

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

MISC LAND APPLICATION NO. 766 OF 2023
(Arising from Land Case No. 390 of 2023)

MNGUMI REGINALD PETER.....APPLICANT

VERSUS

FRANCS ANTONY CIZA.....1ST RESPONDENT

MAJOR SECURITY LTD.....2ND RESPONDENT

GEORGE NYAHITANWA.....3RD RESPONDENT

RULING

09th to 23rd February, 2024

E.B. LUVANDA, J

This is an application for temporary injunction made under the enabling provision of Order XXXVII (1) (a) of the Law of Limitation Act Cap 89 R.E. 2019 (sic, Order XXXVII rule 1(a) of the Civil Procedure Code, Cap 33 R.E. 2019). The Applicant above is also seeking for an order of re – instatement for him to be restored back into physical occupation of Plot No. 658 Block F Tegeta Kinondoni Dar es Salaam pending determination of Land Case No. 390/2023.

The ground taken forth in the affidavit in support of prayers above, is that the Applicant acquired the suit land on 01/10/1993 vide offer of right of occupancy annexure Moshi 1 to the affidavit. Thereafter he procured a building permit

annexure MOSHI 2 to the affidavit. The Applicant bragged to have been paying land rent as per annexure MOSHI 3. The Applicant stated that on 27/10/2023 the First and Third Respondents trespassed into the suit land, demolished his fence, hijacked his caretaker, took possession of his residential house and eventually demolished his house on 05/11/2023.

The First Respondent conceded a fact of demolishing the Applicant's fence and claimed ownership of the suit Plot vide certificate of occupancy Title No. DSMT 1043303 issued on 14/07/2023 as per annexure F1 to the counter affidavit. The First Respondent also asserted to have sought a building permit on 23/08/2023 and was granted the same on 21/09/2023 annexure F2.

The Second and Third Respondent equally admitted in their respective counter affidavit a fact that they demolished a fence of the Applicant.

Mr. Benedict Bahati Begiliye learned Counsel for Applicant submitted that the Applicant have been in occupation of the suit plot since 1993, and from when he was allocated the same he has never received any revocation of his right of occupancy. He submitted that the Applicant has developed by building a house and fence, which the Respondents admit to have demolished it. He submitted that the Applicant planted coconut trees, which he is now under a stage of harvestings for which he seeks to be protected.

Ms. Rebeca Mturi learned Counsel for Respondents, submitted in reply that the First Respondent is the lawful owner of the suit property and dispelled a claim of ownership by the Applicant. She submitted that the First Respondent acquired the land legally by adhering to all procedures to the finalization of holding the title. She submitted that the Applicant planted coconut trees on his own peril knowing that he trespassed the suit property, arguing he should expect any consequences that may arise.

According to Order XXXVII rule 1(a) of Cap 33 (supra), provide,

"(1) where in any suit it is proved by affidavit or otherwise.

a) that any property in dispute is danger of being wasted, damaged, or alienated by any party to the suit of or suffering loss of value by reason of its continued use by any party to the suit ...

b) ...NA...

the court may by order grant a temporary injunction to restrain such act...

Herein, the Applicant allege the Respondents demolished his wall, which fact was admitted by the Respondents. The Applicant is now seeking an order to restrain the Respondents from uprooting coconut trees which he allege to be at a harvesting stage. The learned Counsel for Respondents argued that the

Applicant planted them at his peril, and argued for him to bear the consequences. Truly this argument carry forward the Applicants' argument of long occupation at a suit plot.

Now, so far both the Applicant First Respondent are having title deed over the same plot in dispute, meaning there is a triable issue. And on the strength of accounts of facts in the affidavit, counter affidavit and argumentation. I am constrained to grant the injunction, to rescue the coconut trees planted by the Applicant.

And in view of undeniable fact that the Applicant have been in actual occupation of the suit land since 1993, I make an order for the suit property to remain under occupation of the Applicant, pending determination of Land Case No. 390/2023.

The application is granted. No order for costs.



E. B. LUVANDA
JUDGE
23/02/2024

Ruling delivered in the presence of Ms. Rebeca Mtui learned Counsel for Respondent also holding brief for Mr. Benedict Bagilie learned Counsel for Applicant.



E. B. LUVANDA
JUDGE
23/02/2024