

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LAND APPLICATION NO. 148 OF 2022

(C/F LAND CASE NO. 60 OF 2022)

YAUMY ASSAD NKYA.....APPLICANT

VERSUS

NAFCO VILLAGE COUNCIL.....1ST RESPONDENT

MONDULI DISTRICT COUNCIL.....2ND RESPONDENT

THE ATTORNEY GENERAL OF THE

UNITED REPUBLIC OF TANZANIA.....3RD RESPONDENT

KIMARO KIYONGO.....4TH RESPONDENT

SAITABAU LOOMONI.....5TH RESPONDENT

SUMULEY MELIYO.....6TH RESPONDENT

JOSEPH LOISHIYE.....7TH RESPONDENT

LAIS NGILISHO.....8TH RESPONDENT

NGOJE KIYONGO.....9TH RESPONDENT

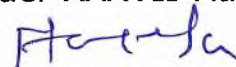
MESIAKI KURESOI.....10TH RESPONDENT

RULING

15/03/2023 & 29/03/2023

MWASEBA, J.

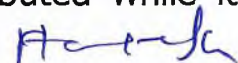
The applicant herein, Yaumy Assad Nkya, brought this application under certificate of urgency based on the provision of Order XXXVII Rule 1 (a)



& (b), Section 68 (b), (c), & (e), and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019. He prayed for an interim order to maintain *status quo* by restraining the respondents herein or their agents, servants, assignees, employees, contributories, assistant, or any person acting on their behalf, jointly or severally from interfering with the suit property measuring 400 acres situated at Lolkisale Ward, Monduli District pending determination of the main case.

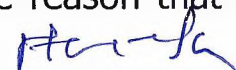
During the application hearing, the applicant enjoyed the legal service of Mr. Fredrick Lucas, learned counsel whereas Mr. Mkama Msalama, learned State Attorney represented the 1st to 3rd respondents. The application was argued orally and ex-parte against the 4th to 10th respondents as they denied service.

Supporting the application, Mr Fredrick Lucas prayed to adopt the applicant's affidavit to be part of his submission. He argued further that he is aware that **Order XXVII Rule (1) (b) of the CPC** prohibits the grant of interim injunction against the Government but only an order declaring the rights of the parties. It was his further submission that the 1st respondent had already distributed 350 acres to the 4th to 10th respondents who are now building permanent structures, so, they are worried even the remaining 50 acres will be distributed while it was



allocated to the applicant in 1988 by Monduli District Council. He stated further that the applicant had been paying land rent as evidenced by annexure "YAN 3" and if the application will not be granted the applicant will suffer irrepealable loss. He argued further that the 1st to 3rd respondents are necessary parties and the order given will not prejudice any rights on their side. Since the order is only for restraining the respondents from developing the suit property pending determination of the main suit. He supported his arguments with the case of **Quality Corporation Ltd and Another vs Forsters Auctioneer & General Traders and Another**, Misc. Commercial Application No. 55 of 2019 and prayed for the application to be granted.

Opposing the application, Mr Mkama told the court that the application is incompetent and unmaintainable for contravening **Order XXXVII Rule 1 and Rule 2 (i) of the CPC** which prohibits temporary injunction against the Government. He submitted further that since the 1st to 3rd defendants are Government, an interim injunction cannot be issued against them. His argument was supported with the case of **Zena Theopist Mpenda and Others vs Ubungu Municipal Council**, Misc. Land Application No. 238 of 2020 (HC-Unreported). He also distinguished the case of **Quality Corporation Ltd** (Supra) for the reason that the



said application was made under **Order XXI Rule 24 (1) (2) and Rule 27** together with **Sections 68 and 95** of the CPC of which the cited case was dealing with stay of execution while the current application is for temporary injunction. In the end, he prayed that this application be disregarded.

In a brief rejoinder, the counsel for the applicant reiterated his submission in chief and asserted that *status quo* be maintained. He maintained his prayer for the application to be granted.

Having carefully considered the affidavit in support of the chamber application, the submissions of the Learned Counsels, and the law applicable, the issue for determination is whether the application has merit.

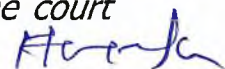
Order XXXVII Rule 1 (a) (b) of the CPC provides that:

“Where in any suit it is proved by affidavit or otherwise—

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

or

(b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors, the court



may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders:

*Provided that, an order granting a temporary injunction shall not be made against the Government, **but the court may in lieu thereof make an order declaratory of the rights of the parties** (emphasis is mine)."*

In the application at hand, the learned state attorney objected to the application for the reason that the law forbids an injunction to be granted against the Government as per **Order XXXVII Rule 1 (b)** of the CPC. However, under the same provision, the court can make a declaration order regarding the rights of the parties. I agree with the learned State Attorney to this legal position.

In this application, it is crystal clear that the 1st to 3rd respondents are Government Institutions as per **Section 16 of the Government Proceedings Act**, Cap 5 R.E 2019 as amended by **Section 26 of Act No. 1** of 2020. However, they were joined in this matter as Necessary parties where there are other persons who are 4th to 10th defendants whom it is alleged that they had been allocated the disputed land by the 1st respondent and are constructing permanent structures thereon.

Thus, taking into consideration the nature of the main case, it is not the 1st to 3rd respondents who are constructing permanent structures to the disputed

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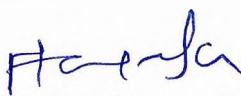
property but the 4th to 10th respondents. That means if this application will not be granted against them, it will cause irrepealable loss to the applicant herein.

For reasons explained above, interim order is granted to maintain *status quo* against the 4th to 10th respondents not to construct permanent structures on the disputed land pending the determination of the Land Case No. 60 of 2022. Costs to follow the event.

Ordered accordingly.

DATED at ARUSHA this 29th day of March, 2023




N.R. MWASEBA

JUDGE