

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**AT SONGEA**

**MISCELENEOUS LAND APPLICATION NO.42 OF 2019**

**(ARISING FROM LAND CASE NO. 02/2019)**

**MCHOMORO VILLAGE COUNCIL ..... APPLICANT**

**VERSUS**

**LIKUYU SEKA MAGANGA VILLAGE COUNCIL ..... RESPONDENT**

**RULING**

**Date of Last order: 04/08/2020**

**Date of Ruling: 25/08/2020**

**BEFORE: S.C. MOSHI, J.**

The application is filed under section 68(c) and (e) and Order XXXVII, Rule 1 (b) and 4 and Order XLIII Rule 2 of the Civil Procedure Code Cap. 33 R.E 2019. The applicant is seeking an order for temporary injunction against the respondent or its agents to enter, use, dispose, sale, lease or sublease, occupy the suit land pending final disposal of a suit in land case number 02 of 2019. The application is supported by an affidavit deposed by Juma Rashidi Mhogora.

The application was disposed of by way of written submissions, the applicant was represented by Mr. Vincent Kassale learned advocate whereas the respondent was unrepresented.

Mr. Kassale submitted *inter alia* that he is seeking for temporary injunction as the respondent has invaded the suit land owned by the applicant. Following such invasion there is a state of unrest among the people of the two villages, if the prayers are not granted there will be breach of peace, as the respondent is using force to evict the villagers through burning their huts, their planted crops, destroying their erected structure, and killing their domestic animals.

He made reference to the case of **Attilio V. Mbowe (1960) HCD No. 284** in which the court set three principles for grant of temporary injunction thus:

- 1. There must be a serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed.*
- 2. That, the court's interference is necessary to protect the plaintiff from the kind of which may be irreparable before his legal right is established*

3. *That on the balance there will be great hardship and mischief suffered by the plaintiff from the granting withholding of the injunction than will be suffered by the defendant from granting of it....the court must be satisfied that the damage which the plaintiff will suffer will be such that mere money compensation will not be adequate.*

He said that going through the applicant's affidavit the above pointed out three conditions have been met.

In response thereto, the respondent opposed the application stating that he is the real and true owner of the suit land. That, he has not used force to evict the villagers of the applicant, he has not burnt their huts, he has not destroyed their crops or structures and he had not killed their domestic animals.

He stated further that, there is no serious question to be tried on the facts alleged and there is no probability that the applicant will be entitled to the relief prayed. He also stated that the applicant shall not get great hardship or mischief if the injunction order will not be granted.

I have gone through the submissions of both parties. The principles governing issuance of temporary injunction have been laid in the case of **Attilio Vs Mbowe** (supra). Such conditions must be tested and applied.

Starting with the first condition, whether there is a serious issue to be tried by the court. The applicant must establish a legal right which he claims in the main suit. I am convinced that the applicant has shown that there is a serious question regarding ownership of the suit land which need to be determined by the court; the issue is who is the lawful owner of the suit land.

In respect of the second condition, whether the applicant will suffer irreparable injury if the prayer for injunction is refused; the law is that injury should not be capable of being compensated by money. Contents of paragraphs six of the applicant's affidavit has stated it all, I quote: -

*6." that, all these come as a result of the respondent of using force to evict the villagers through burning their huts, their planted crops, destroying all their erected structures, and killing their kept domestic animals."*

It is obvious from the above extract that the pointed out injury cannot be compensated in monetary form.

The last condition is balance of convenience, the question here is who is going to suffer greater hardship and mischief if the temporary injunction is not granted. The applicant has shown that if the injunction is not granted he will suffer an irreparable injury as its people have been utilizing the suit land since 2004, they depend on it for their earning and living, they have developed it, built huts thereon and planted their crops.

Basing on the aforesaid, I grant temporary injunction; I restrain the respondent, its agents and whoever in its name to enter, use, dispose, sale, lease, sublease, or occupy the suit land pending the determination of **Land Case number 2 of 2019.**

Costs to be in the cause.

It is ordered.



**S.C. MOSHI**

**JUDGE**

**25/8/2020**