

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
AT TABORA
MISC. LAND APPLICATION No. 4755 OF 2024

MICHAEL GABRIEL MIHAYO (*The Administrator of the Estate of the Late GABRIEL KALWANI MIHAYO*) **APPLICANT**

VERSUS

- 1. NATIONAL HOUSING CORPORATION (NHC)**..... **1ST RESPONDENT**
2. TABORA MUNICIPAL COUNCIL **2ND RESPONDENT**
3. THE ATTORNEY GENERAL..... **3RD RESPONDENT**

RULING

Date of Last Order: 12/04/2024
Date of Ruling: 30/04/2024

KADILU, J.

The Applicant herein filed this application under the certificate of urgency under the provisions of Section 2 (1) and (3) of the Judicature and Application of Laws Act, [Cap. 358 R.E. 2019], Section 68 (e) and Section 95 of the Civil Procedure Code, [Cap. 33 R.E. 2019], seeking the following orders pending the institution and determination of the intended suit between him and the respondents after the expiration of statutory notice:

- i) That, this honourable court be pleased to grant temporary (Mareva) injunction restraining the 1st and 2nd respondents, their workmen and/or agents, and any other person claiming to act under the instructions of the respondents from demolishing the applicant's house pending the expiry of the 90 day's statutory notice.*
- ii) That, this honourable court be pleased to issue temporary (Mareva) injunction against the 1st and 2nd respondents themselves and their assignees, agents, proxies, privies, servants, workmen, and any*

other person working under the instructions of the 1st and 2nd respondents from unlawfully evicting the applicant from his landed property or removing his exhaustive improvements thereat pending the filing, hearing and final determination of the respective substantive suit.

iii) This honourable court be pleased to order that the applicant be let to proceed with his legal business in the disputed premises until the determination of the prospective substantive suit.

iv) That, this honourable court be pleased to dispense with the requirement of 90 days' statutory notice before filing the suit against the respondents.

v) The costs and incidentals thereto abide by this application be granted.

vi) Any other reliefs the honourable court may deem fit to grant.

The application is supported by an affidavit of Mr. Emmanuel B. Musyani, Advocate for the applicant. The respondents filed a counter affidavit sworn by Mr. Gureni Nzinyagwa Mapande, the learned State Attorney. When the application was called on for hearing, the same learned Counsel represented the respective parties. Supporting the application, Mr. Musyani stated that the applicant is the administrator of the estate of the late Gabriel Kalwani Mihayo and the lawful owner of the disputed property under the customary right of occupancy for more than 40 years. He added that the said property has the estimated value of TZS. 600,000,000/= and is located at Nyaligwa - Lumumba Street, Market Road within Tabora Municipality.

According to Mr. Musyani, the applicant has been paying land rent, property tax, water, and electricity bills hence, he is recognized by the

respondents as the lawful owner of the suit property. Mr. Musyani argued that despite all these, on 18/01/2024, the 1st and 2nd respondents trespassed on the disputed property, erected iron sheet walls and beacons, and put an 'X' sign indicating that the property was supposed to be demolished. The learned Advocate told the court that the applicant had tried to resolve the dispute amicably but it proved futile. On 07/02/2024, the respondents issued 30 days' notice to the applicant intimating that on 07/03/2024 on expiry of the notice, the suit premise would be demolished.

The advocate for the applicant urged the court to grant the application because if the respondents are allowed to demolish the disputed property, the applicant will suffer irreparable loss as he had already made substantial improvements on it. He explained that the applicant has a serious triable issue which is why on 20/02/2024, he issued a 90 days' statutory notice to the respondents that will pave the way for the institution of a civil suit in court. He said this application was inevitable as the notice has not yet expired and the respondents could not be sued without issuing a statutory notice of 90 days.

He opined that the respondents have nothing to lose if the status quo is maintained whereas the applicant stands to suffer irreparably because he is carrying on business in the disputed property which he depends on for daily survival. To support his argument, Mr. Musyani cited the case of ***Decent Investment Limited v Tanzania Railway Corporation & 3 Others***, Mics. Civil Appl. No. 13 of 2023, High Court of Tanzania at Tabora.

Responding to Mr. Musyani's submissions, Mr. Gureni stated at the outset that he was opposing the application on the ground that it did not fulfill the conditions laid down in the case of ***Atilio v Mbowe*** [1969] HCD 284. Particularly, the learned State Attorney argued that the applicant has failed to prove ownership of the disputed property so, there is no premafacie case. He also stated that the applicant has no irreparable loss to suffer if the application is withheld because he has not proved that he owns the disputed property. Concerning the balance of probability, Mr. Gureni submitted that if the application is granted, the respondents will suffer more loss than the applicant because the 1st respondent has started an investment project on the property in dispute which is for the wider interest of the public.

The learned State Attorney told the court that on 18/01/2024, the 1st respondent held a meeting with the occupiers of the 5 plots who agreed that they would demolish their structures voluntarily, but the applicant has not done so. Mr. Gureni explained that it is only part of the structure that is in dispute, not the whole of the applicant's property. He elaborated that the case of ***Mareva Compania Naveria SA v International Bulkcarriers SA*** [1980] 1 All ER 213 cited by Mr. Musyani is distinguishable because in Mareva's case, the applicant had a cause of action against the defendant whereas in the present application, the 1st respondent has a granted right of occupancy over the property in dispute. Mr. Gureni urged the court to dismiss the application with costs.

Mr. Musyani rejoined that the case of ***Atilio v Mbowe*** (*supra*), is not applicable in the circumstances of this application as in the present application, there is no pending main suit. Concerning the conditions laid down in Atilio's case, the learned Counsel replied that a *premafacie* case shall be established in the main case as it cannot be dealt with at this stage. He explained the applicant stands to suffer irreparable loss if the application will not be granted because he has already constructed a building on the land in dispute. He stated in addition that the demolition of any part of the disputed property will necessarily affect the applicant's building since they are connected. He prayed for the application to be granted for the protection of the applicant's right to own property.

In the course of composing the ruling, I came across two points of law that were not among the grounds of the application and they were not pointed out at the hearing of the application. I, therefore, invited the parties to address the court on the issues. The first point is about the *locus standi* of the applicant in this matter. Under Rule 10 of the Primary Courts (Administration of Estates) Rules, GN. No. 49 of 1971, the applicant was supposed to submit to the appointing court Form VI containing the expenditure and distribution of the estate to eligible heirs within four months of his appointment or within such further time as the court may allow.

That would mark the closure and end of the applicant's administration role. The record shows that on 21/04/2011, the applicant was appointed as the administrator of the estate of the late Gabriel Kalwani Mihayo by

Mwambao Primary Court. Thus, he was supposed to complete his duties by 21/04/2011 or seek an extension of time within which he could finalize his duties. Computing from when the applicant was appointed to 07/03/2024 when the present application was filed, it is clear that about 13 years have elapsed. Therefore, according to law, the applicant is no longer the administrator of the estate and, he who had inherited the property in dispute became the owner thereof and was entitled to sue in his name.

The second issue that cropped up during the composition of this ruling is concerning the description of the property in dispute for which the court is being moved to grant an injunction. In the application, the property is described as "the applicant's house built on his unsurveyed plots." In the 3rd, 4th, and 5th paragraphs of the affidavit sworn by the applicant's Advocate, the property is referred to as "the disputed land" on which the applicant has been in occupation for over 40 years while paying land rent, property tax, and utility bills. On the other hand, the 1st respondent's notice of demolition served upon the applicant indicates that the applicant has encroached into the 1st respondent's plot numbers 2,4,6,8, and 10. In this circumstance, the description of the disputed property is not clear.

Submitting about the description of the suit property, Mr. Emmanuel Musyani stated that the property in dispute is well described as a house built by the applicant on an unsurveyed plot. He elaborated that it is hard to describe it more because the property is owned under the customary right of occupancy. Whether it is on plots 2, 4, 6, 8, and 10, Mr. Musyani argued

that this is a point that needs to be proved during the hearing of the main case if the application is granted. Concerning the *locus standi* of the applicant, the learned Advocate for the applicant submitted that since the applicant's appointment as the administrator of the estate has never been revoked, he has the *locus* to proceed with this application. Mr. Musyani added that if the application is granted, the question of *locus standi* will be dealt with at a later stage in which the applicant will prove whether he is still the administrator of the deceased's estate or not. He urged the court to consider the application as it was properly placed before this court.

Replying to the submissions by Mr. Musyani, Mr. Samwel Mahuma, State Attorney stated that the property in dispute has not been described properly in terms of size and boundaries. He explained that though the applicant alleges that he owns the property in dispute under the customary right of occupancy, he was supposed to describe its size and boundaries as required by Order VII, Rule 3 of the Civil Procedure Code. Mr. Samwel elaborated that the dispute is over the boundaries where the applicant has encroached on the 1st respondent's Plots No. 3 and 4 located at Nyaligwa Street. The learned State Attorney contended that if the injunction is granted, its execution will not be practicable because it shall not be focused on a specific property.

Regarding the locus standi of the applicant, the learned State Attorney stated that Rule 10 (1) of the Primary Courts Probate rules requires a person appointed as the administrator of the deceased's estate to complete his role within 4 months. He added that though this court did not appoint the

applicant as an administrator, the concern is real because the applicant has been the administrator of the deceased's estate for 13 years, which is legally unacceptable. Mr. Samwel referred to the case of ***Beatrice Brighton Kamanga v Ziada William Kamanga***, Civil Revision No. 13 of 2020 in which it was held that the position of an administrator becomes illegal if he fails to file an inventory within the prescribed time or to apply for an extension of time to do so.

The learned State Attorney concluded that in this application, the applicant's role of administration has ceased by operation of the law. In rejoinder, Mr. Musyani maintained that the application at hand is about an injunction, not the administration of the estate. Therefore, the points raised could wait to be resolved during the hearing of the main suit when filed. He asserted that the expiry of 4 months does not disqualify the applicant to be an administrator of the estate. The learned Advocate urged the court to deal with the application at hand and let probate issues be determined later.

I wish to start by resolving a concern about the description of the property in dispute. The point was raised by the court *suo motto* after having realized that the applicant did not give sufficient description of the disputed property to identify it so that if the injunction order is granted concerning it, it can be easily executed. In ***Daniel Dagala Kanuda (as an administrator of the estate of the late Mbalo Lusha Mbulida) v Masaka Ibeho & 4 Others***, Land Appeal No. 26 of 2015, this court held that the requirement to describe the suit property is not a cosmetic one. Among other purposes, the description is meant to allow the court to pass

final and definite orders. In the case of ***Abutwalib A. Shoko v John Long & Albin Tarimo***, Land Case No. 20 of 2017, the court held that:

"... unless the plaintiff indicates the description of the property claimed by him either by means of boundaries or by means of title number under the Land Registration Act, it would be difficult for the court to find whether the plaintiff has title to the property claimed and whether any encroachment or dispossession has been made by the defendant. Thus, the party must give a description sufficient to identify the property in dispute so that if a decree is passed about it, it shall not be unworkable...."

As already shown, in this application, the injunction was sought over a property that has been referred to in different ways by each party. The Advocate for the applicant has maintained that the description of the disputed property is a point that deserves to be dealt with in the main suit that will be filed after the expiry of a statutory notice issued to the respondents. I am of a settled view that an injunction cannot be issued over an unspecified property like in the present case because it will have the effect of restraining the respondents, their agents, and whoever acting on their behalf from dealing with any landed property located at Nyaligwa - Lumumba Street, Market Road within Tabora Municipality.

About the *locus standi* of the applicant, it is an elementary rule of law that a person with the capacity to institute any civil suit is either that person himself, his agent, or legal representative as an administrator of the estate if the owner is dead. In the ***Registered Trustee of SOS Children's***

Villages Tanzania v Igenge Charles & 9 Others, Civil Application No. 426/08 of 2018, it was stated that:

"Locus standi is a jurisdictional issue, it is a rule of equality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently close relation to it so as to give a right which requires prosecution or infringement of which he brings the action."

In the premises, for there to be a *locus standi*, a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. Thus, after a person has passed away, it is only the administrator of the estate who has *locus standi* to bring and defend a suit on behalf of the deceased. Nevertheless, there is nothing like endless administration or a lifetime administrator in our laws. See the case of ***Beatrice Brighton Kamanga v Ziada William Kamanga***, (*supra*). Once a person is appointed as an administrator of the deceased's estate, he should discharge his duties within the period stipulated under the law and must file an inventory and statement of accounts so that the matter may come to an end.

It should be noted that the application before me has nothing to do with the administration of the deceased's estate. However, in any court action, the court must satisfy itself about the *locus standi* of the parties as it touches the jurisdiction of the court to entertain the matter. In the present application, the appellant claims to be the administrator of the estate of her late father, Michael Gabriel Mihayo. He attached a letter of appointment

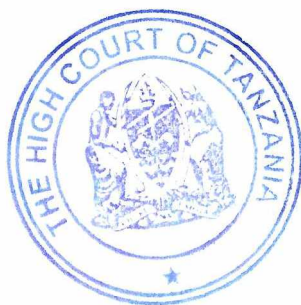
which indicates that the appointment was made 13 years ago. Under any circumstances, since the dispute arose on 18/01/2024, the applicant's administration role was supposed to be completed long ago. Any heir who had derived ownership of the disputed property after the applicant's administration status had ceased, was required to sue in his/her own name, even if it was the administrator himself.

In the premises, this court finds that the applicant has no *locus standi* to prosecute this application. Therefore, I strike out the application. Given the nature of this matter and the outcome of the application, each party shall bear its own costs.

It is so ordered.


KADILU, M.J.
JUDGE
30/04/2024.

The ruling delivered in chamber on the 30th Day of April, 2024 in the presence of Mr. Gureni Mapande, State Attorney for the respondent also holding brief for Mr. Emmanuel Musyani, Advocate for the applicant.




KADILU, M.J.,
JUDGE
30/04/2024.