

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

**MISC.LAND APPLICATION NO. 238 OF 2020**

**ZENA THEOPIST MPENDA.....1<sup>ST</sup> APPLICANT**  
**SELEMAN SAID.....2<sup>ND</sup> APPLICANT**  
**PROTAS ASENGA.....3<sup>RD</sup> APPLICANT**  
**MARIA RODRICK SHUMA.....4<sup>TH</sup> APPLICANT**  
**RAJABU SALUM CHAMSHAMA.....5<sup>TH</sup> APPLICANT**  
**MUSLIM SELEMAN MHANDO.....6<sup>TH</sup> APPLICANT**  
**VENDELIN TILLYA.....7<sup>TH</sup> APPLICANT**  
**FLAVIAN ANGERUS NGINYANI.....8<sup>TH</sup> APPLICANT**  
**TUMSIFU RASIAEL MUNUO.....9<sup>TH</sup> APPLICANT**  
**LAWRENCE MBEGA.....10<sup>TH</sup> APPLICANT**  
**RASHID IDDI ABDALLAH.....11<sup>TH</sup> APPLICANT**  
**ROBERT ARSEN MAX.....12<sup>TH</sup> APPLICANT**  
**WILLIAM CLEMENT MFUKO.....13<sup>TH</sup> APPLICANT**

**VERSUS**

**UBUNGO MUNICIPAL COUNCIL.....RESPONDENT**

Date of last Order: 06.08.2020  
Date of Ruling: 12.10.2020

**RULING**

**V.L. MAKANI, J.**

This is an application made under Section 2(3) of Judicature and Application of Laws Act (**JALA**), CAP 358 RE 2019, Order XXXVII, Rule 1(a), XXXVII, Rule 2(1) and section 68 (c) and 95 of the Civil Procedure Code, CAP 33 R.E 2019 (the **CPC**). The applicants are seeking temporary injunction against the respondent, its agents, assignees and any person working under its authority or direction

from evicting, demolishing or interference in any manner whatsoever with peaceful enjoyment of their lands situated at Mbezi Luis Kitopeni area (the **suit Land**) pending the filing hearing and determination of the intended suit against the respondent. The applicants are also praying for the costs of this application and any other relief/s this court may deem fit and just to grant. The application is supported by the joint affidavit of the applicants.

By the order of the court, this application proceeded by the way of written submissions. The applicants' submissions were drawn and filed by Amin M. Mshana, Advocate. The respondent's submissions were drawn and filed by the Solicitor, Ubungo Municipal Council.

Submitting in support of the application, Mr. Mshana prayed to adopt the contents of applicants' affidavit and stated that the applicants have already served 90 days statutory notice to sue the respondent on 21<sup>st</sup> April 2020 and if this application is not granted in the interim period before maturity of notice on 21<sup>st</sup> July 2020 they will have been made to suffer as they shall be long evicted making any attempt of restraint a matter overtaken by events. He said that it is now that the applicants are being informed of the intention to acquire their lands and if it had it been a peaceful and lawful project that requires mutual understanding, the respondent would not have gone with the demolition equipment stationed in the suit land ready to move in.

He submitted further that, it is only now (at page 5 of counter affidavit) that they have noted that the suit land has been termed as strategic area for strategic projects and that the land will be acquired

by the government. He said that the government known to the applicants is not by any chance Ubungo Municipal Council. He insisted that, had it been the case, the Minister for Lands and Human Settlements, the Commissioner for Lands and Human settlements would not have advised the applicants to make further inquiries and take steps to protect their interest, they would indeed have had site plans, drawings maps, copies of which the respondent would have, if they ever existed, and attached to the counter affidavit to prove the fact and put the applicants to shame and ridicule. In absence of all that, he said, the project is of people hiding under the guise of the power of respondent and its officers, unduly aiming at benefiting from the clandestine support of unruly officers with personal aggrandizement.

Mr. Mshana went on lamenting that there are unanswered questions about the nature, type and speed of the intended project of the Municipality that constitute public purpose with which the acquisition is forced. He insisted that the intention to hurt the applicants is intolerable and such acts have caused a lot of harassment, inconvenience loss of peace, tranquillity, agony and mental torture for the loss or damage that may be irreparable. He cited the case of **T.A Koore vs. General Manager, Mara Cooperative Union (1984) TLR 17** and added that the conditions laid down in that case for the grant of temporary injunction have been met. That the affidavit has disclosed a bonafide contest between the parties, likewise the 2<sup>nd</sup> and 3<sup>rd</sup> conditions have also been met. He said that if the respondent will be allowed to interfere with applicants' peaceful enjoyment of their lands it is the applicants who are going to suffer

and have actually suffered more and stands to suffer most if the interference is allowed to persist. That the applicants have failed to continue to carry out their activities peacefully at the detriment of their families. He prayed for the grant of this application with costs.

In reply, the respondent said that this application is not maintainable for the absence of the main suit. He further said that under The Written Laws (Miscellaneous Amendments) Acts, 2020 all the government institutions including Local Government Authorities become part of the government proceedings as defined under section 26 of the Act. Further he said that under section 25 of the Act, the Attorney General as a necessary part to all government proceedings must be joined. He added that non joinder of Attorney General as in this case renders this application unmaintainable.

The Solicitor further argued that, under Order XXXVIII, Rule 1(b) of the CPC the order of temporary injunction cannot be issued against the government. Further the applicant said that this application for temporary injunction is bad in law for absence of the main suit. He insisted that the condition precedent under which this application has been brought is that there must be a suit upon which the application is based. In support thereto he cited the case of **Israel Solomon Kivuyo vs. Wayani Langoyi and Naishooki Wayani (1989) TLR 140**. He further said that the suit land is strategic for construction of projects like a Bus Stand and Business Centre whose acquisition is of compulsory nature. The applicant further averred that the principles laid down in the land mark case of **Atilio vs. Mbowe (1969) HCD 284** have not been met by the applicants and the court cannot search

to establish and ascertain the claim on the illegality of the compulsory acquisition of land to be done at the suit land. He concluded that the applicants' stands no chance of suffering irreparable loss as the respondent is a reputable government institution who can pay compensation to the applicants in case the suit is not in the favour of the respondent. He prayed for the application to be dismissed with costs.

The applicants did not file rejoinder.

Having gone through submissions from the rival sides, I will first deal with the issue of maintainability of the application as was raised by the respondent.

In the submissions, the Solicitor on behalf of the respondent stated that the suit is unmaintainable in law for failure to join the Attorney General as a necessary Party as per sections 25 and 26 of the Written Laws (Miscellaneous Amendments) Acts, 2020. The respondent further stated that the order of temporary injunction cannot be issued against the government and further that there is no main suit pending.

All suits against the government are governed by section 6(1), (2), (3) and (4) of the Government Proceedings Act, CAP 5 RE 2019 as amended by The Written Laws (Miscellaneous Amendments) Act (No.1) of 2020 (the **Act**). Section 6 (3) of the Act provides:

*"All suits against the government shall, upon the expiry of the notice period, be brought against the Government, ministry, government department, local government authority, executive agency, public corporation,*

*parastatal organization or public company that is alleged to have committed the civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party"*

Section 6(4) of the Act provides:

*"Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3)*

From the wording of the provisions above, the Municipal Councils being under the Local Governments are now covered by section 6(3) of the Act. The respondent herein being a Municipal Council falls within this category stipulated under section 6(3) of the Act and therefore any proceeding in a court of law against the respondent requires the joinder of the Attorney General as a party after expiry of the 90 days' notice. This has not been adhered by the applicants as the application has been brought without the Attorney General being a party. Though this may be an application for mareva injunction, but it remains a mandatory requirement under the said section that the Attorney General has to be joined as a party.

Now what is the consequence of non-joinder of the Attorney General? According to section 6(4) of the Act, non-joinder of the Attorney General shall vitiate the proceedings of any suit. This means that the proceedings shall be rendered void. And since this application involves Ubungo Municipal Council and the Attorney General has not been joined as a necessary party as required by the law, then as correctly stated by the respondent, this application becomes unmaintainable.

Further, the proviso under Order XXXVII, Rule 1 of the CPC states:

*"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"*

This application being for temporary injunction cannot be maintained and pursued in terms of the above order.

The combination of the factors above makes this application incompetent. And for that matter, I will not deal with the merits of the application. Subsequently, the application is hereby struck out with costs for being incompetent.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**12/10/2020**