

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO 478 OF 2022**

**RASHMEAR SERVICES AND MAINTAINANCE COMPANY**

**LIMITED .....APPLICANT**

**VERSUS**

**GREENALLIGHT AUCTION MART.....1<sup>ST</sup> RESPONDENT**

**JESSICA MOTTO .....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Last Order: 29/8/2022*

*Date of Judgment: 27/10/2022*

**T.N. MWENEGOHA,J.**

This is a ruling on an application for temporary injunction to prevent the respondent, their agents, assignees, workmen or any person working under their instructions or authority from trespassing to an 18 storey residential property namely Elite Residency constituted on Plots No.570 and 571 held under Certificates of Title No. 186170/56 and No. 186170/77, Mindu Street. Upanga, Ilala Municipality, Dar es Salaam with the aim of taking over management thereof from the Applicant pending hearing and determination of the main suit.

The application is brought under **Order. XXXVII Rule 1(a) and sections 68 (c) and 95 of the Civil Procedure Code [Cap 33. R.E 2019]** The application is accompanied by an affidavit explaining the grounds upon which it is based.

The application was argued by way of written submission. Parties were represented, applicant was represented by Norbert Mwale (Advocate) and Lydia Susuma for respondents.

In his written submission, Mr. Mwale submitted that the Court's discretion in granting injunction order must be exercised judiciously and that the applicant must satisfy the existence of the three conditions as laid down in the celebrated case of **Atilio v Mbowe [1969] ILC.D 2M**. He added that all the criteria mentioned in the above case have been met in this application.

He further submitted that it is the respondents and their workmen confiscated the keys of the power room and the terrace, elevator keys and also demolished the Godown at the basement of the property. He stated that he filed a suit namely Land Case No. 202 of 2022 against the respondents which is still pending before this Court.

He stated that the applicant has already suffered irreparable loss and she is likely to keep on suffering irreparably in the future in case the wrongful acts of the respondents are not restrained by an injunction order.

In reply, Ms. Susuma submitted that application is improper before this honourable Court because it is brought against the wrong parties. That neither the 1<sup>st</sup> Respondent nor the 2<sup>nd</sup> Respondent have attempted to damage, waste or alienate anything on the suit premises. She added that the matter which was instituted before this Court, that is **Land case No. 34 of 2022** was between the Association and the Applicant.

Having gone through the submissions of both parties, the question for determination is whether the application has merit.

Applicant relied on the case of **Atilio v Mbowe** (Supra) and insisted that the application met the condition stipulated in that case. The respondent on the other hand through her learned counsel, Ms. Susuma insisted that, the application is improper as it is brought against the wrong parties. She stated that it is the association for the owners of the apartments in this suit property who have been seeking for take over of the building.

As submitted by both parties my determination will base on the three conditions mentioned in the Atilio's case

1. whether there is a serious triable issue on the facts alleged and that is Probability that the Plaintiff will be entitled relief.
2. whether there is irrepealably loss when the court withholds the grant of Injunction thus the court interference is necessary to protect the Plaintiff from kind of injury which may be irrepealably.

3. Whether there is a balance of convenience, that the Plaintiff must show that there will be greater hardship and mischief suffered by the Plaintiff from withholding the injunction than will be suffered by the Defendant from granting it.

To the applicant his main allegation is that the second respondent instructed the first respondent to remove him from management in the suit property. On the contrary the first respondent denied to have been instructed by the second respondent and he don't know the applicant. On part of the 1<sup>st</sup> respondent, they denied to have instructed the 1<sup>st</sup> respondent and insisted that the order cannot be granted against her for the fact that she resides in the suit premises apartment No. B206, she did not trespass and never committed any act of assaulting.

From submission of both parties, it is clear that the applicant has failed to show that there is a triable issue between him and the respondents. That means the first condition has not been meet.

The applicant alleged that she has already suffered irreparable loss and she is likely to keep on suffering irreparably in the future in case the wrongful acts of the respondents are not restrained by an injunction order.

For the fact that the second respondent is residing in the suit premises and she did not instruct the first respondent according to the affidavit it

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suffice to say there is no connection between them. The second respondent can not be prevented from accessing her apartment. The prayers if granted will obviously cause the 2<sup>nd</sup> respondent to suffer irreparable loss. With this in mind, I do not see how the applicant will suffer irreparable loss if this order will not be granted. Therefore, it suffices to say that the second condition was not met.

On the third condition the respondents referred to paragraph 7,8,9,10,11, 12 and 17 of the affidavit; that the act of confiscation of the key and demolition of the Godown have rendered the applicant incapable of performing her obligation in favour of dwellers of the property. To him failure of him to provide his duties will render the suit property uncomfortable and almost unsuitable for residential purpose. Therefore, the dwellers in the suit property will create inconvenience and hardship to the applicant.

The fact that the respondent has establish that they have no part in the applicant's allegations, the on balance of convenience cannot be measured against them. Had the applicant established that indeed the respondents were the ones who invaded him and that there will be greater hardship in case injunction is denied then such prayers would have been considered. Otherwise, I am convinced with the respondent's affidavit that she has

sworn to the fact that they do know each other and the second respondent is the tenant to the suit premises.

Having said that I find that the requirements in granting the injunction have not been met. The application is dismissed with costs.

It's so ordered.



  
**T.N MWENEGOHA**

**JUDGE**