

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LAND APPLICATION NO. 6194 OF 2024

(Arising from Execution No. 03 of 2018 between Nguvukazi Group versus Jilia Mayunga and 35 Others and originated from Land Case No. 1 of 2016 between Nguvu Kazi Group versus Jilia and 35 Others)

BETWEEN

THE ATTORNEY GENERAL.....1ST APPLICANT
KABAGE VILLAGE COUNCIL.....2ND APPLICANT
THE DISTRICT DIRECTOR OF MPANDA DISTRICT COUNCIL.....3RD APPLICANT

VERSUS

NGUVUKAZI GROUP.....1ST RESPONDENT
MARK XAVIER MSILU.....2ND RESPONDENT
JILIA MAYUNGA.....3RD RESPONDENT
SWEDI HAMIS SWEDI.....4TH RESPONDENT
MALIMI JUMANNE.....5TH RESPONDENT
ELIAS IGAGABALE.....6TH RESPONDENT
HAMISI MASHINE.....7TH RESPONDENT

MADIRISHA NGANGA.....	8 TH RESPONDENT
MOTO BIKINYENGE.....	9 TH RESPONDENT
TOGONAMBA.....	10 TH RESPONDENT
LWELWE MANGAJO.....	11 TH RESPONDENT
KUNGURUME JAMES.....	12 TH RESPONDENT
ILUNDA NIGELA.....	13 TH RESPONDENT
LIBUNGA MATANGALO.....	14 TH RESPONDENT
YAYA NDALENGWA.....	15 TH RESPONDENT
MAGINE KWILASA.....	16 TH RESPONDENT
MASANJA BULUBA.....	17 TH RESPONDENT
HENULE WALESI.....	18 TH RESPONDENT
KULWA MAKENZI.....	19 TH RESPONDENT
JERRY ILUNDA.....	20 TH RESPONDENT
HAMISI KAZINZA.....	21 ST RESPONDENT
MATANGA HULAHULA.....	22 ND RESPONDENT
KWILASA SALIDA.....	23 RD RESPONDENT
DEO MSABILA.....	24 TH RESPONDENT
JOSEPH MAGADULA.....	25 TH RESPONDENT
MADUMA KITUGULU.....	26 TH RESPONDENT

MANGULA KULWA.....	27 TH RESPONDENT
MIGULA MAKENZI.....	28 TH RESPONDENT
JOSEPH SHIMBI.....	29 TH RESPONDENT
LUHENDE ZAKARIA.....	30 TH RESPONDENT
JOHN MAGADULA.....	31 ST RESPONDENT
MIHAMBO WAMIHAMBO.....	2 ND RESPONDENT
MASHALIA PUZI.....	33 RD RESPONDENT
MHOJA.....	34 TH RESPONDENT
BUKIGURI BUKENYENGE.....	35 TH RESPONDENT
CHINASA MABIRIKA.....	36 TH RESPONDENT
SINGU LUHENDE.....	37 TH RESPONDENT
LUKUBANJA SHEMELI.....	38 TH RESPONDENT

RULING

9th & 15th April, 2024

MRISHA, J.

The application now before me, was jointly filed with the court by the abovenamed first, second and third applicants and certified by Mr. Mujahidi B. Kamugisha, learned State Attorney. It is made under the

provisions sections 6 (a),8 (1) (f), 17 (2) (a) and (2) (a) and (b) of the Attorney General (Discharge of Duties) Act, Cap 268 R.E. 2019, Order XXI, Rule 57 (1) and (2) and sections 95 and 68 (e) of the Civil Procedure Code R.E. 2019.

The application is also supported by the joint affidavit of the applicants dated the 12th March, 2024. Through their chamber application, the applicants have urged the court to grant the following orders in their favour: -

1. That, this honourable court be pleased to issue an interim order not to proceed with Execution No. 03 of 2018 between Nguvukazi Group versus Jilia Mayunga and 35 Others which arose from Land Case No. 1 of 2016, the execution of this court which decreed 4th to 38th respondents to be evicted by the 2nd respondent in the disputed land pending inter parties hearing of this application by the applicants,
2. That, the court be pleased to grant other order (s) as it will deem fit to grant for the interest of justice,

That alternatively, it is the applicants' prayer that the court be pleased to grant them the following orders: -

1. That the court be pleased to investigate and release from attachment the disputed land with 360 acres which is located at Kabage Village in Tanganyika (Mpanda) District in Katavi Region, a land which is owned by the 2nd respondent,
2. That, this honourable court be pleased to take judicial notice on its previous decision in Civil Application No. 32 of 2022 that the first respondent had no legal capacity at the time of instituting Land Case No. 1 of 2016 and its subsequent execution No. 3 of 2018. Hence, the decree in Land Case No. 1 of 2016 is unenforceable for being vacuous.
3. Costs of this application be provided.
4. Any other reliefs (s) as the honourable court may deem fit and just to grant.

As it would appear, the instant application is supported by the affidavit of Kulwa Nkwabi Mahinda, a Village Chairperson of Kabage Village and other oral submissions to be made during the hearing of this application.

It is worth noting that due to its certified urgency as stated above, the application was heard ex parte on the 9th day of April, 2024 and during that stage, the applicants were represented by Mr. Erasto Balua, learned

State Attorney who initially adopted the applicants' affidavit in order to form part of his submission in chief.

Before making his submission, Mr. Balua urged the court to allow his prayer of amending the chamber application which showed inter alia, that it was made under section 8 (1) (f) of the Attorney General (Discharge of Duties) Act, Cap 268 R.E 2019 which provision, the counsel argued, is not existing in that Act and invited the court to note that the correct one is section 8 (f) of the Attorney General (Discharge of Duties) Act, Cap 268 R.E 2019, the prayer which was instantly granted by the court.

Regarding the first limb of the applicants' prayers, Mr. Balua submitted that since the instant application was made under a certificate of urgency, it is the applicants' prayer that the court be pleased to grant an interim order not to proceed with Execution No. 03 of 2018 which is pending before the Hon. Deputy Registrar of the High Court of Tanzania, Sumbawanga District Registry which is scheduled to come on 24th April, 2024 for necessary orders.

According to Mr. Balua the said Application stem from the Land Case No. 01 of 2016 before this court which decreed the 4th to 36 respondents to be evicted from the disputed land by the 2nd respondent. His prayer is

that such order be stayed pending hearing of the applicant's application inter parties.

It was his submission that should the court refuse to grant an interim order, as he has prayed, the applicants and most of the inhabitants will stand to suffer great and irreparable loss and hardship.

It was his further submission that the court has power to make an interim order under section 68 (e) of the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC) and Order XXI, Rule 57 (1) and (2) of the CPC. Based on the foregoing submission and the cited provisions of the law, Mr. Balua implored the court to make an interim order pending hearing of the instant application inter parties. He also urged the court to issue summons to the respondents for them to appear during the hearing of the applicants' application should it grant the present application.

On my part, I had enough time to go through the chamber summons, the applicants' affidavit and the oral submission of the counsel representing the said applicants. It appears to me that the disputed land which is the subject of the present application, contain 360 acres and it is located at Kabage Village within Tanganyika District in Katavi Region.

I have also observed that despite the fact that there is an undisturbed decision of this court dated the 7th day of June, 2018 in which the 1st

respondent was declared to be the lawful owner of the disputed land, the same decision which ordered the 4th to 38th respondents inter alia, to pay the 1st respondent a total sum of Tshs 70,000,000/= as general damages, the applicants still believe that the execution of that decision is unenforceable which is why they have come up with the present application.

The same contain two main prayers; **one**, that the court be pleased to issue an interim order not to proceed with Execution No. 03 of 2018 between the 1st respondent versus the 3rd respondent and 35 Others pending inter partes hearing of the applicants' application ; **two**, that the court be pleased to investigate and release from attachment the 360 acres disputed land which is located at Kabage Village within Tanganyika District in Katavi Region which the applicants' believes to be owned by the 2nd applicant.

Their first point of grievance, as indicated at paragraph 10 of their respective affidavit, is that there is a subsequent decision of this court in Misc. Civil Application No. 32 of 2022 between the 1st respondent and DED (District Executive Director) of Tanganyika District Council and Others in which the court indicated that Nguvukazi Group, the 1st

respondent herein, had never been registered by the 2nd respondent and she has no capacity to sue in court.

It is the applicants' averment at paragraph 11 of their respective affidavit, that upon learning that there has been a summons to evict the 4th to 38th respondents from the disputed land which the 1st respondent is purporting to own, they feel that if that order will be executed, they will suffer great irreparable loss and hardship.

Also, at paragraph 12 of their affidavit, the applicants have pointed out the reasons and loss that will befall them should the eviction order be executed. First, it is their argument that if the court fail to investigate their claim, they will suffer great irreparable loss and hardship to most of the inhabitants whom they have been bestowed with responsibility to ensure their security and safety, on the basis that the attachment is illegal as it is intended to execute against the Village land which is not subject to execution of the court orders and which will be placed in an institution which is not registered (Nguvukazi Group).

Secondly, it is their argument that if the said land falls under the hands of the 1st respondent, it will deprive the right of the applicants to protect land for the benefit of all inhabitants in the village because as a matter of fact, the 1st applicant has never allocated the said land to the 1st

respondent and it is beyond the threshold allowed by the law for the village to allocate land.

Not only that, but also at paragraph 13 of their respective affidavit, the applicants have averred that the Government and the public at large stand to suffer great irreparable loss and hardship as 360 acres cover not only arable land, but also the residential homes of most villages, the act which will leave most of citizens landless which will cause violence and constant insecurity within the village.

It is their further averment at page 14 of the said affidavit, that the judgment and decree do not define the clear demarcations of the said land in dispute, thus the 2nd respondent will not be in a position to properly hand over the land to the 1st respondent without causing public violence as majority of land is likely to fall under the 1st respondent's hands illegally.

And in a bid to justify their application, the applicants have averred at paragraph 15 of their respective affidavit that by virtual of their positions, they have the responsibility to ensure security and safety of their people and also to ensure land justice is upholding.

Finally, at paragraph 16 of their respective affidavit, the applicants have averred that it is in the interest of justice that the sought order be

granted and the court be pleased to investigate the legality of the 1st respondent being unregistered person to evict the land which is not owned by her.

From the above understanding, the issue is whether the present application has merits. It is not in dispute that neither the first applicant nor the second and third applicants were parties to both Land Case No. 1 of 2016 and Execution No. 03 of 2018 which they now challenge before this court.

In the circumstance, and ordinarily they cannot have a room to challenge those cases unless they have some sufficient reasons which under the eyes of the law, would make the court to allow them in and hear their concerns.

I have read almost all the enabling provisions the applicants have cited in their chamber application in order to move the court to grant their application. Among of them is section 17 (1) (a) of the Attorney General (Discharge of Duties) Act, Cap 268 R.E 2019 which provides that:

"17. Audience by Attorney General in matters of public interest, etc.

(1) Notwithstanding the provisions of any written law to the contrary, the Attorney General shall through the Solicitor-General have the right to audience in proceedings of any suit, appeal or petition in court or inquiry on administrative body which the Attorney General considers-

(a) to be public interest or involves public property..."

One of the reasons provided by the applicants in their application before this court, is that the Attorney General through the Officer of Solicitor General (the OSG) is of the considered opinion that the proceedings in respect of Execution No. 03 of 2018 which is pending before the Hon. Deputy Registrar, Sumbawanga Registry, involves a public property. Hence, based on that light, it is my view that the Attorney General has a right of audience in this matter.

Also, under Order XXI, Rule 57 (1) (2) of the CPC cited by the applicants as one of the enabling provisions, the court has power to make investigation of the claim of a claimant as if he was a party to the proceedings which involves the attached property and it may also postpone the sale of such property where the objector claims that such property is not liable to such attachment.

However, the proviso to the provisions of sub rule (1) of Rule 57 of Order XXI, is that the court will not make any investigation of the claimant in respect of the attached property where it considers that the claim or objection was designedly or unnecessarily delayed.

My understanding of the above proviso is that unless the court hear the application inter partes, it is when it can be in a good position to determine whether or not the claim or objection was designedly or unnecessarily delayed.

That apart, section 68 (e) of the CPC empowers the High Court to make such other interlocutory orders as may appear to the court to be just and convenient. The aim of that order is to prevent the ends of justice from being defeated.

There is no doubt that the interim order as the one sought by the applicants herein, is one of the interlocutory orders for which this court has power to grant. Hence, I find the order of interim order to be within the ambits of the law cited above.

In regard to the applicants' prayer of an interim order, it is important to understand the meaning of such order so as to distinguish it with the temporary injunction order and know the purpose of granting an interim order.

Luckily there are authorities to that aspect. For instance, in the case of **Jitesh Jayantilal Ladwa vs House and Homes Limited & 5 Others**, Miscellaneous Civil Application No. 97 of 2022 (HCT at Dar es Salaam, unreported), my brother Mruma, J. defined the interim order to mean:

*"Interim injunctive orders are temporary orders for purposes of maintenance of status quo while awaiting court to make its decision on how the status should be while entertaining a dispute between parties. **They are usually made when there is an urgent issue that needs immediate action while the court processes are ongoing.**" [Emphasis is mine)*

In our case, it is apparent that there is an urgent issue which needs the immediate action of the court. I say so because the applicants have drawn the attention of the court that there is a pending Execution No. 3 of 2018 which has the effect of evicting the 4th to 38th respondents from the disputed land and according to them if that order is executed, the said respondents and some of the inhabitants who are interested with the disputed land, will suffer great loss and hardship.

Again, in distinguishing the above order with temporary injunction order, the court in the case of **Jitesh Jayantilal Ladwa** (supra) had the following to say: -

*"On the other hand, temporary injunction orders entail provisional relief that aim to protect the subject matter in the existing condition without the Respondent's interference or threat. It aims to protect the Applicant's property from being disposed of or getting destroyed. **Unlike in granting interim orders, urgency is not prerequisite condition before granting temporary injunction orders.**" [Emphasis is mine]*

From the above definition, it is clear that in application for interim order, urgency is a prerequisite condition. In other words, one cannot apply for an interim injunction where there is no issue which require the immediate action of the court while the court processes are ongoing.

Also, regarding the condition (s) for an interim order to be granted, the court in the above cited case, stated that:

"...the object of an interim order is to keep matters or things in status quo, in order that, if at the hearing of the substantive action the Applicant obtains a decision in his favour, the Respondent, will have been prevented, in the meantime from dealing with the

property or the subject matter in such a manner as to make that decision ineffectual. Halsbury's Laws of England, 3^d Edition 21, page 343 paragraph 716 states thus;

*A plaintiff is entitled to an interim injunction if he satisfies the Court in, inter alia, the following Respects first, **that there is a substantial or serious question to be investigated.....**"*

[Emphasis is mine]

In the present application, it is the applicants' argument that the attachment of the disputed land needs to be investigated by the court because they believe such land is owned by the 2nd respondent and it is also their argument that there is enough evidence to show that the 1st respondent had no legal capacity to institute Land Case No. 1 of 2016, thus making the judgment and decree resulted from that case to be unenforceable for being vacuous.

In the light of the above arguments, the cited authorities and the foregoing reasons, I am convinced that the applicants herein have made their case properly, thus making the present application to be meritorious. Hence, their application deserves to be granted, as I hereby do. Thus, the court orders that the hearing of Execution No. 03 of 2018 to be stayed pending inter parties hearing and determination of the

applicants' application. This interim order will last for the period of pendency of inter partes hearing of Miscellaneous Land Application No. 6194 of 2024.

Regarding the prayer for costs, however, since the matter was heard ex parte, I am not convinced that the applicants are entitled to be awarded with costs. Hence, I make no order to costs.

It is so ordered.



A.A. MRISHA
JUDGE
15.04.2024

DATED at **SUMBWANGA** this 15th day of April, 2024.



A.A. MRISHA
JUDGE
15.04.2024