

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPL. NO.97 OF 2018**

**ZUBEDA ABDALLAH .....APPLICANT**

**VERSUS**

**ALUWA ABDALLAH BAALWI .....1<sup>ST</sup> RESPONDENT**

**FAIZA ABDALLAH BAALWI .....2<sup>ND</sup> RESPONDENT**

**RADHIA ABDALLAH BAALWI .....3<sup>RD</sup> RESPONDENT**

**BAKARI KESSY .....4<sup>TH</sup> RESPONDENT**

**HASSAN ABDALLAH .....5<sup>TH</sup> RESPONDENT**

**MUNASAM & COMPANY LTD .....6<sup>TH</sup> RESPONDENT**

**R U L I N G**

**P.M.Kente, J:**

By way of a chamber summons filed under the provisions of Order XXXVII Rule 2(1) section 68(c) and 95 of the **Civil Procedure Code**, [Cap. 33 R.E. 2002], the applicant is seeking for an order to restraining the respondents from evicting or threatening to interfere in any way with the suit premises (Plot No. 8 Morocco Road, Kinondoni Dar es salaam) pending the determination of the main suit (Land Case No. 25 of 2018). The application is supported by the affidavit of one Zubeda Abdallah.

Submitting in support of the application the applicant argued that the applicant and other heirs of the deceased estate will suffer

an irreparable loss if eviction is effected rather than the respondents would suffer it is not effected since the house in dispute is the only home and the applicant and other heirs have no residential house to live in.

In response, Mr. Shirima learned counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents argued that the applicant has failed to established the existence of all the three tests for the court to grant a temporary injunction as held in the case of **Atilio Vs. Mbowe (1969) HCD 284**. He argued that all the three principles have not been met. He therefore prayed for the court to dismiss this application with costs.

Now just refresh our minds the conditions set in the famous case of **Atilio Vs, Mbowe (1969) HCD 284** were:-

1. That on the facts alleged there must be a serious question to be tried by the court and a probability that the plaintiff/applicant will be entitled to the reliefs prayed for in the main suit.
2. That, the temporary injunction sought is necessary in order to prevent some irreparable injury happening to the plaintiff while the mischief is likely to be suffered by the plaintiff if the temporary injunction is withheld than may be suffered by the

defendant if the application is granted. Main case is still pending and

3. That, a balance of convenience, greater hardship and

4. The issue now is whether the applicant been able to on prove the existence of all the three principles set out in the above cited case. Upon perusal of the plaint in the main suit and the affidavit in support of the application, I am settled in my mind that, the court has been convinced to grant the application for temporary injunction. I say so because, the applicant in her affidavit has stated that there is a triable issue to be deliberated and determined by this court. The plaint shows that the plaintiff prays for a declaration that the sale of the suit premises, Plot No. 8 Morocco Road, Kinondoni Dar es salaam by the 4<sup>th</sup> and 5<sup>th</sup> defendants to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, is void. It is my settled view that given the position maintained by the applicant on one side and the respondents on the other side, there is a cause of action and the suit against the defendant is not frivolous or vexatious.

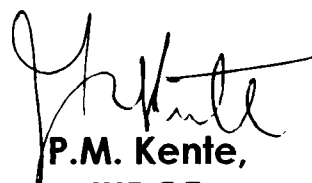
On the balance of conveniences and the question as to whether the applicant will suffer irreparable loss it is submitted that the house in dispute is the only residential house that they have and if they will

be evicted they will become homeless. In my view, I find that the applicant has managed to establish this second condition for granting temporary injunction because if the respondents will not be restrained from evicting the applicant and her relatives, the suit will be rendered nugatory and her family will be thrown into the streets and suffer irreparably.

It is also my settled view, that the balance of inconvenience is generally in favour of the applicant since the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are yet to file WSD's and the applicant's claims in the plaint, remain uncontroverted.

In the premises, from the prevailing circumstances of the application, I am settled in mind that all the three tests required to be proved before granting an order for temporary injunction have been established. Consequently, the prayers sought in the chamber summons are granted. This order shall last for the initial period of six month's with effect from today. Costs shall be in the cause.

Dated at Dar es Salaam this **20<sup>th</sup>** day of **April, 2018**.

  
**P.M. Kente,**  
**JUDGE.**