

**IN THE HIGH COURT OF ZANZIBAR  
AT TUNGUU  
CIVIL APPLICATION NO 09 OF 2022**  
(Arising from Civil Case No 47 of 2021)

<b>PENNYROYAL LIMITED</b>	.....	<b>APPLICANT</b>
<b>VS</b>		
<b>AECUS LIMITED</b>	.....	<b>1<sup>ST</sup> RESPONDENT</b>
<b>THE MINISTER FOR LAND</b>		
<b>AND HOUSING DEVELOPMENT</b>	.....	<b>2<sup>ND</sup> RESPONDENT</b>
<b>THE ATTORNEY GENERAL ZANZIBAR ....</b>		<b>3<sup>RD</sup> RESPONDENT</b>

**RULING OF THE COURT**

28/03/2023 & 11/05/2023

**KAZI, J.:**

The applicant, by way of chamber summons, filed this application praying for the following orders: -

1. The honourable Court be pleased to order that the Respondents, or any other person, officer, organ or authority, acting on their behalf, to be restrained from legally and or physically interfering with the Plot of land identified as DP 1309/2014 in Matemwe Muyuni and Tazari area, North Region, Zanzibar, measuring 411.92 Ha, as a whole or any part thereof, pending hearing and determination of the main suit and or any Counterclaim therein.
2. The honourable Court be pleased to order that the Respondents, or any other person officer, organ or authority, acting on their behalf, to be restrained from reinstating, replanning, resurveying, removing all or part of, entering, taking possession

or any similar conduct or acts aimed at any of the said conduct, including restraint from changing the Leasehold documentation, maps, replan, resurveying, zoning, etc. of all and any land under DP 1309/2014 in Matemwe Muyuni and Tazari area, North Region, Zanzibar, measuring 411.92 Ha, or any part thereof, pending hearing and determination of the main suit and or any Counterclaim therein.

3. The honourable Court be pleased to order that the Respondents, or any other person officer, organ or authority, acting on their behalf, to be restrained from initiating, continuing or pursuing execution of any civil case where the Applicant was or is not a Party, in respect of all that land under the said Plot DP 1309/2014 as a whole or any part thereof, pending hearing and determination of the main suit and or any Counterclaim therein.
4. Costs be provided for.
5. Any order which the Honourable Court shall deem fit to grant to better meet the ends of justice.

This application is preferred under sections 70 (1) (c) and (e) and section 129, Order XLIV rule 1 (a), Order XVIII rule 3 and Order XLIV rule 2 (1) of **the Civil Procedure Decree**, Cap 8 of the Laws of Zanzibar (the CPD) and any other enabling provisions of the laws, and supported by the affidavit of Mohamed Issa Khatibu, Principal officer of the applicant company.

Before me, the applicant was represented by Mr. Elia Lesha Mgoya and Happiness Mathias, learned advocate, whereas the first respondent had

the service of Mr. Ishaq Shariff, learned advocate and the second and third respondents were represented by Ms. Sarah Khatau, learned state attorney. The application was argued by way of written submissions.

Mr. Mgoya started his submission by adopting the contents of the applicant's affidavit to support the application. He then quoted sections 70(1) (c) and (e) and Section 129, Order XLIV Rule 1(a), Order XVIII Rule 3 and Order XLIV Rule 2(1) of the CPD and the authoritative case of **Atilio vs Mbowe** [1969] HCD 284 quoted in several cases such as **Lenasia William vs EFC Tanzania Microfinance Bank Ltd & Others** (Misc. Land Application 854 of 2017) [2018] TZHC Land D 403 and **Abdi Ally Salehe vs Asac Care Unit Limited & 2 others**, Civil Revision No.3 of 2012. Mr. Mgoya submitted that all cases quoted reiterated the conditions which guide the Court in granting or rejecting orders of a temporary injunction, which are: -

1. That there is a serious question to be tried and the Plaintiff Applicant is likely to succeed;
2. That the Court's interference is necessary to protect the applicant against irreparable loss;
3. That on a balance of convenience, there will be greater hardship on the part of the plaintiff/applicant if injunction is not issued.

In elaborating on the said principle to the instant application, Mr. Mgoya submitted that there is a serious question to be tried, and the plaintiff/applicant is likely to succeed. He added that the respondents have already initiated execution of the Decree emanating from Exparte/Default Judgment which was entered in a suit where the

applicant was not a party but related to property owned and held by the applicant. The property which is the subject matter of this Application. He submitted further that the applicant had been issued with a letter showing the respondent's joint and several intentions to interfere with its title and possession of the property, despite the fact that the applicant holds a valid title and that the applicant has made a substantial investment in it as deponed in paragraphs 3, 4, 5, 9, 10, 13, 18, 21, 22 and 23 of the applicant's affidavit. In support of his submission, Mr. Mgoya refers the case of **Heir of Nikobamye Mathias vs The Attorney General of Burundi** EACJ at Arusha App No. 02 of 2020 cited in the case of **Geilla vs Cassman Brown & Co. Ltd** [1973] E.A. 358 which held that: -

*"First, an applicant must show a prima facie case with a probability of success..."*

Therefore, it was his submission that there is a prima facie case with a probability of success leading this matter to be more worthy of adjudication by this Court. Thus, he added, an injunction has to be issued before the main suit is finally determined.

Arguing in respect of the second principle that the Court's interference is necessary to protect the applicant against the irreparable loss, Mr Mgoya contended that, in this manner, the applicant stands to suffer an irreparable loss due to the respondent's interference with its land ownership and land use rights by evicting the applicant from the land or any part of it since the applicant is the bonafide owner of all land under

DP 1309/2014 of which she has invested and entered legally binding agreements for management, designing, construction, marketing, hospitality, developed infrastructure network and extra of which costs will not be recoverable as shown in paragraphs 9, 15, 17, 24 and 27 of the applicant's affidavit. To support his submission, he referred to **Kibo Match Group Limited vs His Impex Limited** (2001) TLR 152 cited in **Pudensiana Hillary vs Standard Chartered Bank (T) Ltd and Two Others**, Misc. Land Application No. 24 of 2018, which held: -

*"The court is satisfied that, unless immediate action is taken the applicant may suffer irreparable damage whether quantifiable or not and further the final decision will be rendered nugatory as a consequence of not granting the temporary injunction".*

Therefore, Mr. Mgoya maintained that the applicant stands to suffer an irreparable loss due to the respondent's interference with its land ownership and land use rights.

Submitting on the third principle on a balance of convenience, Mr. Mgoya stated that there would be greater hardship on the part of the plaintiff/applicant if injunction is not issued. Referring to paragraphs 27(c), 3, 4, 5, 8 and 17 of the applicant's affidavit, Mr. Mgoya claimed that the applicant would not be adequately compensated by awarding of damages and, therefore, she stands to suffer more hardship if the application is not granted than what will be suffered by the first respondent if the same is granted.

The advocate for the first respondent did not file a written submission in reply.

Replying for the second and third respondents, Ms. Khatau, by way of introduction, contended that on 24 August 2021, the first respondent, who was the plaintiff, filed a Civil Case No. 47/2021 against The Attorney General and Penny Royal Limited, the applicant in this application. Ms. Khathau contended further that on 13 October 2021, Aecus Limited decided to withdraw Civil Case No. 47/2021, and on 20 February 2022, this Honorable Court marked the same withdrawn. The applicant (the 1<sup>st</sup> Defendant then) filed a written statement on 21 January 2022 together with a counterclaim and an application for an injunction.

I will pose here a bit and wish to state, with much respect, that what was submitted by Ms. Khatau is a blatant lie. Mr. Ali A. Hassan made the same untruth story when hearing the preliminary points of objections raised by the second and third respondents in challenging this application in **Pennyroyal Limited v Aecus Limited & Others** (Civil Application 9 of 2022) [2022] TZZNZHC 37. In my ruling delivered on 30 August 2022, before deliberating on parties' submission, I hurriedly demonstrated that: -

*"Before I determine the matter, it is noteworthy that the main suit is not assigned to a judge for determination.  
In the meantime, I have been assigned only to determine the instant application."*

Later in my ruling, I confirmed that the main suit (Civil Suit No. 47 of 2021) was still pending, awaiting the determination of the applications instituted by the parties along with it. It is, therefore, unprofessional, and unethical for the learned state attorney to reiterate this untruth statement, knowing that what she alleges is untrue. For what stated above, I will not consider the respondent's introductory party of her submission.

In her further reply, the respondents adopted the supplementary counter affidavit sworn by Ali Ali Hassan. Subsequently, she quoted principles governing the granting of the application of this nature as stated in the case of **Attilio** (supra). It was Ms. Khatau's submission that the applicant had failed to establish and prove the said principles in his entire submission as required. She, therefore, prayed this application to be dismissed. In her further submission, the learned state attorney stated that there must be a prima facie case and demonstrated the disputed history between the parties concerning Land Lease No. D.P. 1309/2014, and the decision of the Court in Civil Case No. 5/2013. In her submission, she contended that the cited case of

**Heirs of Nikobamye Matias vs Attorney General of Burundi** EACJ AT ARUSHA CIVIL APP. NO. 02 OF 2020 is distinguished as the Court departed from its position and adopted the decision in **Forum Pour le Renforcement De La Societe Burundi and Another** EACJ APPL. NO 16 OF 2016 regarding the demonstration of a serious triable issue rather than a prima face case in an application for interlocutory injunction. She, therefore, maintained that the applicant's cause of

action is unrealistic. She argued that the disputed lease and the whole project no longer exist. Thus, the applicant must first apply for reinstatement of her lease to the Ministry of Land and ZIPA for reinstatement of her project. According to the respondent, the applicant has no cause of action against the respondents to the main suit, and it will be absurd to issue an injunction order in those circumstances. Regarding the irreparable loss, Ms. Khatau contended that a mere submission that the applicant will suffer irreparable loss without showing to what extent and proof of unmeasured injury is insufficient for them to be granted the order prayed.

As regarding the balance of inconvenience, the respondent averred that there is no prejudice that the applicant will suffer, considering that the disputed lease and the whole project no longer exist. She, therefore, claimed that the event had taken all prayers in this application.

In rejoinder, Mr. Mgoya reiterated his submission in chief and added that all principles from **Atilio** (supra) were submitted descriptively.

From what submitted by the parties, the Court is invited to determine whether this application have merit. In doing so, I will bind myself to the authoritative and persuasive decisions revealed by both sides. As emphasized by the learned legal practitioners, the guiding principles in granting or otherwise for an order of temporary injunction is as outlined by the celebrated case of **Atilio v Mbowe**. It is the duty of the Court, therefore, to consider whether the applicant has managed to establish the said three principles.



The first principle or condition that the applicant must establish is the existence of a prima facie case or serious question to be tried and that she is likely to succeed. The subject matter in this matter is the plot of land identified as DP 1309/2014 situated at Matemwe Muyuni and Tazari area. In the affidavit, the applicant claimed to be a bonafide purchaser for value who the Government of Zanzibar granted a lease of the disputed land for value without notice of any party's claim against the disputed land. On the other side, the first respondent, by way of counter affidavit deponed by his advocate, contended that the applicant has never been a bonafide purchaser of the disputed land and that the bonafide purchaser is the first respondent who bought the disputed land from the original owner. Whereas the second and third respondents' counter affidavit shows that the applicant's lease concerning the land in dispute was invalidated by the Court order in 2018 in Civil Case No. 05 of 2013. Looking at these facts and many others as deponed from the parties' affidavit and counter-affidavits, and after going through the pleadings, I am convinced that there is a serious triable issue of ownership by lease of the disputed land which needs to be determined by the Court.

Regarding the second condition concerning the irreparable loss; Having gone through the entire affidavit, especially paragraphs 9, 15, 17, and 27, I am settled that the applicant has clearly demonstrated how she substantially invested in the development of the disputed land.

Therefore, it is clear that the interference of this Court is necessary to

protect the applicant from injury, which could be irreparable pending the determination of the main suit.

As regards the last condition on the balance of convenience, again, I am convinced that the applicant will suffer greater hardship if the application is not granted compared to what the respondents will suffer if the same is granted. It is suffice to say that according to paragraph 24 of the applicant's affidavit, it is undisputed facts that the applicant has vacant possession of the disputed land. Therefore, since there is a pending suit regarding the same land, the balance of convenience tilts to the applicant, who is still in vacant possession.

From what I have observed herein, the applicant successfully managed to establish all three conditions for the Court to grant this application. In the event, this application is granted with the following orders: -

1. The Respondents, or any other person, officer, organ or authority, acting on their behalf, are restrained from legally and or physically interfering with the Plot of land identified as DP 1309/2014 in Matemwe Muyuni and Tazari area, North Region, Zanzibar, measuring 411.92 Ha, as a whole or any part thereof, pending hearing and determination of the main suit and or any Counterclaim therein.
2. The Respondents, or any other person, officer, organ or authority, acting on their behalf, are restrained from reinstating, replanning, resurveying, removing all or part of, entering, taking possession or any similar conduct or acts aimed at any of the said conduct, including restraint from changing the Leasehold documentation,

maps, replan, resurveying, zoning, etc. of all and any land under DP 1309/2014 in Matemwe Muyuni and Tazari area, North Region, Zanzibar, measuring 411.92 Ha, or any part thereof, pending hearing and determination of the main suit and or any Counterclaim therein.

3. The Respondents, or any other person, officer, organ or authority, acting on their behalf, are restrained from initiating, continuing or pursuing execution of any civil case where the applicant was or is not a party, in respect of all that land under the said Plot DP 1309/2014 as a whole or any part thereof, pending hearing and determination of the main suit and or any Counterclaim therein.

Costs shall be in the cause. It is so ordered.

Dated at Tunguu, Zanzibar this 11<sup>th</sup> day of May 2023.

A handwritten signature in black ink, appearing to be 'G. J. Kazi', written over a circular stamp or seal.

**G. J. KAZI**  
**JUDGE**  
**11/05/2023**