IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

TANGA SUB - REGISTRY

AT TANGA

MISC. LAND APPLICATION NO. 67 OF 2023

DAIMON EMMANUEL MWASAMILA T/A DM SPORTPUB..... APPLICANT

VERSUS

TANZANIA RAILWAY CORPORATION.....1st RESPONDENT

ATTORNEY GENERAL .....2nd RESPONDENT

RULING

08/02/2024 & 16/02/2024

NDESAMBURO, J.:

This is an application filed under a certificate of urgency preferred under Section 2(3) of the Judicature and Application of Law Act, Cap 358 R.E 2002 and Section 68 (e) and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019. In the inter parties, the applicant is seeking the following orders:

1. *The court is pleased to grant an order for Mareva injunction in respect of the leased premises located at land property No. TRC/TAN/066 as well as an order for the restoration of the applicant's business activities pending the expiry of 90 days statutory notice of the intention to sue the Government.*

2. Any other order that the court deems necessary to grant.

In support of the application is the affidavit of Daimon Emmanuel Mwasamila. The respondents lodged a counter affidavit contesting the application.

In the hearing, the applicant was represented by Ms. Ernesta Chuwa, a learned counsel while the respondents were represented by Mr. Innocent Rweyemamu, a learned Senior State Attorney assisted by Ms. Agnes Gombe, a learned State Attorney. The hearing was conducted via viva voce.

Ms. Chuwa, before the hearing adopted the affidavit by the applicant to form part of her submission. She asserted that the applicant seeks an order of Mareva injunction against the respondents pending the expiry of a 90-days' notice of an intention to sue the Government. The notice was served on the second respondent on the 14th December, 2023.

The counsel contended that the application meets the criteria set forth in the case of **Auto Mech Ltd v TIB Development Bank Ltd and 3 Others,** Misc. Land Application No. 73 of 2020, necessary for the grant of a temporary injunction. Firstly, the first respondent leased the premises to the applicant, who duly fulfilled his rental obligations.

Secondly, the applicant through the letter dated 1st August 2023, complied with request to pay three months' rent and preparation fees for the lease agreement, with the expectation of securing the contract. However, the applicant was later instructed to vacate the premises and dismantle all constructed developments. Furthermore, the learned counsel emphasized that despite the applicant's initial request for permission to construct a toilet on 20th March 2023, and the subsequent follow-up, there was no response from the first respondent. Consequently, the applicant proceeded with the construction of the toilet, deeming it necessary for the nature of the business being conducted. Based on these circumstances, the learned counsel asserts the existence of a prima facie case.

Regarding the second condition, the learned counsel emphasized that the applicant would incur irreparable losses if the application is denied, as the applicant has made significant investments in the area. It was anticipated that a three-year contract, as specified in the letter dated 1st August 2023, from the first respondent, would be granted to him.

In respect of the third condition, concerning the balance of convenience, she argued that the applicant is more likely to suffer

greater hardship compared to the respondents if the application is not granted. This is because the applicant has invested capital in the development of the area.

Mr. Rweyemamu, for Respondents, opposed the application and argued that the applicant has failed to satisfy the conditions necessary for the grant of a Mareva injunction. He referred this court to its prior decision of **Decent Investment Ltd v TRC and others**, Misc. Civil Application No. 13 of 2023 which cited the Canadian Supreme Court decision in **Aetna Financial Services v Feigelman** (1985) 1 SCR 2. In this case, the court discussed two conditions for the grant of a Mareva injunction, and it was held as follows:

> *"Firstly, the applicant must demonstrate a strong prima facie case or a good and arguable case and secondly having all the circumstances of the case, it appears that granting the injunction is just and justifiable".*

Applying the aforementioned principles to the present application, Mr. Rweyemamu argued that, the crux of the matter originates from the lease agreement. Thus, the prima facie case the applicant must establish hinges on demonstrating the existence of said lease agreement with the first respondent. However, the applicant's submission failed to substantiate the existence of this lease agreement, with no

documentation annexed to the affidavit. Mr. Rweyemamu further contended that without a lease agreement, there is no viable and arguable case between the parties. Furthermore, Mr. Rweyemamu pointed out that the applicant has not paid rent since 31st October 2023. Consequently, the applicant has not successfully proven the existence of a prima facie case.

Regarding the second principle, Mr. Rweyemamu succinctly argued that the applicant's request lacks justification due to the absence of a lease agreement.

In response to the claim of irreparable loss by the applicant if the application is denied, Mr. Rweyemamu maintained that without a lease agreement, the applicant's alleged loss is unfounded. He further argued that any costs incurred for development were undertaken at the applicant's own risk. Consequently, he urged the court to dismiss the application due to the applicant's failure to meet the conditions required for the grant of a Mareva injunction. However, Mr. Rweyemamu urged the court to order the applicant to pay rent if the application is granted.

Rejoining, Ms. Chuwa asserted that while awaiting the lease agreement, the applicant diligently complied with the conditions outlined in the letter dated 1st August 2023, including payment of rent up to

January 2024. She emphasized that the renovations were communicated to the first respondent in advance. Ms. Chuwa implored the court to grant the application.

After meticulously considering the oral arguments presented during the hearing and thoroughly reviewing the chamber summons, affidavit in support of the application, counter affidavit, and relevant laws, the pivotal question for determination is the merit of the application.

A Mareva injunction serves as an interim measure pending the establishment of a legal basis for instituting a suit. Thus, the court is empowered to grant such an order when no suit is currently pending. The applicant may seek such relief when faced with a legal obstacle, as evident in the present case where the applicant is required to issue a 90-day notice to sue the Government pending its expiration.

It is worth noting that during the drafting of the ruling, I found it necessary to summon the parties to clarify the relief sought by the applicant in this application. The chamber summons did not explicitly specify the nature of the relief sought apart from stating that, the applicant was seeking for Mareva injunction in respect of the leased premises. The learned counsel informed the court that the applicant

seeks an order restraining the first respondent from requiring the removal of all developments made, pending the expiration of the 90-day notice to sue the Government. The respondent confirmed that this understanding aligned with their own interpretation. It should also be noted that the issue of restoration was abandoned by the applicant and, therefore, it will not be considered as part of this ruling.

Beginning with the prima facie case, which constitutes the first condition for the grant of a temporary injunction, as articulated in the case of **Attilio v Mbowe**, HCD, 1969, it is imperative to exercise caution in determining whether there exists an arguable issue to be tried by the Court. This decision must be made sparingly at this stage, as the court's role should not encroach upon trying the main case. According to the applicant, this condition has been satisfied, as he leased the premises in question and fulfilled the requisite payments in anticipation of signing a lease agreement, as indicated in the letter dated 1st August 2023. However, the respondents contested this assertion, arguing that a prima facie case had not been established, as the applicant failed to produce a lease agreement with the first respondent.

Reviewing the evidence, it remains undisputed that the applicant indeed rented the premises from the first respondent, as documented in

the aforementioned letter. This correspondence outlined key terms, including the obligation to pay three months' rent and a fee for the preparation of a three-year lease agreement, with a provision allowing the first respondent to acquire the premises upon issuing a notice. The applicant duly fulfilled his party by making the necessary payments. Nonetheless, as contended by Mr. Rweyemamu, the crux of the matter revolves around the absence of a formal lease agreement between the parties. The letter annexed by the applicant does not constitute a binding lease agreement that establishes a legal relationship between the applicant and the first respondent.

Furthermore, the affidavit submitted by the applicant lacks any mention of a finalized lease agreement, aside from the directive to pay rent and fees outlined in the aforementioned letter. Notably, there is no indication that such an agreement was signed by both parties. As argued by Mr. Rweyemamu, this evidence falls short of establishing a prima facie case, thus failing to meet the first condition necessary for the issuance of a Mareva injunction.

Regarding the second requirement, which assesses whether the applicant would suffer irreparable loss if the temporary injunction is not granted, the applicant contends that significant investments have been

made in anticipation of a three-year contract from the first respondent and that if the application is not granted would suffer irreparable loss. However, the respondents dispute this claim, asserting that the alleged losses are unfounded due to the absence of a lease agreement. Additionally, they argue that any development costs incurred were undertaken at the applicant's own risk.

With due respect to the learned counsel for the applicant, I concur with the respondents' arguments. The absence of a formal lease agreement between the parties undermines the assertion of potential irreparable loss if the injunction is denied. This simply means that, the parties had no any landlord tenancy agreement between them. Furthermore, any development requests made by the applicant were not approved or acted upon by the first respondent despite the reminder. Therefore, the actions taken by the applicant were undertaken at his own risk, and the purported losses cannot be deemed irreparable without a clear lease agreement and permission for the development in place. Furthermore, in Annexure OSG 4, the respondents contend that the development made has affected its work. Consequently, the respondents are likely to suffer irreparable loss compared to the applicant.

In addressing the third condition, which examines the balance of convenience between the parties, Ms. Chuwa asserts that the applicant is more likely to endure greater hardship than the respondents if the injunction is not granted, emphasizing the capital invested by the applicant in the development. However, as previously discussed, the crux of the matter hinges on the relationship of the parties. The absence of a lease agreement between the parties undermines the claim by the applicant.

According to Annexture OSG 4 to the counter affidavit, the applicant was instructed to remove the unauthorized development, indicating that the first respondent did not grant permission for such actions. Furthermore, the construction has adversely affected the operations of the first respondent's work. The applicant in paragraphs 7 and 13 of his affidavit states that despite his request for development and a subsequent reminder, there was no response from the first respondent. Nonetheless, the applicant proceeded with the construction. This proves that any development undertaken by the applicant was done at his own discretion and peril. Upon weighing the balance of convenience, it becomes apparent that it is the respondents who stand to suffer more compared to the applicant.

That said, the application for Mareva injunction pending expiry of 90 days to sue the Government is not granted. Bearing the nature of this application, each party shall bear its costs.

It is so ordered.

DATED at **TANGA** this 16th day of February 2024.

H. P. NDESAMBURO

JUDGE