

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA

MISC. LAND APPLICATION NO. 88 OF 2019

(Originating from Land Case No. 30 of 2019, High Court of Tanzania, Arusha)

ALLY OMARI ABDI APPLICANT

Versus

AMINA KHALILE ALLY RESPONDENT

RULING

Date of Last Order: 1/04/2020

Date of Ruling: 29/05/2020

Masara, J

Ally Omari Abdi, the Applicant herein, is suing Amina Khalile Ally (the Respondent) and two others in Land Case No. 30 of 2019 pending before this Court for, among others, an order of specific performance to compel rectification of the land register by cancelling the name of the Respondent herein in the certificate of title Number 18049, L.O. Number 165694, Plot No. 30, Block "E" Area "F" within Arusha District and Region. Under a certificate of extreme urgency, the Applicant brought this Application under Order XXXVII, Rule 1(a) and 4 of the Civil Procedure Code, Cap. 33 (R.E. 2002) seeking for an order of temporary injunction to restrain the Respondent, her agents, servants or workmen or any person whatsoever from interfering with the Applicant's peaceful enjoyment in the disputed building located at certificate of title number 18049, L.O. Number 165694, Plot No. 30, Block "E" Area "F" within Arusha District and Region pending

the determination of the main suit. The Application is supported by the affidavit of **Ally Omari Abdi**, the Applicant. The Respondent opposed the Application and filed a counter affidavit attested by **Mr. Innocent Mwanga**, learned Advocate for the Respondent. The Applicant appeared in Court represented by **Mr. Nerius Rugakingira** and **Mr. Gwakisa Sambo**, learned Advocates, while the Respondent was represented by **Mr. Innocent Mwanga**, learned advocate. Hearing of this Application proceeded via written submissions.

The facts leading to this Application can be deciphered from the affidavit of the Applicant. They are simply as follows: The Applicant was, through natural love and affection, handed over ownership of the suit premise by the late Yusuf Khalili Ally in the year 2005. The said Yusuf Khalili Ally was the administrator of the estate of the late Khalili Ally Hildid, the original owner of the property. It is further stated that after the said transfer was finalized, the Applicant erected a building therein and rented it out to tenants. On 13th February 2015 vide Land Case No. 9 of 2013, the High Court of Tanzania, Maghimbi, J, reversed the Applicant's ownership of the property above named and the Respondent was declared the lawful owner of the property. Subsequent thereof, the Respondent applied for rectification of the land register which was effected and a duplicate certificate of Title given to her in July 2016. In November 2016, the Court of Appeal of Tanzania reversed the decision of the High Court on technical grounds. It was directed that the matter be heard denovo, more specifically on whether the High Court had jurisdiction to deal with the

dispute. The case was then assigned to S.C. Moshi, J. On 17 February, 2017 the case was marked withdrawn at the request made on behalf of the Respondent. It is further stated that it was not until July 2019 when the Applicant realized that his name had been withdrawn from the land register and substituted by that of the Respondent. Meanwhile, in July 2019, the Respondent issued a 14 days' notice to the Applicant's tenants to vacate the premises. The Applicant then filed a caveat against the property and commenced proceedings before this Court as above stated. In the Counter Affidavit, the Respondent does not seem to contest the facts as narrated but only on the effect of the Court of Appeal decision.

Submitting in support of the Application, Mr. Rugakingira, while adopting the contents of the affidavit filed in support of the Application, submitted that the order of temporary injunction should be granted in order to safeguard the Applicant's interests over the suit property and avert possible evictions of his tenants. On whether the application meets the legal requirements for grant of temporary injunction as propounded for in ***Atilio Versus Mbowe*** (1969) HCD 284 and ***Aloyce Anthony Duwe Versus Aly Juu ya Watu*** (1969) HCD 268, the learned counsel submitted that the grant of a temporary injunction will ensure that the *status quo ante* is maintained as the main suit demonstrates that there are triable issues for determination, including the fact that the decision that led to the rectification of the land register was reversed and no pending suit entitles the Respondent the right over the suit premises. The learned counsel further argued that the Applicant is likely to suffer irreparable loss and that

on the balance of convenience the Respondent ought to be restrained from evicting tenants currently occupying the suit premises.

Replying to the submissions on behalf of the Respondent, Mr. Mwanga strongly opposed the grant of temporary injunction on the grounds stated by the Applicant. Mr. Mwanga contended that the Applicant has not managed to traverse the conditions for grant of temporary injunction as set in ***Atilio Versus Mbowe*** (supra). He contended further that as the Applicant has already filed a caveat over the suit premises, there is no imminent danger requiring redress by way of a temporary injunction. Mr. Mwanga also attacked the submission in support of the Application contending that the same has not demonstrated the existence of material danger that will expose him to irreparable loss.

Having considered the affidavits both in support and against the Application, and reiterated the submissions made by the learned counsels on behalf of the parties, albeit in brief, the issue for determination before me is whether or not an interim injunction should be granted. As rightly submitted by both counsels, a temporary injunction is an equitable remedy that traces its roots in England. In Tanzania the conditions for grant of the same were well elaborated in the now famous case of ***Attilio Versus Mbowe*** (Supra). Georges, CJ (as he then was) mentioned them as follows:

- a) 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;*

- b) 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*
- c) 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.*

In this Application, the Applicant strongly believe to have an arguable case against the Respondent founded on the documents attached in this Application and in the main case. This is vehemently countered by the Respondent. This Court cannot make an opinion on the strength of the evidence proving or disproving the issue of ownership to the suit premises until the suit filed is determined on merits. The Applicant is therefore given the benefit of doubts relating to the first condition laid in ***Attilio's*** case; that is, the presence of a prima facie case against the Respondent.

Once it is found that prima facie exists, the next question is whether the Applicant stand to suffer irreparable damages unless the injunctive orders are issued. That is to say, if the current tenants of the Applicant are evicted or threatened as alleged, the Applicant stands to suffer an irreparable loss. In ***Abdi Ally Salehe Versus Asac Care Unit Limited and 2 Others***, Civil Revision No. 3 of 2012 (unreported) the Court of Appeal decided as follows:

"Once a court finds out that there is a prima facie case, it should then go to investigate whether the applicant stands to suffer irreparable loss, not capable of being atoned for by way of damages. There, the applicant is expected to show that, unless the court intervenes by way of injunction, his position will in some way be changed for the worse; that he will suffer damage as a consequence

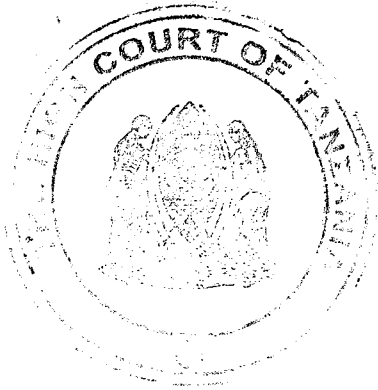
of the plaintiff's action or omission, provided that the threatened damage is serious, not trivial or minor, illusory, insignificant, or technical only. The risk must be in respect of a future damage."


The submissions made by the Applicant in this respect is that the threat of eviction to tenants causes psychological torture and unnecessary panic to the Applicant and that if the threats of eviction are turned into actual evictions, the Applicant expects multiple suits from such tenants. He concludes that these cannot be atoned by monetary compensation. This apprehension cannot be ignored in the absence of evidence disproving it. Lastly is the issue of balance of convenience. Mr. Rugakingira submits that the Respondent is not likely to be inconvenienced in any way by an order of injunction given the fact that it is the Applicant who stand to suffer more as a consequence of possible evictions to his tenants. This submission may appear novel, but unless there is sufficient evidence to prove otherwise, it is my view that the balance of convenience tilts more to the Applicant than to the Respondent. If she was willing to withdraw the suit that was meant to determine ownership over the suit premises and did not for a period of over two years claim ownership over the suit premises registered in her name, she can hold on for a bit longer till the main suit is determined.

On those circumstances, the conditions precedent for granting of temporary injunction appear to have been met by the Applicant. In the upshot, I order maintenance of *status quo*. The Respondent, her servants, agents, workmen or persons acting on her instructions are restrained from interfering with the Applicant's peaceful enjoyment in the premises located

at certificate of title Number 18049, L.O. Number 165694, Plot No. 30, Block "E" Area "F" within Arusha District and Region pending the determination of the main suit. I make no orders as to costs.

Order accordingly.




Y.B. Masara
JUDGE
May 29, 2020