

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

MISC. CIVIL APPLICATION NO. 2473 OF 2024
(Arising from Civil Case No. 1404 of 2024)

MGOLOLA JASON RWEBANGILA-----APPLICANT

VERSUS

**AFRICAN BANKING CORPORATION
TANZANIA LIMITED (BANK ABC) -----1ST APPLICANT**

**NUTMEG AUCTIONEERS
AND PROPERTY MANAGER CO. LTD-----2ND RESPONDENT**

RULING

Date of last order: 10/05/2024

Date of Ruling: 29/05/2024

A. A. MBAGWA, J.

This is an application for temporary injunction orders against the respondents namely, African Banking Corporation Tanzania Limited (Bank ABC) and Nutmeg Auctioneers and Property Manager Co. Ltd pending determination of the main suit to wit, Civil Case No. 1404 of 2024. The applicant has preferred this application, under certificate of urgency, seeking the following orders;

A. EX-PARTE:

- 1. That this Honourable Court be pleased to grant an order for status quo ante restraining the Respondents, their agents or servants or any other person*



acting under their instructions or authority from entering, evicting, threatening, demolishing, developing, and or interfering with or making or cause to have made anything that may interfere with the Applicant's possession and peaceful enjoyment of the suit property known as Plot No. 2313, Block "A" located at Mbezi Manyema Area, Kinondoni District with Dar es Salaam Region, pending determination for injunction orders inter-parties.

B. INTER-PARTIES:

1. *That this Honourable Court be pleased to grant an order for temporary injunction restraining the Respondents, their agents or servants or any other persons acting under their instructions or authority from entering, evicting, threatening, and or interfering with or making or causing to have made anything that may interfere with the suit property to render the main suit nugatory and the applicant's possession and peaceful enjoyment of the suit property known as Plot No. 2313, Block "A" located at Mbezi Manyema area Kinondoni District within Dar es Salaam Region pending determination of the main suit known as Civil Case No. 1404 of 2024.*
2. *That the costs of this Application be provided for; and*
3. *Any other relief as this Honourable Court may deem just fit to grant.*

The above prayers were contained in a chamber summons made under sections 68 (e), 95, and Order XXXVII Rule 1(a) of the Civil Procedure Code. [Cap 33 R.E 2019] (the CPC) which was supported by an affidavit of Mgolola Jason Rwebangila, the applicant.

In contrast, the application was opposed by the 1st respondent via a counter affidavit sworn by Nyanjala Mtebe, the principal officer of the 1st respondent.



The 2nd respondent failed to file a counter affidavit nor did she appear to defend the case despite being duly served. As such, the hearing proceeded *ex parte* against the 2nd respondent.

In his affidavit, the applicant contends that on the 1st day of July 2014, the applicant entered into a loan agreement with the 1st respondent for the sum of TZS 300,000,000/- (Tanzania Shillings Three Hundred Million) for the purposes of completing the construction of his residential house located in Plot No. 2313 Block A Mbezi Manyama (the suit property). The said property was also mortgaged to secure the said loan. The applicant contends further that he properly serviced the loan as per the repayment schedule up to 28th September 2023. However, to the applicant's dismay, the 1st respondent instructed the 2nd respondent to auction the suit property contrary to the mandatory procedural requisite of a public auction over the mortgaged property. The applicant lamented that the 1st respondent proceeded to auction the suit property without issuing a statutory default notice.

Acting under the instructions of the 1st respondent, the 2nd respondent armed with bouncers forcefully evicted the applicant and his tenants from the suit premises. As such, the applicant and his tenants suffered damage to the tune of TZS 300,000,000/=.



On the contrary, the 1st respondent through a counter affidavit sworn by Nyanjala Mtebe, a principal officer of the 1st respondent, resisted the application. He stated that on the 10th day of July 2014, the applicant applied for a loan of TZS 300,000,000/=. Upon approval, the applicant and the first respondent signed the loan facility agreement after which the 1st respondent disbursed the loan money to the applicant's account. She contended further that the applicant mortgaged the suit property in favour of the 1st respondent. Copies of the facility agreement and mortgage deed (**annexure ABC-1**) were attached to the counter affidavit to support the 1st respondent's contention.

It was further averred that the applicant failed to service the loan as agreed as a result, on 4th November 2021, the outstanding loan stood at TZS 510,418,526,345/=. In consequence thereof, the 1st respondent issued a 60 day-default notice (**annexure ABC-2**) but to no avail. In a bid to enforce the contractual terms, on the 30th day of September 2021, the 1st respondent instructed the 2nd respondent to evict the applicant from the suit property.

The 1st respondent further alleged that after receipt of the said default notice, the applicant filed in the District Land and Housing Tribunal for Kinondoni at Mwananyamala Land Application No. 514 of 2021 and Miscellaneous Application No. 1208 of 2021 to prevent the 1st respondent



from exercising its right of eviction and auction. Nonetheless, the said cases were dismissed for non-appearance of the applicant.

Still protesting, the applicant filed in this court (Land Division) Land Revision No. 28 of 2023 which was also dismissed by Hon. Luvanda, J. The respondent therefore prayed the Court to dismiss the application for being frivolous.

When the matter was called on for hearing on 15th April 2024, Mr. Frateline Munale, learned counsel appeared for the applicant whereas the 1st respondent had the services of Mr. Mohamed Muya, learned counsel.

Submitting in support of the application, Mr. Munale adopted the applicant's affidavit and a reply to the counter affidavit to form part of the submissions. He submitted that the epicenter of the application is the suit premises and the facts that prompted the applicant to bring the application are stated in paragraphs 4 up to 8 of the affidavit. Referring to the case of **Atilio vs Mbowe** (1968) HCD No. 284, the applicant's counsel had it that there are three conditions for granting a temporary injunction namely; the existence of a prima facie case, imminent irreparable loss incapable of being atoned for by way of damages, and balance of convenience. Mr. Munale forcefully submitted that the applicant has complied with the threshold enunciated in the case of Atilio (supra).



On *prima facie case*, the applicant's counsel referred to paragraph 9 of the affidavit and submitted that there is a pending case namely, Civil Case No. 1404 of 2024. In the counsel's view, the pendency of the said suit was enough to establish the existence of a *prima facie case*.

On irreparable loss or injury, Mr. Munale referred to paragraphs 10 and 11 of the affidavit and contended that the applicant is likely to lose his right to redeem the suit property in case it is disposed of. He added that such a loss cannot be easily atoned by damages because the suit property is a residential house.

On a balance of convenience, Mr. Munale had it that the applicant stands to suffer more than the respondent in the event the injunction order is not granted. He concluded that the application is meritorious and therefore implored the court to grant the orders sought.

In reply, Mr. Mohamed Muya was so brief and focused. He submitted that the application was overtaken by events. Referring to paragraph 6 and annexure ABC-4, Mr. Muya contended that the applicant was peacefully and legally evicted from the suit property. He added that according to paragraphs 6 and 7 of the 1st respondent's counter affidavit, the auction was conducted publicly and the suit property is currently under the new ownership. He therefore prayed the Court to dismiss the application.



In a brief rejoinder, Mr. Munale challenged that the respondent did not produce any evidence to prove the new ownership of the suit premises. He concluded that the application cannot be said to be overtaken by events in the absence of proof of new ownership.

Having canvassed the depositions of the parties and the rival submissions the central issue for the determination of this application is whether the temporary injunction orders are called for in the circumstances of this matter.

The applicant, under paragraphs 4, 5, and 6 of his affidavit, avers that he was evicted from the suit premises. He also admits that the suit property was auctioned to a third party, who is not subject to these proceedings.

For clarity, I let the said paragraphs speak for themselves. They read;-

4. Sequel to paragraph 3 above, the Second Respondent invaded the Applicant's suit property with a lot of bouncers armed with weapons, caused commotion and broke into the suit property where the Applicant resides together with his family and tenants on the backyard. The Respondents evicted, harassed and embarrassed the Applicant from his own residence without a Notice or any justifiable reason.
5. That, the Second Respondent has caused some serious damage to valuable belongings of the Applicant and welfare of his tenants. The Applicant has suffered great loss and his belongings such as beds, bedsides, dressers, drawers, baby crib, sofa sets, music system, decor picture, curtains poles, refrigerator, utensil broken and wall paint damage. The



destruction of the Applicant's properties costs has reached to the tune of Tshs. 300,000,000/= . A copy of the Inventory of valuable properties destroyed by the by the Second Respondent is attached herewith as Annexure MJR - 2.

6. That the eviction of Applicant was conducted on his residential and matrimonial home where the whole family resides. Thus illegitimate eviction, forceful invasion and eviction without Notice has led to the Plaintiff and his family been thrown out on the streets, disrepute the Applicant's reputation and his family. The Applicant has been embarrassed au that has led to psychological torture of his family leading to health difficulties.

From the above averments, it is undisputed that the applicant is already evicted from the suit property. It was also contended by the 1st respondent and uncontroverted by the applicant that after the applicant's eviction, the suit property was sold to a third person who is not a party to these proceedings.

Based on the above-undisputed facts, it is my considered view that the temporary injunction orders cannot salvage the applicant. Since the applicant has been already evicted from the suit premises, the viable remedy is to prosecute the pending case i.e Civil Case No. 1404 of 2024 so that this Court can determine his rights over the property in dispute. I therefore agree with Mr. Muhamed Muya, learned counsel for the 1st respondent that the instant application is overtaken by events.



In the event, I find this application misconceived hence I accordingly dismiss it. Each party should bear its own costs.

It is so ordered.

The right of appeal is explained.

Dated at Dar Es Salaam this 29th day of May 2024.




A.A. Mbagwa

JUDGE

29/05/2024