

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO.35 OF 2019

ZANZIBAR TELECOM PUBLIC LTD CO. APPLICANT

VERSUS

KINONDONI MUNICIPAL COUNCILRESPONDENT

RULING

MASABO, J.:-

The Applicant Company has moved this Court by way of chamber application filed under Order XXXVII Rule 1(a), 2(1), 3, section 68 (e) and section 95 of the Civil Procedure Code, Cap 33 RE 2002. The application was filed under a certificate of urgent made under Order XXXVII Rule 4 of the Civil Procedure Code seeking for extension of time of an injunctive order issued by this Court (Luvanda, J) on 17TH January 2019 restraining the Respondents, servants, agents and or assignees and any other person or institution with interest or claiming from the Respondent from trespassing into, evicting, demolishing or in manner interfering with the Applicants' peaceful enjoyment of the suit premises on Plot No. 1,2 and 3 Block 'F' Msasani Drive in area in Kinondoni municipality. The injunctive order is sought pending the determination of Land Case No. 38 of 2018 which is pending before me. This being an application for extension of the injunctive order, the question for

consideration is whether or not the applicant had demonstrated sufficient grounds for the extension.

Rule 3 of Order XXXVII of the Civil Procedure Code under which this Application is made provides that:

In addition to such terms as the keeping of an account and giving security, the court may by order grant injunction under rule 1 or rule 2 and such order shall be in force for a period specified by the court, but not exceeding six months:

Provided that the court granting the injunction may, from time to time extend such period for a further period which in the aggregate shall not exceed one year, upon being satisfied, on the application of the holder of such court injunction that the applicant has diligently been taking steps to settle the matter complained of and such extension sought is in the interest of justice, necessary or desirable.

From the above provision, the determination of whether or not the applicant has demonstrated a good cause for extension has to be determined on the basis of three criteria namely:

1. The aggregate time of the injunction (does the total aggregate of the injunction exceed one year?);

2. Diligence of the Applicant (Whether the holder of the court injunction that (the applicant in this case) has been diligently taking steps to settle the matter complained;
3. The interest of justice (is the extension sought in the interest of justice, necessary or desirable?).

On the first criteria, the Applicant and Respondent are all in agreement that the extension issued was for six months with effect from 17th January 2019 hence it expired on 17th July 2019 and has so far not been extended. Considering that the maximum duration for extension provided for under Rule 3 is an aggregate of one year, the Application is still within the prescribed period hence it meets the first test above.

Regarding the second criteria, the Applicant has argued that it has been diligently pursuing the case by entering appearance in court without fail whenever the matter is called for before judge and that because of its untainted diligence the suit has made a noticeable step such that it is now due for hearing. On its part the Respondent submitted that the Applicant has not been diligent in finding solution in that even after the Respondent ably established through the relevant authorities the actual boundaries of the suit premise, the Applicant has persistently refused to pay. It was the Respondent's case that the Applicant company is required to pay rental fee in respect of excess land which the Applicant is required to pay for, the Applicant has adamantly refused or neglected to pay the outstanding rent.

Upon the perusal of the court records, it has occurred to me that both parties have been diligently pursuing this matter. After the injunctive order was issued on 17/1/2019 the suit has been called before judge 5 times and once before the mediator and in all these occasions the parties entered appearance and because of this, a noticeable progress has been made. Hearing of the suit is due to commence on 10th October 2019. The argument raised by the Respond on the continued adamancy of the Applicant is very attractive, however considering that the rental fee is at the Centre of the dispute whereby the Applicant is arguing that the suit land belongs to Oilcom, it would be premature, in my settled opinion to decide on this issue at this level or to deny the application on the basis of this fact which is a subject for determination in the main suit. By holding that the Applicant's ought to have demonstrated their diligence by paying the rental due it will, in my considered opinion, be tantamount to holding, prematurely that the Respondent company is unlawfully occupying the suit property an issue which can only be determined in the main suit after all the parties have lead evidence in support of their respective claims.

The third criteria can centres on the principles for granting injunction as laid down in the in the landmark case of *Atilio v Mbowe* (1969) HCD 284, that is:

- (i) There must be a serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed;

- (ii) That the Court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established; and
- (iii) That on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it

Guided by these principles Luvanda J while granting the interim order made a finding which I quote below in *extenso*:

"On 17.10.2018 I made or issued an interim order in the Misc. Land Application No. 75/2018 based on the following grounds:

1. The applicant had paid rent to the said Oil Company Limited
2. Throughout the period of 13 years, where the applicant has been in peaceful enjoyment of the lease suit premises, there are investment of infrastructures for his business as stated in the affidavit
3. Sudden threat by the respondent who had given a very short notice for payment of such colossal sum of amount within two weeks, or eviction in default. These grounds are still valid.

He further held that:

"Regarding the argument that an injunction, if any or is issued should be confined to restrain demolition and or eviction only, in view of accommodating respondents process of acquiring or obtaining titles deeds, for what the learned inhouse solicitor for Respondent alleged being in pursuit of administrative directives to that effect. This seems to be persuasive argument, given that the applicant does not claim ownership of the suit land and even in the reliefs claimed in the main suit, nowhere the issue of ownership is reflected. However prudent and convention wisdom dictate for maintenance of status quo pending determination of a suit in court. As anything done, amid, may have the effect of preempting or circumventing court's decision.

This having been said, my task is limited to determining whether or not the grounds/factors above are still relevant. The Applicant has forcefully argued that these factors are not only still valid but have been aggravated by a new demand notice served on them by the Respondent on 19th June 2019 which has scaled the has scaled the amount payable by the Applicant from the initial sum of Tshs 3,698, 836,000/= to a new sum of 4,319,085,595.50 (being an increase of Tshs 620,249,596/=) which the Respondent in paragraph 15 of the counter claim have acknowledged as the natural effect of the Respondent's continued occupancy of the disputed premise. The Applicant has maintained that considering that it has been in uninterrupted

occupation of the suit property for over 13 years, it is entitled to protection against forceful dispossession. On its party the Respondent has contended that the Applicant has been occupying the disputed land for 13 years without paying any rent and that has caused the Respondent substantial loss of revenue. As stated above, the issue of occupation and non-payment of rent is central to the

All having been said and done, I find that the grounds cited by my learned brother Luvanda J are still relevant. However, in my opinion, contrary to the considered view of my learned brother, I find the issue of ownership naturally ingrained in the first and second prayer. Granting the two prayers sought would imply that the Respondent is the owner of the disputed property which he claims to own. Conversely, holding otherwise would mean that the Respondent is indeed the owner of the disputed property. It is in this context I find it imperative to maintain the status quo.

Under the circumstances, I extend the injunction for 4 months from the date of this ruling. There will be no prospects for extension.

DATED at DAR ES SALAAM this 4th day of October 2019.



J.L. MASABO

JUDGE