

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO 69 OF 2020

BETWEEN

DAUD MKWAYA MWITA _____ APPLICANT

VERSUS

1. BUTIAMA DISTRICT COMMISSIONER _____ 1st RESPONDENT

2. ATTORNEY GENERAL _____ 2nd RESPONDENT

RULING

19th November & 11th December 2020

GALEBA, J.

According to the chamber summons commencing this application, the major prayer in this application was that;

'This honourable court may be pleased to issue temporary injunction restraining the Respondents or their agents or workmen from evicting, interfering, embarrassing and or disturbing the Applicants' peaceful use and enjoyment of the premise located at Kyankoma village Nyamimange within Butiama District, Mara Region pending hearing and determination of the main suit.'

The application met a preliminary objection from counsel for the respondents that the applicant was supposed to file an application for Judicial Review, because the District Commissioner issued the orders

complained of in exercise of his administrative powers under section **14(3)(b) and (c) of the Regional Administration Act, no 19 of 1997**. Mr. Kitia Turoki learned state attorney appearing for the respondents added that injunctive remedies are also available under the Judicial Review forum, citing **rule 7(5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014, GN 324 OF 2014**.

Mr. Turoki finally submitted that the orders sought even if this court was to grant them, they were already overtaken by events because according to the affidavit of the applicant, he has already been evicted. He prayed that this application ought to be struck out with costs.

In reply, Mr. Ostack Mligo learned advocate for the applicant floated several arguments. He argued that the application was maintainable because *first* the same is seeking to challenge the orders of the District Commissioner with the intention of instituting a land suit against Butiama District Commissioner and *secondly* that what the applicant was seeking was to obtain a *mareva* injunction. Mr. Mligo added that for orders in judicial review to issue all available remedies must be exhausted meaning that they would not have gone to the judicial review without first

exhausting the remedies provided for under the **Judicature and Application of Laws Act [Cap 358 RE 2002]**. He finally submitted that although paragraph 8 of the affidavit supporting the application shows that the applicant has already been evicted, but at the same house there are graves, growing crops and his livestock kraals.

This application calls for serious pronouncements in the area of law. **First**, a *mareva* injunction cannot be applied or be granted pending a suit. It is an application pending obtaining a legal standing to institute a suit. A *mareva* injunction may be applied where an applicant cannot institute a law suit because of an existing legal impediment for instance where law requires that a statutory notice be issued before a potential plaintiff can institute a suit. Although Mr. Mligo said that this application is for *mareva* injunction, but there was no indication that the injunction is being sought pending expiry of a statutory notice; in actual fact according to the chamber summons, the prayer if granted would be pending determination of 'the main suit' which suit is nonexistent and unknown to both parties. So the prayer quoted above if granted, it would be pending nothing tangible or ascertainable. This court cannot grant an order pending nothing on record. That is the first reason why not only this application

should fail at this preliminary stage, but also it is the same reason it must fail even it was to be substantively heard.

The second reason is that although the application is seeking to restrain implementation of the 1st respondent's orders of eviction, but by paragraph 8 of the affidavit of the applicant, the police already evicted the applicant from the premises that this court is now being asked to issue an order preserving the applicant's presence and residence at the very premises. Mr. Mligo submitted that there are graves, crops, houses and even livestock kraals. That is possibly correct but the issue with it is that the protection of graves, crops, houses, livestock sheds and even animals were not intended to benefit from the orders sought. In this case, to cut a long story short, even if this court was to grant the order as sought, the same would have nothing to serve for the applicant whose presence in the land is to be protected and preserved is no longer there.

Based on the above discussion, this application is hereby struck out with no orders as to costs.

DATED at MUSOMA this 11th December 2020





Z. N. Galeba
JUDGE
11.12.2020