

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**MISC. LAND APPLICATION NO. 159 OF 2017**  
*(Arising from Land Case No. 91 of 2017)*

**AZIM ALARAKHIA HOODA.....1<sup>st</sup> APPLICANT**  
**YASMIN HOODA.....2<sup>nd</sup> APPLICANT**

**VERSUS**

**NATIONAL HOUSING**  
**CORPORATION.....1<sup>st</sup> RESPONDENT**  
**HILARY LIGATE t/a NOVEL**  
**ESTATE COMPANY.....2<sup>nd</sup> RESPONDENT**

**RULING**

*Date of last order: 09/03/2020*

*Date of Ruling: 18/06/2020*

**S.M. KULITA, J.**

This application is made under section 68(e), section 95 and Order XXXVII Rule 1 (a) of the Civil Procedure Code [CAP 33 R.E. 2002]. The application is accompanied with a chamber summons

and the affidavit deposed by **AZIM ALARAKHIA HOODA**, 1<sup>st</sup> Applicant. The said applicant seeks the for the following orders;

- i. That this court be pleased to grant a temporary injunction restraining the respondents and or their agents, assignees or any other persons acting under their instruction from evicting and or trespassing the land which was occupied by the applicants on Apt. No. 002, Plot No. 49, Mkadini Street, Oysterbay, Dar es Salaam pending the hearing of the main case on merit.
- ii. That this court be pleased to order the restoration of the applicant to the suit premises pending the hearing and final determination of the main case.
- iii. Costs of the application.
- iv. Any other relief as the court may deem fit and just to grant.

In the applicant's affidavit the reasons for the application have been stated from paragraph 5 to 11 of the affidavit. The application was heard by way of written submissions.

The applicant through his Advocate Mr. Godfrey Saidi submitted that in October 2017 the 1<sup>st</sup> respondent illegally terminated the lease agreement between him and the applicant while the

applicant did not breach any terms of the Lease Agreement. He stated that the applicant was paying the rent regularly including the month of November, 2017.

Mr. Saidi went on to submit that the 1<sup>st</sup> and 2<sup>nd</sup> respondents partly evicted the applicants who are spouses from the suit premise even before the expiration of the period of notice as comprised in their letter with Ref. No. NHC/KN/884/VOL/III/39/EMK/DSM dated 16<sup>th</sup> October, 2017. Mr. Saidi stated that the 1<sup>st</sup> Respondent's assertion that the applicants abandoned the suit premise is not true as the settlement in the same allegation was reached in 2016 whereby the deed of settlement was made to clear the issue. He further said that if the said allegations were true, why did the applicant wait until 2017 if it were not for their ill intentions?

Mr. Saidi further submitted that the applicants acquired the status of statutory tenancy hence they were not bound by the previous limitation as alleged by the 1<sup>st</sup> Respondent that the applicants' Lease expired on 30/06/2017 while they had paid the rent up to November, 2017.

Furthermore, Mr. Saidi submitted that the applicants were thrown out of the house, they will suffer irreparably if an order for

injunction is not issued. To support his argument that the application should be granted as there is a likelihood of the applicants to suffer irreparably Mr. Saidi cited the case of **PHILEMON JOSEPH CHACHA & 3 OTHERS V. SOUTH AFRICA AIRWAYS & 3 OTHERS [2002] TLR 362.**

He concluded by submitting that if the order of injunction is not issued the main case will be rendered nugatory and of no value because the applicants will not be able to recover vacant possession if the premises shall be allowed to be let to another tenant.

Replying to the Applicants' submission the 1<sup>st</sup> Respondent's advocate opened his submission by citing the case of **ATILIO V. MBOWE (1969) HDC NO. 284** in which the court pointed out the conditions for the court to consider when granting an order of injunction. With regard to the said conditions of which he prayed the court to refer the counsel submitted that the applicants have failed to establish that there is a serious question to be tried as it has been contemplated in that cited case.

The 1<sup>st</sup> Respondent's advocate submitted that the relationship existed between the 1<sup>st</sup> Respondent and the Applicants is that of

the ***landlord and tenant*** subject to the lease agreement signed between them. Therefore the act of the 1<sup>st</sup> Respondent to notify the Applicants his intention to end the lease agreement was in compliance with conditions of the lease agreement and in accordance with the law, thus the applicants have no cause at all.

With regard to suffering an irreparable loss, the 1<sup>st</sup> respondent's advocate submitted that the applicants have nothing to suffer as they have failed to establish the kind of injury that they will suffer if the order is not granted by the court.

The Advocate concluded his submission by praying for this application to be dismissed.

In the rejoinder the applicants' advocate submitted that, the applicants have properly moved this court under order XXXVII Rule 1, and that the 1<sup>st</sup> respondent was not at liberty to terminate the said lease agreement while the applicants continued to pay rent which means that the tenancy was still in place. Mr. Saidi went on to substantiate his argument that the applicants will suffer irreparable injury/loss if there will be no court's interference to protect the applicants by granting injunction. To support his argument Mr. Saidi cited the case of **Atilio v. Mbowe**

**(supra)** which was also cited by the 1<sup>st</sup> Respondent's advocate of which to his opinion its applicability is in favour of the applicants.

I have carefully considered the rival submissions by the parties in this application and I have this to say; For the application of temporary injunction to be granted by the court there must three conditions to be fulfilled as it has been enunciated in the case of **Atilio v. Mbowe (supra)** which are in complimentary with provisions of **Order XXXVII Rule 1 (a) of the Civil Procedure Code [Cap 33 RE 2002]**, that is;

- 1. There must be a serious a serious issue to be tried on the facts alleged and a probability that the plaintiff will be entitled to the relief prayed in the main suit.*
- 2. 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.*
- 3. On the balance there will be greater hardship and mischief that will be suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendants from granting of it.*

The Applicants in this matter are seeking for an order of temporary injunction restraining the Respondent from trespassing into the suit premises as well as the court's order to restore them into the suit premise pending the determination of the main suit. I had an opportunity of looking into the applicants' prayers in the main suit, Land Case No. 91 of 2017 and found that the orders which the applicants are seeking for are almost the same. The issues of restoration of the applicants into the suit premise cannot be determined in this application for injunction while it is the core issue in the main suit. Be it noted that among the issues in the main suit is whether the applicants' eviction from the suit premise was lawful. Therefore issuing an order of restoration will be pre-empting the decision of the main suit.

The Applicant's prayer to prevent the Respondent from trespassing the suit premise cannot be granted. As it has been submitted by both parties that the Applicants were already evicted from the suit premise by the Respondents and allocated to somebody else. The said act cannot be regarded a trespass before determination of the main suit.

The Applicants' counsel alleged that the 1<sup>st</sup> Respondent has breached the contract for evicting the Applicants before the

expiry of time for the rent they had paid which is November, 2017. On the other hand the 1<sup>st</sup> Respondent's counsel alleged that the Applicants breached the contractual terms for misusing the suit premise that's why they decided not to renew the contract. The counsel added that terms of lease contract does not compel the 1<sup>st</sup> respondent to renew the contract after the same being expired on the time bases in June, 2017.

It is my view that the issue of validity of **termination of the lease contract** which led to the eviction of the applicants from the suit premise is prematurely submitted by the applicants at this juncture. In this application for temporary injunction the Applicants were just supposed to establish that they will suffer irreparable loss if the application is not granted or the sufferings on their side will be greater as compared to the Respondents, which is an important ground for the grant of temporary injunction.

All in all the grounds submitted by the applicant's counsel are not sufficient enough for this court to grant a temporary injunction as the said grounds are prematurely raised, they are supposed to be argued in the main suit. Not only that but also the fact that the



Applicants have already been evicted from the suit premise and there is no dispute that the said premise has already been allocated to another person, application for injunction cannot stand.

In upshot the application has no merit and the same is hereby dismissed with costs.



**S.M. KULITA**

**JUDGE**

**18/06/2020**