

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 179 OF 2003

1. AMIL A.L. BHALOO }
2. ROSEMIN A.A. BHALOO }.....APPLICANTS
VERSUS

AHMED BORA.....RESPONDENT

RULING

Rugazia, J.

The applicant who is represented by Mr. Marando learned advocate is applying for an injunction against the respondent, to be precise, a mandatory injunction. The applicant prays that the defendant/respondent be orderd to restore the property, namely Plot No.138 Kipawa Title No.33922, to the apparent owner, the plaintiff/applicant until the final determination of the suit. Another prayer is that the defendant/respondent, be ordered by quia timet injunction not to commit any waste, damage or alienation of the said property, or continue to use the same, until the final determination of the suit.

In his submission, Mr. Marando said that the applicant is the owner of the disputed property which was forcefully and wrongfully

entered by the respondent with police support. All efforts to request the defendant to vacate and deliver up the property, the respondent has wrongfully failed and refuses to do so. Further that, the defendant/respondent is intimidating the plaintiff/applicant to convey the property to him

Quoting from the book on **Principles of Injunction** by kuloba at p.77, Counsel submitted that the circumstances in which a mandatory injunction is ordered are those where the infringement of the right has created a state of affairs continuing to damage the plaintiff. At page 80 of the book, the author says that in considering the prayer for the injunction, it is a highly material fact that the defendant continued to do wrong in the face of clear and early protest by the plaintiff.

Quoting from Mulla's **Code of Civil Procedure** 14th Edn, Vol.III at page 2149, Counsel submitted that it is only in rare cases that a mandatory injunction is issued in an interlocutory application and that is only for maintaining the status quo. It is further asserted that, a temporary mandatory injunction can be issued only in case of extreme hardship and compelling circumstances and, mostly, in those cases when status quo existing on the date of the institution of the suit is to be restored.

As learned Counsel rightly submitted in support of the accompanying affidavit by the plaintiff, the property in dispute was forcefully taken away from him in collusion with the police which is denied by the defendant. Going by the pleadings, it appears to me that there are serious matters involved in this suit. Yet still, to my shock and disbelief, the defendant appears to take matters lightly. Both parties were ordered to file written submissions which order plaintiff's Counsel complied with. Up to the time of writing this ruling, which is very close to two months, the defendant is yet to file his and, what is worse, not even an application for extension of time to file them. I take this to mean that this application stand unopposed. It has been held by this court that failure to file submissions as by consent agreed to and ordered is tantamount to non-appearance or want of prosecution (See **Hidaya Zuberi vs. Bogwe Mbwana** (PC) Civ. App. No.98 of 2003 DSM Registry (Unreported)).

Having read various literatures on the subject, I can only say that courts are not ready to dish out these types of injunctions very lightly. It has to be said that a mandatory injunction as Mulla says in his book on **Civil Procedure** (supra), can only be issued in very rare situations. All the same, this does not oust the court's discretion. In this particular case, I have a situation in which the defendant is alleged to have dispossessed the plaintiff of his rightful property so an application is made to have it restored. As already observed in the

foregoing, to my disbelief, the defendant decides not to oppose the application. Makes my task easier - doesn't it?

As the defendant has, for reasons known to himself chosen not to challenge the application and he is still in possession of the property, I allow the application as prayed with costs. Property to be restored forthwith to the plaintiff.



P. Rugazia

JUDGE

23/6/04