

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICANTION NO. 43 OF 2021**

*(Originating from Misc. Land Application No. 21 of 2021)*

**FLORENCE CHACHA ..... APPLICANT**

***VERSUS***

**TBP PLC (as successor in title of**

**the defunct TIB Corporate Bank Limited ..... 1<sup>ST</sup> RESPONDENT**

**MCHINGA AUCTION MART & REAL AGENCY.....2<sup>ND</sup> RESPONDENT**

**RAMADHAN BWANA Trading**

**As LE GRAND VICTORIA HOTEL ..... 3<sup>RD</sup> RESPONDENT**

**KITAJI INVESTMENTS LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**GATI DEBORAH ISACK (Adiministratrix of the estate of the late**

**CHACHA MWITA NG'ARIBA) ..... 5<sup>TH</sup> RESPONDENT**

**ZAITUNI NG'ARIBA ..... 6<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

18<sup>th</sup> November and 22<sup>nd</sup> November, 2021

**F. H. MAHIMBALI, J.:**

This ruling is in respect of the chamber summons filed by the applicant under certificate of urgency praying for this honourable Court to issue summons to the third Respondent to appear and show cause as to why he should not be committed as civil prisoner for deliberately

disobeying the Court order dated 11<sup>th</sup> May, 2021. Secondly, this court should be pleased to execute an order issued on the 11<sup>th</sup> May, 2021 by allowing the applicant access to and possession of the suit premise. Thirdly, costs of this application to follow the event. Fourthly, any other order(s) as this Honourable Court may deem fit and just to grant. The said application is made under section 2(3) of the Judicature and Application of Laws, Cap. 358 of the Laws of Tanzania Revised Edition, 2019 together with any other enabling provisions of the Laws.

The said application has been contested by all the respondents as being misplaced and thus wanting merits.

The background of this application can be stated this way. That originally, the applicant Florence Chacha filed Misc. Land Application no. 21 of 2021 by way of chamber summons made under section 2(3) of the Judicature and Application of Laws Act, [Cap 358, R.E 2019] (JALA) and Order XLIII, Rule 2 and section 95 of the Civil Procedure Code, Cap 33, R.E 2019 (the CPC) praying for maintenance of the status quo in respect of the property in plot no. 2 Nyabisare Area, Musoma Municipality with certificate of title no. 6334 LO No. 133090 pending the filing, hearing and determination of the application for temporary injunction and the

main suit to be filed after the expiration of 90 days statutory notice of intention to sue the Government and the Public Corporation.

In consideration of the said application and upon satisfaction that the applicant would suffer greater injury if application is not granted, the Court (this Court, Kisanya,J), granted the application by issuing temporary injunction order requiring maintenance of the status quo as existed on 28<sup>th</sup> April, 2021 when the application was filed in Court to 22<sup>nd</sup> July, 2021 when the notice to sue the 1<sup>st</sup> and 7<sup>th</sup> Respondents is expected to expire. Thereafter the applicant will be at liberty to apply for temporary injunction after instituting the suit.

This application has then been filed as execution to Court's order dated 11<sup>th</sup> May, 2021. When the matter was fixed for hearing on 18<sup>th</sup> November, 2021 I had asked the parties to address me on the competence of the application considering the timing of events as per Court's order dated 11<sup>th</sup> May, 2021 which issued the temporary injunction order requiring maintenance of the status quo as existed on 28<sup>th</sup> April, 2021 when the application was filed in Court to 22<sup>nd</sup> July, 2021 when the notice to sue the 1<sup>st</sup> and 7<sup>th</sup> Respondents is expected to expire. Thereafter the applicant will be at liberty to apply for temporary

injunction after instituting the suit. As it is now November, 2021 whether this application is still meritorious as per law.

Arguing in support of the competence of the application as it is by now, Mr. Kadaraja learned advocate submitted that this application is still competent and the Court has to consider its merit. While mixing with the merit of the application itself, Mr. Kadaraja submitted that this application is still competent before this court as per Hon Kisanya, J order dated 11<sup>th</sup> May, 2021. That as by 28<sup>th</sup> April, 2021 the applicant was still occupant in the said suit premises, then when it reached 30<sup>th</sup> April, 2021, it was when the 1<sup>st</sup> respondent by force/unlawfully evicted the applicant from the suit premises. It is through this eviction, the utensils of the applicant were brutally thrown out. Motor vehicles were left out and other properties locked in. When it had reached 11<sup>th</sup> May 2021, Hon. Kisanya, J issued an injunction order restraining the respondents by maintaining status quo as it was on 28<sup>th</sup> April, 2021.

From the order of Hon. Kisanya, J the applicant served the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents for compliance but denied obedience to it. It is without doubt that 90 days have already lapsed and that no suit has been filed in court. It is also undisputed that to date, the applicant has been denied access to the suit premises. Yet, he finds the application as still

meritorious as there is disobedience of court's order so long as the applicant was evicted during the pendency of the former application (Misc. Land application no 21 of 2021). As Mr. Toroke was in court on the date of ruling, it is clear that there is disobedience of the court's lawful order and is only remedied by issuing court's order of arrest and detention of the 3<sup>rd</sup> respondent as civil prisoner. He added that, this application for contempt of court's order wouldn't have been prayed had the applicant been evicted after the expiry of 90 days' notice. It being done within the pendency of the former application, he considers it as highest disrespect of the Court's order. If this is left to stand as contempt, it will bring chaos to the parties and the public at large. This Honourable court then be pleased by this application, as the grant of this application will serve as a good lesson to the 3<sup>rd</sup> respondent. If anyone was dissatisfied by that order of Hon Kisanya, J the right remedy was to appeal against it. Leaving it disrespected is equivalent to court's contempt.

With the second prayer in the application, the learned counsel submitted that the 3<sup>rd</sup> respondent be ordered to comply with the court's order as issued.



Lastly, he submitted that as this application is brought under order XXXVII, rule 2(2) and section 68 and (c) and 95 of the CPC and section 2 (3) of JALA, the application is competent before this court.

On the other hand, for the 1<sup>st</sup> and 7<sup>th</sup> respondents, Mr. Toroke learned State Attorney submitted that this application is currently not competent before the court. He submitted that the essence of Hon. Judge Kisanya's order is section 2 (3) of JALA, XLIII, r.2 and section 95 of the CPC. As per this order, is not improper for the applicant to invoke the provision of order XXXVII, rule 2 (3) of the CPC now purporting to execute the Court's Order. Secondly, he submitted that as that was court's order, the execution of it by arrest and detention of the 3<sup>rd</sup> respondent as civil prisoner is not appropriate as this is the last resort mode. Thirdly, as the 11<sup>th</sup> May, 2021 court's order is temporary injunction and it was subject to filing main suit by 22<sup>nd</sup> July, 2021 this application is overtaken by events. Considering it now, is equivalent to make it perpetual and everlasting order. As the order had no post effect but rather retrospective effect, it being overtaken by event there are no consequential orders to make the applicant restored unless there is an execution application for that and not proceeding on contempt as opted.

For the 3<sup>rd</sup> Respondent, Mr. Edson Philipo learned advocate submitted that this application is improper before this court. He has argued that normally committing a party as civil prisoner is an execution proceeding. Digesting the gist of the current application it is perplexing. It is perplexing because if it is contempt of court, then it is Criminal proceedings. What the learned counsel is praying is not what he is arguing/submitted in court. Secondly, he submitted that as the Court's order (Judge Kisanya's order) makes an expiration date to be 22<sup>nd</sup> July, 2021 and that today is November, 2021 the applicant's only remedy is to file an appropriate suit. Now being November, 2021 and the order expired 22<sup>nd</sup> July, 2021, it is now inexecutable as per law. Thirdly, as the one who effected the eviction order is the 1<sup>st</sup> respondent but the application is made against the 3<sup>rd</sup> respondent, the application is out of context.

In his rejoinder, Mr. Kidaraja learned advocate who all the time looked furious and angered in court on contempt issue, reiterated his submission in chief and added that the CPC is clear under Order XXXVII, Rule 2(2). As there is disobedience of lawful order of maintenance of status quo and both learned counsel are in agreement that there is breach of the order, he is of the opinion that the applicant was supposed to remain within the said suit premises until 22<sup>nd</sup> July, 2021.

As she has not enjoyed the said fruits of the order, there is disobedience of the Court's order. The other modes of execution as argued are not applicable in the context of this matter, argued Mr. Kadaraja, learned advocate.

In digesting the temporary injunction order as issued by this Court dated 11<sup>th</sup> May, 2021 (Hon Kisanya, J), it is clear that the said order was not meant to remain perpetual. It only remained in force during that time pendency the maturity of the 90 days of the statutory notice within which time the applicant had to file the intended suit upon the expiration of the 90 days. As the former application was filed on 28<sup>th</sup> April, 2021 and the eviction was done on 30<sup>th</sup> April, 2021, Hon Kisanya, J had this to say on the competence of the application before him.

*"On my part I agree with Mr. Kipeja, learned advocate that the status quo in respect of the order for temporary injunction relates to the status that existed at the time immediately before the filing of the application up to the determination of the case. See the case of **National Bank of Commerce Vs. Dar es Salaam Education and Office Stationaery** (supra) where the Court of Appeal held:*

*"the purpose of an order for temporary injunction as set out under Order 37, rule 1 is to preserve and retain the status quo as obtains at the time*



*immediately before the filing of the application until the determination of the suit”*

*Although the above cited case makes reference to temporary injunction made under Order 37, rule 1 of the CPC, I am of the view that the said decision applies in determining the meaning and the time when the order for maintaining the status quo starts to run. That it covers the time and position that existed immediately before the filing of application up to the determination of the case.”*

I am in total agreement with my brother (Kisanya, J) that time of the *status quo* in respect of the order for temporary injunction relates to preserve the status of the parties that existed at the time immediately before the filing of the application up to the determination of the case. What then is the remedy available upon breach of the said temporary injunction order issued? The CPC under XXXVII, Rule 2(2) provides:

*“In case of disobedience or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained as a civil prisoner for a term not exceeding six months, unless in the meantime the court directs his release”*

The issue is whether in the circumstances of this case where the temporary injunction order related to the maintenance of status quo of

the evicted applicant, what was the appropriate mode of execution? How would that Court order be complied with where already the applicant had been evicted? There ought to be re-entry of the applicant to the evicted house. For one to be re-entered in the evicted house, there ought to be a legal process. The smooth manner of doing it was to apply for an execution of court's order in which court broker would have been deployed to effect the court's order. Resorting to this mode of arrest and detention of the 3<sup>rd</sup> Respondent as civil prisoner was not appropriate in the circumstances of this case. This is because the 3<sup>rd</sup> respondent was not the party breaching the Court's order but it concerned the 1<sup>st</sup>, 2<sup>nd</sup> and the 7<sup>th</sup> respondents. The 3<sup>rd</sup> Respondent being just a beneficiary to the 1<sup>st</sup> respondent's action could not re-enter the applicant into the suit premises. That was the legal duty of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent. Nevertheless, considering the conditional precedent of the said Court's order that the temporary injunction order of maintenance of the status quo should have only existed between on 28<sup>th</sup> April, 2021 when the application was filed in Court to **22<sup>nd</sup> July, 2021** when the notice to sue the 1<sup>st</sup> and 7<sup>th</sup> Respondents was expected to expire and today being November, 2021 the previous Court's order is legally ineffectual by the applicant. As its life span has already expired, the applicant was duty bound after that expiration to withdraw the

application and apply for another temporary injunction upon instituting the intended suit. However, if any material damage has been occasioned, there must be an appropriate legal course for redress and not hiding under the back of the former injunction order.

In that consideration, I find the application as inappropriate before the Court for addressing a wrong party, wrong remedy and overtaken by events. The application is thus struck out. Each party to bear its own costs.

DATED at MUSOMA this 22<sup>nd</sup> day of November, 2021.



F. H. Mahimbali

JUDGE

22/11/2021

**Court:** Ruling delivered this 22<sup>nd</sup> day of November, 2021 in the presence of advocate Kadaraja for the applicant, Mr. Edson Philipo for 3<sup>rd</sup> respondent also holding brief of Mr. Toroke, state attorney for the 1<sup>st</sup> and 7<sup>th</sup> respondents and Mr. Mugoa – RMA.

F. H. Mahimbali

JUDGE

22/11/2021