



IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA
FIRST INSTANCE DIVISION



(Coram: Monica K. Mugenyi, PJ; Audace Ngiye & Charles Nyachae, JJ)

APPLICATION No. 3 OF 2019

(Arising from Reference No. 9 of 2019)

FRANCIS NGARUKO APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF BURUNDI RESPONDENT**

DATE: 20TH JUNE 2019

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RULING OF THE COURT

1. This is an Application for interim orders *ex parte* pending the hearing of the Parties in the same Application *inter partes*. the Application is grounded in **Reference No. 9 of 2019** between the same Parties that challenges the decision of the Republic of Burundi's Special Court of Land (Second Degree).
2. The interim orders sought by the Applicant are as follows:
 - i. Pending *inter partes* hearing and determination of the Application, an order doth issue prohibiting the Respondent from implementing the impugned decision or in any way taking action to revoke, cancel or otherwise dispose of the Applicant's interest in the subject property.
 - ii. Pending the hearing and determination of the Reference, an order doth issue prohibiting the Respondent from implementing the impugned decision or in any way taking action to revoke, cancel or otherwise dispose of the Applicant's interest in the subject property.
 - iii. The Respondent do file an appropriate undertaking before the Court that no alteration or any modification shall be done on the subject property pending further orders of the Honourable Court.
3. We deduce orders (ii) and (iii) above to relate to the *inter partes* Application and shall therefore restrict ourselves to the first order sought in this Application.
4. In an application such as the present, the question before us would be whether the case made by an applicant would warrant the grant of such orders *ex parte* rather than *inter partes*.

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5. The proviso to Rule 21(2) of this Court's Rules of Procedure mandates this Court to hear and determine *ex parte* any Motion filed before it if satisfied that the delay caused in proceeding *inter partes* '**would or might entail irreparable injustice.**' The emphasis on the justice of the matter as a consideration for the grant of interim orders *ex parte* is reiterated in Rule 73(2) of this Court's Rules, which enjoins the Court to grant *ex parte* interim orders only '**if satisfied that it is just to do so.**'
6. In Wani Santino Jada vs. The Attorney General of the Republic of South Sudan & 2 Others, EACJ Application No. 8 of 2017, where the Respondent Partner State's representatives to the East African Legislative Assembly (EALA) had been appointed with clear disregard for the applicable provision of the Treaty for the Establishment of the East African Community, this Court did determine the justice of the matter to necessitate the grant of *ex parte* interim orders staying the swearing in of those representatives pending the hearing of the Application *inter partes* to avert an outright illegality.
7. In the Application before us presently, it has been sufficiently demonstrated before us that whereas the impugned decision of the Special Court of Land (Second Degree) did explicitly delineate one (1) acre of the subject property on which his residential house is situated to the Applicant, in the course of the execution of the said decision the execution agents, in blatant disregard of that Decision, sought to demolish part of the Applicant's residential property or otherwise encroach on the 1 acre of land delineated to him.
8. Quite clearly, the act of going beyond a court decision (just like the illegal appointment of the Respondent State's EALA representatives

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in the **Wani Santino Jada** case) constitutes a flagrant illegality. We take the view that such an apparent illegality would warrant the grant of the sought interim order *ex parte* pending the hearing of both Parties *inter partes*.

9. Accordingly, this *ex parte* Application is allowed with the following orders:

- i. The Respondent is hereby restrained from implementing the impugned decision of the Special Court of Land (Second Degree) of Burundi or in any way taking action to revoke, cancel or otherwise dispose of the Applicant's interest in the subject property therein, pending the hearing and determination of this Application *inter partes*.
- ii. The Applicant is hereby directed to serve the Application for interim orders upon the Respondent.
- iii. The Application shall be heard *inter partes* on a date to be communicated on notice.

10. We so order.

Dated and delivered at Arusha this 20th day of June 2019.

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Hon. Lady Justice Monica K. Mugenyi
PRINCIPAL JUDGE



Hon. Justice Audace Ngiye
JUDGE



Hon. Justice Charles Nyachae
JUDGE