condition, the applicants also failed to establish on how they stand to suffer greater injury more than the respondents. The affidavit is completely silent on this condition. Mr Aligawesa only pointed that the grant of the application will not prejudice the respondents. Mr. Mhoro learned Advocate on rejoinder tried to mention the third condition that on the balance of convenience, the applicants will suffer more, despite the fact that it was a new fact on rejoinder, he did not show how the applicants will suffer more than the respondents, who have demonstrated that since the project is for the public interest and the Government fund which is already in move will have to stop hence stall the development.

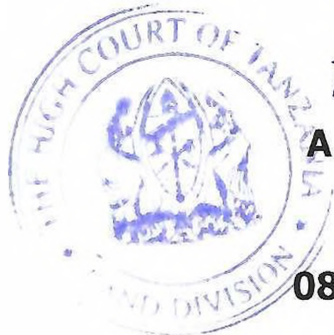
In the upshot, the applicants have failed to demonstrate cumulatively the three conditions set in the case of **Atilio vs Mbowe**, as

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they have only established one condition. The Application is refused for that reason of failure to meet all three conditions necessary for grant of the interim injunction.

The Application is dismissed with no order as to the costs.

It is so ordered.



A. Msafiri
A. MSAFIRI
JUDGE
08/04/2024