

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 26386 OF 2023

BALTHAZAR MUSSOLIN KITUNDU.....1ST APPLICANT

NICO LAND DEVELOPMENT CO. LTD.....2ND APPLICANT

VERSUS

THE COMMISSIOENR FOR LANDS.....1ST RESPONDENT

THE REGISTRAR OT TITLES.....2ND RESPONDENT

KIGAMBONI MUNICIPAL COUNCIL.....3RD RESPONDENT

TANZANIA HOUSE OF BUSINESS COMPANY LIMITED..4TH RESPONDENT

ATTORNEY GENERAL.....5TH RESPONDENT

RULING

21st March 2024 & 16th April 2024

L. HEMED, J.

This application has been made under section 2 (3) of the Judicature and Application of Laws Act, [Cap. 358 R.E 2019] and section 95 of the Civil Procedure Code [Cap. 33 RE 2019]. The Applicants seek for restraint order against the 1st, 2nd and 3rd respondents from transferring ownership of Plot No. 450, Block "A" at Amani Gomvu – Kigamboni Municipality, pending expiry of statutory notice of 90 days.

The application has been supported by the affidavit of Balthazar



Mussolin Kitundu and Erasto Gaudence Ngamilanga who have asserted to the effect that the 1st Applicant purchased the suit land on 20th June 2017 pursuant to the order of the District Land and Housing Tribunal for Temeke, previously registered in the name of **TANZANIA HOUSE OF BUSINESS COMPANY LIMITED** (4th Respondent). On 23rd August 2022, he disposed it to **NICO LAND DEVELOPMENT CO. LTD**, (the 2nd Applicant) by signing all necessary transfer documents. That while the transfer documents are pending in the office of the Commissioner for Lands, (1st Respondent), on 10th November 2023, he received a 30 days' notice from the Registrar of Titles, (2nd Respondent) of his intention to rectify the land register in respect of Plot No. 45 Block 'A' cancelling the 1st Applicant's name and replacing it with the name of the 4th Respondent.

It was stated further that the failure of the Commissioner for Lands to process approval of the transfer, renders the sale contract signed between 1st and 2nd Applicants invalid. It was lamented that, the 1st Applicant will be obliged to refund to the purchaser, the capital gain tax of Tshs. 45,660,000/= and the purchase price of Tshs. 218,134,000/=. He insisted that unless the court intervenes and gives redress, the intended change of ownership to the 4th Respondent will be detrimental to the applicants as the



4th Respondent will be at liberty to dispose the property to another person causing endless litigation, costs and time wasting for both the parties and the court.

The 1st, 2nd, 3rd and 5th respondents contested the Application through the Counter Affidavit of one **KAJESA MINGA**, an officer working in the office of the 1st Respondent who averred that the notice of rectification was served to the 1st Applicant after having discovered that the sale of the suit property was unauthorized. The 4th Respondent could not file counter affidavit nor he could enter appearance, despite being duly served by publication in Mwananchi News paper of 6th December 2023.

The matter was heard by way of written submissions which were promptly filed as ordered by the court. In arguing the Application, **Mr. Benjamin Mwakagamba**, represented the applicants while the 1st, 2nd, 3rd and 5th respondents enjoyed the service of **Ms. Mariam Matowolwa**, learned State Attorney. I have gone through the submissions made by both learned counsel. The question for determination is whether the instant Application has merits.

As aforesaid, this is an application for '*mareva injunction*' a common law remedy developed by Court of England in the famous case of **Mareva**



Compania Naviera SA vs International Bulk Carriers SA (1980) I All ER, applicable in Tanzania *vide* section 2 (3) of the Judicature and Application of Laws Act, [Cap. 358 R.E 2019]. The *Mareva* application provides for an exception to the general rule that there must be a pending suit in court, for one to apply for temporary injunction.

In the instant case there is no pending suit but the applicants seek for injunctive order against the respondents from effecting transfer of ownership of the suit property pending expiry of the 90 days' statutory notice to sue the Government. The conditions for granting *Mareva* injunctive orders are the same as those for granting ordinary injunctive order propounded in the case of **Atilio vs Mbowe** (1969) HCD 284. The said conditions according to this case are : -

1. The applicant(s) must demonstrate existence of *prima facie* case, that is a serious triable issue between the parties;
2. It should be established that if *injunctive* order is withheld the Applicant(s) would suffer irreparable loss;
3. The Applicant(s) should be able to establish that on the balance of convenience they will suffer greater



hardship in case the order is withheld than the Respondent(s) will in case the order is granted.

Let me start with the 1st condition on existence of *prima facie* case. I have noted from the rival affidavits and submissions that the applicants are challenging the intention of the respondents to transfer ownership of the suit landed property to the 4th Respondent. The 1st Applicant claims to be the current registered owner of the suit land and has sold the same to the 2nd Applicant. On the part of the 1st, 2nd, 3rd and 5th respondents, they assert that the 2nd Respondent issued the 30 days' notice of rectification after having discovered that there was unauthorized sale of the suit property. From the facts drawn out of the rival affidavits, it is unequivocally clear that there is a *prima facie* case of transfer of ownership between the parties.

The 2nd condition which must be met is the probability of the applicants to suffer irreparable loss. In the matter at hand, the applicants are complaining of an attempt by the respondents to alienate them the disputed landed property. The question is what kind of loss are the applicants going to suffer in case the injunction is not granted? The answer to the aforesaid question is that the respondents are going to effect transfer of the suit property to the 4th Respondent. The effect of the intended transfer will be



that ownership of the property will shift to the 4th Respondents. The Applicants will be alienated the suit landed property. Such effects of alienation of property cannot be easily compensated. I am holding so because the person whose property has been taken away from him, apart from having lost it, he may psychologically be affected due to such loss. Mental anguish are kind of losses that cannot be easily be compensated through monetary means. Again, once the property is transferred to another person it won't be easier for the Applicants to recover it. From the foregoing, I find the 2nd condition to have been met.

The 3rd condition is on the balance of convenience between the parties. From the facts deponed, the suit property is registered in the name of the 1st Applicant. In my view, it is the 1st Applicant who is going to suffer greater hardship if injunction will not be granted than the other parties will if the same is refrained. This is because the 1st, 2nd, 3rd and 5th respondents are Government institutions whose role in the instant case is to effect transfer only and thus, if restrained they will not be affected in anyhow. The 4th Respondent is the 3rd party to whom the property is intended to be transferred to. Therefore, it cannot suffer any loss. After all the 4th respondent has not demonstrated the loss that it may suffer in case the



application is granted.

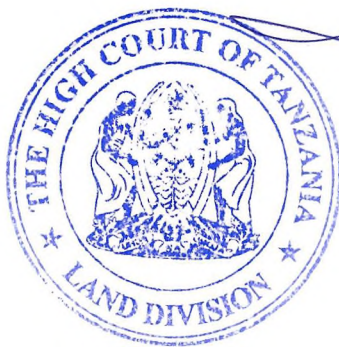
Besides, I have considered the nature of this suit that if the 1st, 2nd, 3rd respondents will be left to proceed to effect transfer of the property, the 4th Respondent may proceed to dispose the same to 3rd parties and hence the complication of the matter. In that regard, I find the 3rd condition to have been meet.

In the final analysis, I find the Application to have merits. The same is granted with the following orders: -

1. The respondents are hereby restrained from effecting transfer of ownership of Plot No. 450 Block 'A' Amani Gomvu in Kigamboni Municipality pending expiry of the 90 days' notice to sue.
2. Each party to bear its own costs.

Order accordingly.

DATED at DAR ES SALAAM this 16th April 2024.




L. HEMED

JUDGE