

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

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MISC. CIVIL APPLICATION NO. 195 OF 2003.

SHERBANU ABDALLAH OBEID APPLICANT

VERSUS

AMINA IBRAHIMU MPINGA RESPONDENT

Date of last Order: 10/10/2007

Date of Ruling : 16/10/2007

RULING.

Mlay, J.

This is an application brought by a Chamber Summons under Order XXXVII Rules 1 and 3 and Sections 68 (e) and 95 of the Civil Procedure Code 1966, as well as the Land Registration Ordinance, Cap 334 and “**any other enabling provisions of the Law**”. The Applicant did not specify in the Chamber Summons, any specific provision of the Land Registration Ordinance Cap 334 relied upon or the “**other enabling provisions of the law**” referred to.

The application is however, supported by the affidavit of the RICHARD MSIRIKALE, advocate for the Applicant, as well as that of the applicant, one SHERBANU ABDALLAH OBEID.

In the Chamber Summons, the applicant has sought both, *ex parte* and inter- parties orders that:

“This Honourable Court be pleased to issue an order directing the Registrar of titles from registering the contested title into Respondent’s name and restraining the Respondent from sale and transfer the Plot situated on Plot No. 431 Block “A” L. O No. 65672 Mikocheni area, Dar es salaam pending determination of the suit”.

In the application for inter- parties orders, the applicant has also sought the following orders:

3. The titled Deed No. 28306 be deposited in Court.
4. Costs to be provided for

In the supporting affidavit of the Applicants advocate Mr. RICHARD MSERIKALI, he has deponed as follows:

1.
2. *That on 20th September, 2002 I filed RM's Civil Case No. 82/2002 at Kisutu Resident Magistrates Court under Certificate of Urgency praying for an order that the Court issue an order restraining the Respondent from sale and transfer of a house at Plot No. 431 Block "A" Mikocheni, Dar es salaam pending determination of the main suit.*
3. *THAT, on 9th October, the Court Luguru PRM, gave an order that the Respondent should not dispose of the plot until the suit is finally disposed of. Further that the certificate of title of the suit premises should be deposited in court before 16th October, 2005. Copy of the Court proceedings and order is annexed herewith*
4. *THAT Respondent blatantly refused and/ or ignored to surrender to certificate of title to the court despite repeated demands and was charged with a criminal offence for disobedience of a court order.*
5. *THAT, the Registrar of titles was notified of the court order but on contracting her Ms. Rehema Ntimizi who was acting in that capacity she said it is only the High Court which can move the Registrar of titles with the necessary orders and not lower courts.*

6. *That on 16th July 2003 the Registrar of Titles informed me among other interested parties that Respondent has presented the above right of occupancy for registration in her name.*

7. *THAT, if the High Court does not intercept and give the necessary order directing the Registrar of titles not to register the contested title into Respondent's name the main suit will be mere academic exercise as Respondent by conduct is on the move to sell the plot to another person other than the Respondent who has already incurred much expenses in acquiring it from Respondent. Copy of the notice from the Registrar of titles is annex herewith (sic).....*

Pursuant to the ex parte application, an interim ex parte order was granted by this court directing the Registrar of titles not to effect the transfer of the title No. 28306 for Plot No. 421 Block A Mikocheni, pending the hearing and determination of the application inter partes.

The Respondent did file a counter affidavit and was represented by Mr. Hyera at the hearing of the application, inter partes while Mr. Mserikali advocated for the applicant. In his oral submissions Mr. Mserikali stated that he is seeking an order directing the Registrar of Titles from registering the

contested title over Plot No. 431 Block "A" L. O No. 65672 Mikocheni Dar es salaam in the name of the Respondent and restraining the Respondent from disposing of the same. He contended that the direction sought is pursuant to the power conferred upon this court by section 79 subsections (1) and (3) of Cap 337, which allows the Registrar of Titles to enter an injunction restraining any person effecting any changes in the Land Register until the injunction is removed by the Registrar or by this court. He submitted that, this court has the power to issue a direction to the Registrar to issue such an injunction. He further contended that they had come to the High Court because the Registrar had refused to recognize the orders of the lower Court in Civil Case No. 182/2002 in which Luguru PRM had issued an order requiring the respondent to deposit the certificate of title in the RM's court and the Respondent had refused to comply and instead, deposited the title deed with the Registrar of Titles. Mr. Mserikali went on to state that they came to know that under section 79 (3) Cap 334, it is only the High Court which can direct the Registrar of Titles not to effect the transfer. He further stated that they made a prayer that the title deed be deposited in this court pending the determination of suit in the lower court.

Mr. Hyera submitted that the application is devoid of merit because the respondent has lawfully purchased the property from BAKARI MCHONGA ALI, as reflected in the Notice from

the Registrar which is annexed to the applicants affidavit. He contended that, if anybody was to object to the transfer, it would be BAKARI MCHONGA ALI from whom the land in dispute was purchased. He argued that it is only when the land has been transferred in the name of the Respondent that the Respondent can transfer the same to the applicant or to any person. He further argued that in the circumstances, the application by the Respondent (for the transfer of the title to the Respondents name) which is pending before the Registrar of Titles, is beneficial to the applicant. He submitted that since there is no evidence of fraud or improper dealing in respect of the intended transfer and no evidence that the Respondent intends to sell the property to another person, the application should be dismissed.

Mr. Mserikali in reply submitted that, the position of the law is that it gives any person having an interest in the land to protect such interest by bringing an application of this nature.

The matter was adjourned several times to obtain an extension of time to finalise it in terms of section 54 of the Land Disputes Settlements Act.

Although in the Chamber Summons the applicant cited a number of provisions of the Civil Procedure Code, in the oral submissions Mr. Mserikali advocate for the applicant has

relied entirely on the Land Registration Ordinance, Cap 334. As I pointed out earlier on in this ruling, although the Land Registration Ordinance was also cited in the Chamber Summons, section 79 (1) (3) or any other specific provision of that Ordinance was not cited. Fortunately for Mr. Mserikali and the Applicant, Mr. Hyera did not raise the issue of non citation of the specific provision of the Law relied upon. This court will not therefore pursue this issue further. Section 79 (1) and (3) of the Land Registration Ordinance Cap 334 is the same as the same provision in Cap 334 RE. 2002 and it provides as follows:

79 - (1) It shall be lawful for the Registrar, for the prevention of any fraud or improper dealing or for any other sufficient cause, at any time to enter an injunction in the land register as an incumbrance and any such injunctions shall operate to prevent only disposition of the estate or interest thereby effected until such conditions as may be specified therein have been satisfied on the injunction has been withdrawn by the Registrar or the High Court otherwise directs.

(2) Notice of any such injunction shall be given to the owners of the estate or interest.

(3) The High court may, on the application of the owner of the estate or interest affected by such injunction or of any other interested person, summon the Registrar to attend and show cause why the injunction should not be removed and there upon the High court may make such order, either ex parte or otherwise, as it thinks fit. (emphasis mine).

From the provisions of subsections (1) and (3) of section 79 Cap 334 quoted above, the power to enter an injunction in the Land register is a discretionary power conferred upon the Registrar of Titles, for the purpose of preventing fraud and improper dealings in land or for any other sufficient cause. In terms of subsection (3) of section 79, the High court can only intervene, where the Registrar has already exercised the discretion and entered an injunction and, the intervention of the High Court is only for the purpose of removing the injunction after an application has been made and the Registrar of titles has been given the opportunity to show cause why the injunction should not be removed. Under

section 79 of Cap 334, the High Court does not have the powers to order the Registrar of titles to exercise the discretion conferred upon him or her or to enter an injunction in the land register. Such an order can only be sought by way of judicial review by way of mandamus.

In the present application the applicant is asking this court ***“to issue an order directing the Registrar of titles from registering the contested title into the Respondents name and restraining the Respondent from the sale and transfer”*** of the plot in dispute.

I do not find any powers conferred upon this court by section 79 (1) and (3) to give the said orders. As the Registrar of titles has not entered an injunction in the register in relation to the said disputed title or plot, the High Court cannot exercise its powers under the said provisions.

In addition, even if the said powers were exercisable by this court, they could only be exercised after giving the Registrar of titles an opportunity to show cause, as stipulated by subsection (3) of section 79. Clearly, such powers cannot be exercised to grant an order restraining the Respondent from transferring the plot in dispute. If I may say so, since the subordinate court trying the main suit has already given such an order, even if such order has been disobeyed by the

Respondent, the High Court cannot act as the court of execution of the decisions of the subordinate court. The subordinate court has powers to enforce its own decisions, and as the Applicants advocate has deposed in paragraph 4 of his affidavit, such enforcement measures have already been undertaken by institution of criminal proceedings against the Respondent. In so far as the provisions of section 79 (1) and (3) of Cap 344 of the Land Registration Ordinance of Cap 334 RE 2002 are concerned, which were not cited in the Chamber Summons, such provisions cannot be relied upon to grant the orders prayed. I would however observe that, where a the Registrar of titles is aware that a party has been ordered by a court of competent jurisdiction not transfer a registered land, such an order can be considered by the Registrar of titles as “**any other sufficient cause**” to enter a injunction in the land register, but this is far from saying that such an order constitutes an order or a direction to the Registrar of titles by the court issuing the order. Again, where the registrar has not exercised the powers conferred by section 79, there is nothing which prevents an interested party from entering a caveat under section 78 of Cap 334.

The applicant also cited Order XXXVII Rules 1 and 3 and also Sections 68 (c) and 95, all of the Civil Procedure Code. The applicants counsel did not touch on these provisions in his submissions.

Since the application is intended to prevent the Respondent from transferring the land in dispute and the trial court has already given orders to that effect, the provisions cited are inapplicable, particularly considering also that the suit is not before this court.

In the final analysis and for the reasons given above this application is improperly before this court and it is accordingly struck out, with costs.


J. I. Mlay

JUDGE

16/10/2007