

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 458 OF 2021

(Arising from Land Case No. 143 of 2021)

TAHER MUCCADAM.....APPLICANT

VERSUS

PALM BEACH CASINO (T) LTD..... RESPONDENT

Date of last order: 12/10/2022

Date of ruling: 31/10/2022

RULING

A. MSAFIRI, J.

On the 3rd day of September 2022, the applicant lodged an application in this Court by way of chamber summons under Sections 68 (e) and 95, Order XXXVII Rule 1 (a) of the Civil Procedure Code [CAP 33 R.E 2019], (the CPC) for the following orders;

- i. *That this Honourable Court be pleased to issue an order for temporary injunction restraining the respondent, his agents, workmen, assignee or any other persons on that behalf from trespassing and erecting a structure on the demise premises on Plot*

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*No. 1006/1 Upanga belonging to the applicant pending
determination of the main suit.*

- ii. *Costs of this application be provided for.*
- iii. *Any other order (s) or relief(s) as this honorable court
may deem fit and just to grant.*

The application has been taken at the instance of TN LAW FIRM ATTORNEY AT LAW and it is supported by the affidavit affirmed by the applicant himself.

When the application was called on for hearing on 28/6/2022, Ms. Maria Pengo and Mr. Josephat Mabula learned advocates appeared for the applicant and respondent respectively. The application was disposed of orally. It is on record that although hearing of the application was on 28/6/2022, ruling to the effect was stayed paving the way for determination of preliminary objection raised in the main suit. Following the determination of the said objection I am now in a position to determine the application at hand on merits.

Ms. Pengo's submission was brief. Having adopted the contents of the affidavit in support of the application she urged me to grant the prayers

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sought. She contended that if the respondent won't be restrained there will be dispute over the property referred above.

On reply, Mr. Mabula strongly contested the application contending that there are no sufficient reasons to grant the same. According to the learned advocate for the respondent, in order for the court to grant the prayer for injunction the ingredients stated in the case of **Attilio v Mbowe** (1969) HCD No. 284 must be established. In the present application the applicant has failed to establish existence of the ingredients hence he prayed the application be dismissed with costs.

On rejoinder, Ms. Pengo essentially reiterated the submission in chief. She added that in order for the court to determine the main case the present application should be granted.

Having gone through the submissions of the parties rival and in support of the present application the sole issue calling for my determination is whether the applicant has shown sufficient cause to justify his application.

In the present application, the applicant seeks an injunction restraining the respondent from erecting a structure on the disputed property described above. As rightly submitted by Mr. Mabula learned

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advocate for the respondent before granting an injunction the conditions stipulated in the landmark case of **Atilio v Mbowe [supra]** have to be established. The said conditions are;

- i. There must be a serious question to be tried on the alleged facts and a probability that the plaintiff will be entitled to the relief prayed.*
- ii. That the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established.*
- iii. That on the balance there will be greater hardship and mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from granting it.*

It is the requirement that the said conditions must be cumulatively established as per the decision of this Court in the case of **Neem Salha Company Limited v Dar es Salaam Development Corporation (DDC) & another**, Misc. Land Application No. 92 of 2022 (unreported).

Going by the affidavit in support of the application as well as oral submissions by Ms. Pengo it has not been stated whether there is any serious issue for determination by the court, or whether the applicant

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stands to suffer any loss let alone irreparable loss. Suffice it to say the affidavit and the submission have not disclosed any element stipulated in the case of **Atilio v Mbowe [supra]**. The applicant has simply stated the court should grant the application for injunction without specifically stating the reasons for granting such injunction.

Order XXXVII Rule 1(a) of the CPC requires that before the court can grant an order for injunction it must be proved either by affidavit or otherwise that the property in question is likely to be damaged or the party to a suit is likely to suffer any loss. In the application at hand the applicant has failed to discharge that obligation as the affidavit and submission are conspicuous silent as to whether any of the conditions exists.

It is for the foregoing reasons that I hold that the application has not satisfied the conditions stated in the case of **Atilio v Mbowe** (supra) hence it lacks merits and it is hereby dismissed with costs.



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A. MSAFIRI,
JUDGE

31/10/2022