

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISCL. LAND CASE APPLICATION NO. 1070 OF 2017

MARIAM CHRISTOPHERAPPLICANT

VERSUS

EQUITY BANK TANZANIA LIMITED1ST RESPONDENT

CHRISTOPHER MAKINDI EDWARD2ND RESPONDENT

Date of last Order: 3/3/2018

Date of Ruling: 11/5/2018

R U L I N G

MGONYA, J.

The prayer sought by the Applicants intends to move the court to grant **temporary injunction order** restraining Respondent, his agent, servant or any person to demolish the suit property pending the final determination of the main suit.

The application has been brought under **Order XXXVII Rule 1 (a) & (b) & 2, and section 95 of the Civil Procedure Code Cap. 33 [R. E. 2002]**. The application is supported by the Affidavit of one **MARIAM CHRISTOPHER**, the Applicant herein.

In this Application, the Applicant was representing herself in court while her affairs are managed through legal by The Legal Assistance and Social Welfare Organization of Tanzania (LASWOT); while the 1st Respondent was represented by the learned Counsel Mlwale; and the 2nd Respondent never entered appearance before the court. The Application was argued by way of written submissions.

Through the Applicant's written submission and Affidavit, the Applicant insisted that she has a triable case before the court since she was denied notice prior to the intended sale by the 1st Respondent. It is from the same, she has a strong case before the court. Further, if the application is refused then the case before the court will be rendered nugatory since the applicant's substantive rights are vested in the property in dispute.

Looking at the Applicant's affidavit, she only stated that if the application is not granted, she stands to suffer an irreparable loss.

On the other side, the 1st Respondent through their written submission strongly and in length objected the application stating that the application does not meet the requisite tests for the temporary injunction. It is the 1st Respondent's Counsel view that the applicant's application does not meet the three tests for temporary injunction as they are well stipulated in the case of

ATILIO VS MBOWE HCD, 1972. After a long submission opposing the application, the prayer was that this honorable court dismiss the application with costs.

I have carefully considered the applicant's Chamber Summons and affidavit supporting the same together with the Respondent's counter affidavit and respective counsels' for both parties submissions. It is not in dispute that the application was brought under **Order XXXVII Rule 1(a) and (b)** which is the principal law for the court to **grant injunction**. However, unfortunately the prayers containing in the Chamber Summons does not reflect the facts deepened in the affidavit. I say so since in the Chamber Summons, the Applicant is praying for an order that the Respondent or their agents be restrained from demolishing the suit property; while the facts in the affidavit reflects restraining the same from selling the suit property.

It does not need a microscope to see what happened to create this kind of unnecessary confusion. The only advice I can offer the people who have assisted the Applicant in preparing this application to be more careful and step down from copy and paste business without the proper editing. This can seriously costs interests and rights of those who are assisted. One have to assist diligently and wisely, especially in the name of the said legal

assistance. This is only one anomaly that I have pointed out among the others that for the time being I don't have enough time to discuss, but it suffices to say that those who are concerned have to be more careful. However, since I have understood the Applicant's prayer, I will proceed to determine this application accordingly on merits.

Conditions for granting temporary injunction were set out in the case of ***ATILIO VS MBOWE 1969 284***, by Sir George C. J. Since then they have been repeatedly reinstated in the numerous other decisions. These conditions are:

First, that, on the facts alleged, there must be a serious question to be tried by the court and a probability that the plaintiff will be entitled to the relief prayed for (in the main suit).

Second, that the temporary injunction sought is necessary in order to prevent some irreparable injury be falling the Plaintiff while the main case is still pending, and

Third, that on the balance, greater hardship and mischief is likely to be suffered by the Applicant / Plaintiff if temporary injunction is withheld than may be suffered by the Respondent /

Defendant if the order granted. **All these conditions must be met before a temporary injunction can be granted.**

Further, the above tests must be reflected in the affidavit in support of the application. I have gone through the Applicant's affidavit and it came across my eyes that paragraph 3 - 10 of the Applicants' affidavit suggests that there is a triable issue pending the main suit. Further, paragraph 11 suggest on the irreparable loss that the Applicant is going to suffer if the prayer sought is refused.

In the instant matter, the noble duty or the question to be addressed now is whether the facts disclosed in the Application for temporary injunction satisfy the conditions for granting the injunction which has been prayed for.

Let me start with the first condition of the Applicant to establish the *prima facie* case and probability of success. It is settled position of law that, in the instant condition the Applicant is required to show two things:-

One, the reliefs sought by the Applicant in the main suit must be one that the court is capable of awarding; and

Two, the Applicant should at the very minimum show in the pleadings that in the absence of any rebuttal evidence he is entitled to the said relief.

Further, I am of the view that it is not sufficient for the Applicant to file a suit with claims but Applicant must go further and show that he has a fair question as to the existence of a legal right which he claims in the suit. Moreover, with transparent conviction, I still register the position of the law that the Court is required to look at is the reliefs sought in the main suit and the claims made and see if they raise a serious question for determination by the court and then assess whether there is a justification for granting a temporary injunction.

Regarding the extent of proving whether there is a serious question for determination, it is not conclusive evidence which is required but rather the facts as disclosed by the plaint and the Affidavit and so the standard of proof required would be somehow below the expected standard in full trials. You may wish to refer to the case of ***SURYAKANT D. RAMJI VS. SAVING AND FINANCE LTD AND THREE OTHER HC COMMERCIAL DIVISION DAR ES SALAAM, Civil Case No. 30 of 2000 (Unreported)***.

In view of the sentiments alluded above, indeed the Applicant have failed to exhaustively elaborate in her submission as to

whether the relief sought by the Applicant in the main suit are one that the court is capable of awarding and she has managed to convince explain to the court on the relief sought and the claims made in the pleading that they raise serious question for determination. By the court looking at the facts disclosed in the plaint and the supporting affidavit indeed they don't raise serious question to be determined by the court on the face of it. I will thus hold that this condition has not been satisfied.

On the second test, the question is whether, the averments that the applicant and the beneficiaries of the estate of the deceased stand to suffer more than the respondent can be taken to mean the irreparable loss.

In the case of ***KAARE V. GENERAL MANAGER MARA COOPERATION UNION (1924) LTD (1987) TLR 17*** Mapigano, J (As he then was) clearly states:-

*"The court should consider whether there is an occasion to protect either of the parties from the species of injury known as **"irreparable"** before his right can be established.....*

By irreparable injury it is not meant that there must be no physical possibility of repairing the injury but merely that the

injury would be material e.g. one that could not be adequately remedied by damages”.

From the above case, it should not be only loss, but irreparably one if the prayer for injunction is refused. As stated earlier, the Applicant in her Affidavit she just stated that she will suffer irreparable loss if the order is refused, but didn't explain how even in her written submission in respect of the Application. Tough in her affidavit she added that the Applicant is living with the family at the suit premises though the same is not well presented.

Of course, the 1st Respondent was of the view that nothing is impossible to redress the Applicant by way of damages since the Applicant is an individual against the Company Limited.

And that the 1st Respondent contended that they can never fail to redress any person according to the court orders any agreement of any kind.

Now, indeed I am aware that an injury capable of being compensated by money is not an irreparable one. In considering the question of irreparable loss, the court of course has to look at the injury which is one of irreparable loss which cannot be compensated by monetary. Looking at the whole business of the Respondent and the reliefs sought in the Plaint if the same will be

proved, the Respondent is in a position to redress the Applicant by way of damages. I thus hold the second condition has not been satisfied.

The last condition is on balance of convenience. The question here is who is going to suffer greater hardship and mischief if the temporary injunction is not granted. Now, since the Applicant never touched this condition neither in her Affidavit nor in her written submission, I hold that the test has not been met.

Having weighed the facts in totality, I will hold that this is not a fit case for temporary injunction because all conditions for granting temporary injunction have not been met.

At this juncture therefore, I have no other option rather than to **DISMISS** the Application for temporary injunction.

Since the Applicant is under legal assistance, I make no orders as to costs.

It is so ordered.

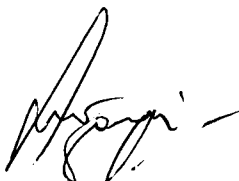


L. E. MGONYA

JUDGE

11/5/2018

COURT: Ruling is read before the Applicant, Advocate Nobert Mwaifwani for 1st Respondent and Ms. Emmy B/c in my chamber today 11th May, 2018.



L. E. MGONYA
JUDGE
11/5/2018