

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 307 OF 2017**

**ZEIN MOHAMED BAHROON.....APPLICANT**

***VERSUS***

**RELI ASSETS HOLDINGS COMPANY LTD**

**(RAHCO).....RESPONDENT**

*Date of last Order:*      19/10/2018

*Date of Ruling:*        24/8/2018

**R U L I N G**

**MGONYA, J.**

There is before me an Application by way of Chamber Summons. It is supported by an Affidavit affirmed by **ZEIN MOHAMED BAHROON**, the Applicant.

The same is laid under Section 5 of the Judicature and Application of **Laws Act Cap. 358 [R. E. 2002]**, **Order XXXVII Rule 2 (2)** and **Section 68 (c) of the Civil Procedure Code Cap. 33 [R. E. 2002]**.

Mr. Nazario Michael Buxay learned Counsel appeared for the Applicant while Mr. Petro Myeshi, learned Counsel represented the Respondent.

In this Application essentially the Court is being moved for an Order that:-

***"The Court be pleased to issue Summons to the Respondent's Managing Director namely Masanja K. Kadogosa to appear before this Honorable Court and show cause as to why he should not be convicted of contempt of court and detained as civil prisoner for disobedience of the Lawful Order of this court dated 18<sup>th</sup> October, 2016."***

When the matter came up for hearing on 28<sup>th</sup> February, 2018, the Applicant's Advocate Mr. Nazario Buxay prayed the Court to be allowed to argue the Application by way of Written Submissions. Mr. Mnyeshi Counsel for the Respondent raised no objection.

Accordingly, I granted the Counsel request to argue the Application by submitting written submission as follows:-

Mr. Nazario Buxay Michael was required to submit before **13<sup>th</sup> March, 2018** while Mr. Mnyeshi was required to submit his reply by **27<sup>th</sup> March, 2018**. And if there was a rejoinder, the same was

to be submitted by 4<sup>th</sup> April, 2018. The Application was fixed for Ruling on **4/5/2018**.

When the matter came up for Ruling on 4<sup>th</sup> May, 2018, the court by Deputy Registrar in presence of Mr. Buxay and his learned brother Mr. Mnyeshi was adjourned until 18<sup>th</sup> May, 2018; that is today.

However, up to the 1<sup>st</sup> date of Ruling which was 18/5/2018, no reply to the submissions made by Mr. Michael in time, has been filed by Respondent's Counsel Mr. Mnyeshi pursuant to the court order. However, on that date, Mr. Mnyeshi prayed for two weeks' time to file the same since they were not in a position to make a reply due to the fact all TRL files were called by Hon. Attorney General who is the Government Legal Advisor. I granted the prayer as prayed. However, for the 2<sup>nd</sup> time, on 3/8/2018 at the time of delivering this Ruling, once again no response was filed by the Respondent's Counsel. That being the case, and upon the prayer for extension of time by the Respondent's Counsel, I granted the prayer sought and scheduled today, that is on 24<sup>th</sup> August, 2018 for the said ruling to be delivered after the Respondent herein have filed their respective reply to the Application on 3<sup>rd</sup> August, 2018.

Before I proceed with the discussion regarding the merits or otherwise of the Application brought by the Applicant's Counsel, let me partly produce what transpired on the Affidavit in support of the Application.

The present Application originates from the **Land Case No. 235 of 2015** of which the Applicant is the 3<sup>rd</sup> Plaintiff together with GAPCO Tanzania Ltd (1<sup>st</sup> Plaintiff), MFI Office Solutions Ltd (2<sup>nd</sup> Plaintiff) and Tanzania Signwriters and Engravers Ltd as the (4<sup>th</sup> Plaintiff). The suit is against the Respondent which is yet to be determined on merits.

That on 26<sup>th</sup> July, 2016, the Applicant with other Applicants filed to this Court **Misc. Land Application No. 603 of 2016** against Respondent seeking for temporary injunction order restraining the Respondent, its Agents, Workmen, Assignees or any other persons working on that behalf from demolishing the properties comprised on Plot No. 79/86 CT No. 1860 63/79 Gerezani Area, Dar es Salaam; C.T 9932, Nkurumah (Msimbazi Streets), Kamata Area, Ilala Dar es Salaam; Plot No. 83, Gerezani Industrial Area, with Title No.186 228/56 and Plots No. 56, 57, 58 and 84 Gerezani Area, Nkurumah Street, Ilala, Dar es Salaam. The copy of Chamber Summons was annexed as **Annexure PA 1**. Paragraph 4 disclosed that on 28<sup>th</sup> July, 2016 this Court by Hon. F. W. Mgaya, J. granted an ex parte interim injunction order

restraining the Respondents, its Agents Workmen or any person working on that behalf from demolishing the said properties mentioned above. The order was annexed as Annexure PA 2.

The Affidavit deponed further that on 18<sup>th</sup> October, 2016 Hon. Mgaya, J. granted an inter parties injunction restraining the Respondent, its Agent, Workmen, assignees or any other person working on that behalf from demolishing these properties mentioned in Chamber Summons. The copy of injunction was marked as **Annexure PA 3** forming part of the Affidavit. The **Land Case No. 235 of 2016** is at the stage of mediation stage before Hon. Wambura, J. and thus is still pending for hearing and determination.

That on 23<sup>rd</sup> to 25 March, 2017 the Respondent demolished main part of the Applicant's building on Plot No. 79/86 held under CT No. 186063/79 Gerezani Area, Dar es Salaam copy of Certificate of Title was attached as Annexure PA 4.

Paragraph 8 of the Affidavit revealed that on 26<sup>th</sup> March, 2017 the Respondent reported vide Government Newspaper issued on Sunday namely Sunday News that it demolished the Applicant's building on ground that a six months stop order granted in July last year expired and the owners of the building did not file ones. Copy of the Newspaper was attached as Annexure PA 5 and form part of the Affidavit. It is further averred that the injunction order granted

by Hon. Mgaya, J. on 18<sup>th</sup> October, 2016 was not conditional to six months limitation rather the condition imposed by the court was that it was being granted **pending hearing and determination of the Land Case No. 235 of 2016.**

The Affidavit deponed further that despite the fact that the land case No. 235 of 2016 is still pending for hearing and determination, the Respondent embarked into demolition of the said building and is still carrying on demolition of the remaining part of the said buildings situated on Plot No. 79/86 CT. No. 186 063/79 Gerezani Area, Dar es Salaam copies of Photostat pictures are attached was Annexure PA 6.

It has been deponed that Respondent's Managing Director is Mr. Masanja K. Kadogosa. It has been averred that the temporary Injunction was issued in presence of the Respondent's Advocate and thus subsequent demand and reminders from the Applicant to the Respondent has refused to obey or comply with the Lawful Court Order. The ground upon committal to prison to the Respondent's Managing Director is due to the fact that the said Director has disobeyed the order of the court issued on 18<sup>th</sup> October, 2016 which restrained the Respondent, its Agents, Workers Assignees or any other person from demolishing the Applicant's properties comprised on **Plot No. 79/86 under CT**

**No. 186063/79 Gerezani Area, Dar es Salaam pending determination of the Main Suit, Land Case No. 235 of 2016.**

On the other hand, I have gone through the respective reply to the Application from the Respondent dully filed on 3<sup>rd</sup> August, 2018. From the same, it was the Respondent's Counsel Observation that the Application has been brought under the wrong citation and above all, that the Application is omnibus.

On my part, I have meticulously gone through the Respondent's filed Written Submission to this Application and the "sort/kind" of preliminary objection therein made by the learned Counsel for Respondent. At this stage, the issue before me centres on the Application brought by the Applicant and not for want of proper citation of the enabling law. The question that follows then is what is the fate of the said objections to this Application in regard to the fact of wrong citation of the law.

There have been a school of thoughts on this matter. One is that the wrong citation would ultimately render an Application incompetent and thus the same should be struck out. The other school of thought that non-citation or wrong citation of the law is **not fatal and can be cured.**

In my settled mind I would go for the second school of thought in that as much as I appreciate the Respondent's concern that in the present application there is a wrong citation of provision of law, but this is not fatal or incurable; as I see it does not affect the root of the Application.

I strongly advocate the stand that in any matter that is brought before the court what is paramount is the **substantial justice** and the courts should not be carried away by technicalities. More so, where such failure will not occasion injustice to the Respondent. My reasoning also goes hand in hand with the finding of the Court of Appeal in the case of ***SAMSON NGWALIDE VS. THE COMMISSION GENERAL TRA, Civil Appeal No. 86 of 2008***; whereby the court took into account the newly introduced provision of the Court of Appeal rules which rule underlines the principle that in administering the rules the court shall have due regard to the need to do **substantive justice** in the particular case.

I am further persuaded by my brother Judge Karua in his ruling found in Miscellaneous **Civil Case No. 7 of 2011, *FELIX MOSHA AND 2 OTHER VRS. THE CAPITAL MARKET AND SECURITIES AUTHORITIES, AND HON. ATTORNEY GENERAL*** where he adopted the Court of Appeal Case (Supra).



I am also mindful of the **Constitution of the United Republic of Tanzania** specifically **Article 107 A (2) (e)** which calls upon the courts in the country to dispose justice without being tied up with rules leading to technicalities which principle is also to be found in the **SAMSON NGWALIDA'S Case ( Supra)**.

From the foregoing, and as the said error is not fatal, I am inclined to proceed to determine the Application on merit as herein below. The time factor of this Application have been taken into consideration in my decision as I have narrated a long journey of this Application before delivery of its Ruling which was due long time ago.

Before I venture to determine the merits or otherwise of the present Application, I feel duty bound to make an observation and register the position of law in respect of proceeding of this nature.

To start with, I am mindful that the court orders are made with a purpose which is to regulate proceedings and of course they must be adhered to. If parties are to act in total disregard to those orders, then the court business will rendered uncertain and will not be good for effective administration of justice.

My learned brother Luanda, J. as (he then was) in the case of ***T.B.L VS EDSON DHOBE & OTHERS Misc. Civil Application No. 96 of 2006*** propounded the following sentiment:-

***"Court order should be respected and complied with court should not condone such failure, to do so is to set a bad precedent and chaos. This should not be allowed to occur. Always court should exercise firm control over proceedings."***

In the light of the above, the question is whether there was a court order alleged to be disobeyed by Managing Director of Respondent, Mr. Masanja K. Kadogosa.

The content of paragraph 5 of the Affidavit in support of the Application through Annexure PA 2 disclose the said order dated 18/10/2016 issued by this court by my learned sister Hon. Mgaya, J. (as she then was). It was an Order of temporary injunction restraining **RELI ASSETS HOLDING COMPANY**, their Agents, Workmen, Assignees or any other person working on their behalf from demolishing the properties comprised on Plot No. 79/86 CT No. 186063/79 Gereniza Area Dar es Salaam, Plot No. 9932, Nkuruma/ Msimbazi street, Kamata Area, Ilala Dar es Salaam, Plot No. 83 Gerezani Industrial areas with Tile No. 1862228/56 and Plot No. 56, 57, 58 and 84 Gerezani Area, Nkuruma street Ilala Dar es Salaam. The said temporary injunction if I may quote partly reads:-

***"Pending the hearing and determination of the main suit Land Case No. 235/2016 filed in the court."***

I have no doubt in my mind that, unless extended an order of Injunction issued under **Order XXXVII** has a life span of 6 months and that, although the order may be renewed the aggregate period should not last more than 12 month. This position was also enunciated in the case of ***AFRICAN TROPHY HUNTING LTD VS. ATTORNEY GENERAL AND 4 OTHERS [1999] TLR, 408*** it was stated that:-

***"The law in Tanzania under which this relief was granted, specifically provides for a period not exceeding six months by virtue of Government Notice No. 508 of 22<sup>nd</sup> November, 1991. Order XXXVII Rule 4 was amended order to introduce a Maximum period of six months when an interim order of injunction would be in force."***

Now from the quotated order issued by this court on 18<sup>th</sup> October, 2016 speaks for itself that was **pending the hearing and determination of the main suit Land Case No. 235 of 2016.**

Now by virtue of Order XXXVII Rule 3 which stipulate the life span of an order temporary injunction to be 6 months unless further extended to 6 months honestly; I am not saying nor can I pretend to be competent to comment on whether the Order of the court dated 18/10/2016 issued by my learned Sister Hon. Mgaya,

J. was proper or not. It is for a Superior Court to do so. Since no superior court has set it aside, nor this court has exercised its review jurisdiction, it is only logical to conclude that in my view, the order of this court dated 18/10/2016 **is still valid in law.**

The question whether the said court Order dated 18/10/2016 its life span ended after six months or was pending determination of the man suit shall be address at end of this ruling.

Now, I am aware that in the present Application the Applicant has instituted this contempt proceeding, of course it has to be for the purpose of which is not and should not be punish the Respondent but to vindicate the rule of law by ensuring obedience of or compliance with, orders of his court.

I understand further that the doctrine of the contempt in the legal acceptation signifies disrespect to that which is entitled to a legal regard but as a wrong purely moral or affecting an object not possessing a legal status, it has in the eyes of the law no existence.

As regard to the existence of the Court Order, of course the same has no dispute and indeed it has been proved by the content of **Paragraph 5** of the Affidavit through Annexure PA 3. Regarding to whether the Respondent willfully disobeyed or contravened such an order, the Applicant's counsel by virtue of Paragraph 8 of the affidavit reading together with the content of

annexture PA 5, alleged that the demolition of the Applicant's building was willfully disobedience of an order issued by court on 18/10/2016.

If I may quote meaning of Willfully Disembodied in clear terms in Oswalds contempt of court 3<sup>rd</sup> Edition at Page No. 101. It reads:

***The phrase "Wilfully disobedience to a judgment or order requiring a person to do any act other than the payment of money or abstain from doing anything is a contempt of court."***

Again, if I may partly reproduce the contents of Annexure **PA 5** forming part of the Affidavit in support of the Application, reads:-

***"We could not demolish them earlier when we carried out the exercise as there was court injunctions. The stop orders were effective six months from July last year and owners did not file new ones that gives us authority to continue with the exercise."***

From the quoted passage shows that the Respondent was aware with the Court issued by Hon. Mgaya, J. issued on 18/10/2016 Then the Respondent proceeded with demolition on the ground that in law the said order its life span ended after six months. It falls therefore there was a justification on the part of

the Respondent to proceed with the demolition since its life span ended after six months.

In view of the above findings, let me now turn to the protracted question which of course is fundamental for purpose of determination of the present Application.

Now, the question is whether the life span of the court order dated **18/10/2016** by Hon. Mgaya, J. was for six months or was pending determination of the main suit.

Reading between the line of **Annexure PA 3** forming part of Affidavit in support of Application revealed that what was before me learned Sister Mgaya, J. was an Application for temporary injunction restrained Respondent, its Agents, Assignees or any other person from demolishing the properties including the Applicant's building on Plot No. 79.86 held under **CT No. 186063/79 Gerezani Area, Dar es Salaam.**

The court indeed issued the said Order **pending the hearing and determination of the main suit i.e Land Case No. 234 of 2016** filed in the court.

What does the law provides for the life span of an order of temporary injunction?

The wisdom of Parliament under provision of **Order XXXVII Rule 3** provided:-

***"In addition to such terms as the keeping of an account and giving security, the court may be order grant injunction under rule 1 or 2 and such order shall be in force for a period specified by the court but not exceeding six months."***

The proviso of the above order also reads:-

***"Provided that the court granting the injunction may from time to time extend such period for a further period which in the aggregate shall not exceed one year, upon being satisfied, on the Application of the holder of such court injunction that the Applicant has diligently been taking steps to settle the matter complained of and such extension sought is in the interest of justice necessary or desirable".***

I have no doubt in my mind that by virtue of the provision above that unless extended an order of injunction issued under **Order XXXVII** has a lifespan of 6 months and that, although the order may be renewed the aggregate period should not last more than 12 months.

According to the wording of the Order of this court dated **18/10/2016** issues by Hon. Mgaya, J. the period specified by the order was **pending the hearing and determination of the main suit**. It follows therefore its lifespan was not that of not exceeding 6 month but rather was **pending the hearing and determination of the main suit**.

As I have alluded earlier in this ruling, I still maintain and put every clear that am not saying nor can I pretend to be competent to comment on whether the said order of the court has proper or not.

It is for the superior court to do so or for the review of this court which has not been attempted nor exhausted by Respondent.

Now since as per the content of the Affidavit in support of the Application have establish that on 23<sup>rd</sup> to 25 March, 2017 the Respondent committed the contempt of the order by demolishing the Applicant's building contrary to the Court order; then I join hands with the submission by the Applicant's Counsel that indeed the Respondent disobeyed the said Order since the main suit is yet to be heard and determined.

Furthermore, the content of **Annexure PA 5** forming part of the affidavit disclose *per see* that the Respondent disobeyed the order by demolishing the Applicant's building only for the reason



that the life span of said order of six months which has already elapsed and left an avenue for the Respondent to proceed with demolition.

Now, since the said court order dated 18/10/2016 by did not specify the life span of six month but rather was **pending the hearing and determination of the main suit** which is still pending in this court, I proceed to find that the question whether the Respondent has contravened or disobeyed the said Order is answered affirmative that the Respondent willfully disobeyed the said order; since the demolition as alleged took place before the hearing and determination of the main suit.

From the wording of Annexure PA 5, which tend to establish that the Respondent demolished the Applicant's building on the ground that the said court order of temporary injunction was in force for only six months from July last year, then it was a legal justification for the Respondent to proceed with the demolition after expiry of the statutory period of six months; I find the same has no legal weight in law since what was supposed to be exhausted by the Respondent before demolition of the Applicant's building was to either challenge the said order to the superior court OR to file for an Application for Review to this Hon. Court in order to rectify and inset the statutory period provided by the law under Order XXXVII Rule 3 of CPC.

Finally but not least, what then is the punishment for contempt.

I am conversant with the position of law that a person cited for contempt can be committed to prison, but as stated by Mapigano J; in the case of ***TANZANIA BUNDU SAFARIS LTD VS. DIRECTOR OF WILDLIFEX AND ANOTHER [1996] TLR 246***, the Law holds that contempt is also punishable by imposition of a fine.

In the present case, I find the imposition of a fine will also meet the needs of justice.

In the circumstance and in the view of the contents of this Ruling which are sufficient proof that Respondent has willfully disobeyed or contravened to court order dated 18/10/2016, by this court; then in such premises, it is ordered that Respondent's Managing Director one **Masanja K. Kadogosa** pays a fine of **Tshs. 2, 000,000/= ( two Million Shilling )** within 14 days of this order and if in default, the Managing Director of the Respondent to go to jail and the serve a term of **three months** as a Civil prisoner.

But in all fours, the Applicant **deserves costs** incurred in this Application.

It is so ordered.

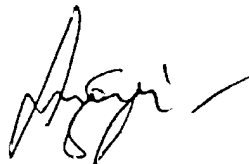


**L. E. MGONYA**

**JUDGE**

**18/5/2018**

**COURT:** Ruling delivered in the presence of Advocate Othman Omary for Applicant, Advocate Pamela Swai for Respondent and Ms. Monica RMA in my chamber today 24<sup>th</sup> day of August, 2018.



**L. E. MGONYA**

**JUDGE**

**18/5/2018**