IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB - REGISTRY

AT IRINGA

MISC. LAND APPLICATION CASE NO. 15039 OF 2024

VICTOR MUSHI .....APPLICANT

VERSUS

NATIONAL HOUSING CORPORATION ..... 1ST RESPONDENT

THE ATTORNEY GENERAL .....2ND RESPONDENT

RULING

Date of last Order: 02/07/2024
Date of Ruling: 04/07/2024

LALTAIKA, J.

The Appellant herein **VICTOR MUSHI** filed this application under certificate of Urgency. The Application is made under section 2(3) of the Judicature and Application of Laws Act Cap 358 [R.E. 2019, section 68(e), 95 and Order XXXVII of the Civil Procedure Code CAP 33 R.E. 2022 among other laws.

The Applicant is praying for the following orders/reliefs:

(a) This Honourable Court may be pleased to order maintenance of status quo with respect to the tenancy relationship that exists

between the plaintiff and the first respondent until the expiry of the 90 days' statutory notice of intention to sue issued to the concerned parties.

(b) Costs of this application be provided for.

(c) Any other relief this Honourable Court may deem just to grant.

It is instructive to note that Counsel for the Applicant Mr. Edmund Bado Mkwata had filed a Certificate of Urgency dated 24/6/2024 praying that the application be heard immediately. The said application was received by this court on 26th of June 2024. It was assigned to me on Friday 28/06/2024 but reached my Chamber on Monday 01/07/2024 whereupon parties were summoned for hearing on Tuesday 2/07/2024.

At the hearing, whereas the Applicant enjoyed the legal services of **Mr. Edmund Mkwata,** the Respondents appeared through Ms. Ansila Makyao, Senior State Attorney and Ms. Neema Sarakikya, State Attorney.

Mr. Mkwata submitted in support of the application, requesting an order to maintain the status quo until the matter is resolved. He argued that this is necessary because the applicant has already been issued an eviction notice, which has since expired. Mr. Mkwata expressed concern that without this order, the applicant might be evicted, adversely affecting his interests.

The learned Counsel referred to paragraph seven of the affidavit of the Applicant and annex VM4, which includes the notice issued by the 1st respondent to the applicant, requiring him to vacate the premises by June 30 or face eviction. The notice, issued on June 1, allowed 30 days for compliance. During this period, Mr. Mkwata averred, the applicant attempted to communicate with the 1st respondent to highlight his unconsidered interests, but these consultations, which were mainly oral, were unsuccessful.

Mr. Mkwata cited a similar case where such an application was granted by this court (Land Division), specifically **Genoveva Ndelimbi Muro and Another v. Tanzania Commercial Bank and 2 Others**, Misc. Land Case Application No 17 of 2023. He requested that the court order the maintenance of the status quo until the hearing of the matter inter partes, noting that in the referenced case, the defendants did not file a copy of their affidavits, prompting the court to maintain the status quo.

Mr. Mkwata proceeded to outline three key issues, based on the case of **Mareva Compania Naviera SA v. International Bulkcarriers SA** [1980] 1 All ER 213, that need to be considered: (i) A strong prima facie case (ii) The justifiability of granting the injunction considering all

circumstances and (iii) The applicant's inability to institute a case due to legal impediments.

Mr. Mkwata pointed out that the application was filed before the expiration of the 90-day notice issued to the respondent, highlighting a legal impediment as envisioned by the referenced case. He asserted that the case is arguable because the applicant believes she has a justifiable cause against the respondent, as indicated in paragraph three of the affidavit, which the 1st respondent overlooked before issuing the impugned notice.

Lastly, Mr. Mkwata emphasized that it was justifiable for the court to grant the order to preserve and protect the applicant's interests, as demonstrated in the affidavit.

Ms. Makyao, on her part, reiterated their earlier request for 14 days to file a counter affidavit. She noted that the learned Advocate for the Applicant had expressed doubts and preferred to pray for an order of maintenance of status quo. Ms. Makyao clarified that the Applicant is still occupying the suit premises, specifically House Number 101, Plot Number 12/2, Zone (ii), Karume Apartments, located along Karume within Iringa Municipality. The applicant has been residing there since 2009.

Recently, Ms. Makyao averred, it appears that the applicant was instructed to renew the contract or pay **TZS 1,818,927.05.** A notice was issued to him, providing a control number for payment within 30 days. The applicant had the option to either pay the required amount or surrender the suit premises.

Ms. Makyao mentioned that she could not provide detailed comments at this stage as she had not yet consulted with the 1st Respondent. According to her, the applicant had not allowed sufficient time to settle the bill or consult with the 1st Respondent. She acknowledged the existence of the notice and stated that she had no objection to it. However, she prayed that the notice be considered only after the expiration of the 90-day period.

I have dispassionately considered submissions by both parties and thoroughly examined the content of the application. Before going further, I cannot resist the temptation to comment on Mr. Mkwata's submission in general and this Court's case he cited to support his argument for grant of the application. Although he stated blatantly that in **Genoveva Ndelimbi Muro and Another v. Tanzania Commercial Bank and 2 Others** (supra) this Court (Land Division) granted the application, the opposite is true. As an avid reader, I reverentially went through the pages

eager to learn from My Sister A. Msafiri J. only to discover that after her impressive analysis that I am going to borrow shortly, she concluded:

> *"In the upshot, this Court finds that the applicants have failed to meet conditions necessary for granting of the reliefs sought at the auspices of mavera injunction. Having found that, I hereby dismiss the application in its entirety with costs."*

I know this is not the proper place to discuss issues related to misconduct of an Advocate but again I cannot resist the temptation. My roles as a Judge are hearing, reading and writing. Did Mr. Mkwata think I will not read the case he referenced to buttress his argument? How would I have justified by decision? Or was he in such a hurry that he forgot to attach the relevant authority? Either way, I am immensely flabbergasted if not utterly bewildered.

Picture this: a tenant is issued with a 30-day notice to settle his outstanding bill or vacate the premises on the 1st of June 2024. For reasons known to him, he does neither of the two. On the last week before expiration of the notice, he approaches a lawyer who quicky puts together an application and label it of extreme urgency. The said application, as alluded to earlier, reaches the court after expiration of the notice. What does this

signify? I will come back to this in the end, for now let me consider the application on merit.

The three conditions for grant of a temporary injunction are (i) the existence of a prima fascie case (ii) imminent irreparable loss incapable of being atoned for by way of a damages and (iii) balance of convenience.

On the first condition, I do not want to prejudge the rights of either party, but I find it very difficult to pinpoint a *prima fascie case.* The applicant is the one who has been ordered to clear his bill to the tune of TZS 1,818,927.05 or vacate the premises. I asked Mr. Mkwata if that was the only continuous issue and he referred me to the affidavit deponed by the Applicant. Here is what is stated at para 8

> 8. *That the 1st respondent herein did issue the said notice to the applicant in utter disregard to the alteration and renovations effected on the building by the applicant which did cost the latter a substantial amount of money to the tune of Tanzanian Shillings Forty One Million, Six Hundred Seventy Three Thousand Five Hundred (Tshs 41, 673,500/-) that the former has not taken any cognizance of or taken trouble to reimburse.*

Whereas this application is on landlord and tenant, the above claim is inclined towards contractual agreements. Assuming that the renovation was indeed made, is this a form of a past consideration claim? If the answer is to the affirmative was the applicant aware of the legal regime governing public procurement in Tanzania? To what extent can a tenant take the liberty to renovate a public structure without specific instructions to that effect?

Transitioning to the 2nd requirement, the applicant has not demonstrated that he will suffer irreparable harm if the status quo is not maintained. The payment required is a quantifiable amount, and any dispute over this can be addressed through compensation. Monetary damages would suffice to remedy any potential harm, negating the need for an injunctive relief.

On the balance of convenience, I need to be pragmatic here. Unfortunately, even after liberalization of the market in Tanzania in the early 1990's our case laws have not change substantially. The inconvenience caused to the 1st respondent by delaying rent collection outweighs any inconvenience to the applicant, who has not substantiated any significant hardship. In the past, courts would issue injunctive reliefs without considering that in a competitive business environment many factors are

considered before issuing a client a notice to vacate premises. I think this should change. As the Kiswahili saying goes *Dawa ya Deni ni Kulipa* the solution to a debt is to pay it off.

In his oral submission, Mr. Mkwata suggested that there was a legal impediment preventing the applicant from addressing the issue directly with the 1st Respondent, that is to say, expiration of the 90-days' notice. With due respect to Mr. Mkwata, I have already indicated that there is no *prima fascie* case here. A Business conflict all the world over is resolved through consultation, not court injunctions. That is why lawyers are encouraged to continuously horn their negotiation skills. In a liberalized market, courts of law cannot be used to interfere with innovation, change in market structures and strategic planning among businesses.

In the matter at hand, there is a reliance on oral consultations, which are not corroborated by documented evidence or formal communication records. The absence of concrete proof weakens the applicant's position and fails to convince the court of the necessity of maintaining the status quo. Although the 1st Respondent is a public entity, she has financial obligations to meet. It would be unfair to delay implementation of her strategic goals

for 90 days and beyond for what appears to be a *past consideration* claim of **TZS 41, 673,500/-**

As I wind up, I think there is no harm emphasizing that maintaining the *status quo* without valid reasons could set a precedent that undermines contractual obligations and lawful administrative processes. In the quest to improve our country's position in the *Ease of Doing Business Index* and embrace fast changing market dynamics, including the advent of the African Continental Free Trade Area, a change of mindset is necessary.

Waiting for the last minute before filing this application indicates that there is a wrong perception that one can ignore negotiation, ignore their obligation in a contract, walk into a court of law and "obtain" an injunction to prolong petty claims. This is not how a liberalized market works.

It is in the public interest to uphold the enforcement of contracts and compliance with legal procedures (such as public procurement). Ensuring that parties comply with their obligations without unnecessarily resorting to seek judicial interference in the way to go. That is how economies are built by allowing implementation of strategies and ensuring flexibility.

In the upshot, this application is hereby dismissed. I make no orders as to costs.

It is so ordered.

E.I. LALTAIKA
JUDGE
04/07/2024

Court:

This ruling is delivered under my hand and the seal of this court on this 4th day of July 2024 in the presence of Ms. Ansila Makyao, SSA & Neema Sarakykya, SA accompanied with Regional Manager for the 1st Respondent Esther Magese and Amos Manyama Estate Officer, Mr. Edmund Mkwata, learned Advocate for the Applicant & the Applicant.

E.I. LALTAIKA
JUDGE
04/07/2024

Court

The right to appeal to the Court of Appeal of Tanzania fully explained.

E.I. LALTAIKA
JUDGE
04/07/2024