

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

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 494 OF 2022**

**DAYNESS PHILEMON MBAGA ..... APPLICANT**

***VERSUS***

**THE ATTORNEY GENERAL.....1<sup>ST</sup>RESPONDENT**

**THE BOARD OF TRUSTEES OF NATIONAL  
SOCIAL SECURITY FUND.....2<sup>ND</sup>RESPONDENT**

**PROPER CONSULT (T) LIMITED.....3<sup>RD</sup>RESPONDENT**

**R U L I N G**

*Date of Last Order:22.09.2022*

*Date of Ruling: 17.10.2022*

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

This is an Application for a **MAREVA** Injunction Order, sought by the applicant against the 2nd and 3rd respondents and any person working under their instructions. The aim is to restrain the respondents from evicting, demolishing, interfering or whatsoever from the applicant's rented suit property in respect of the portion of a residential premises, situated on Block B.1 at Masaki 1 Flats, along Masaki area in Kinondoni Municipality within Dar es Salaam pending hearing and determination of the intended suit to be filed in this Court after the expiry of Statutory Notice of 90 days of the intention to sue the government.

The Application was made under **Section 2 (3) of the Judicature and Application of Laws Act, Cap 384, R. E. 2019 and Sections 65 and 95, of the Civil Procedure Code, Cap 33 R. E. 2019**. It was supported by the affidavit of the applicant, Dayness Philemon Mbagwa, who was represented by advocate Alex Mashamba Balomi.

Briefly, there exists a contractual relationship (lease agreement) between the applicant and the 2<sup>nd</sup> respondent over the suit premises. That, the dispute between two parties is over service charges that the parties had not agreed to. That the said charges are high and are almost half of the rental price leaving the applicant aggrieved.

She submitted that, she has been issued with 30 days' notice to vacate the premises for a breach of lease agreement and that without this Court intervention she will be evicted before her 90 days' notice to sue the government matures. It is for this reason she has approached this Court to pray for Mareva Injunction.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents, represented by Salehe Manoro, learned State Attorney, opposed the Application, hence, hearing of this Application, which was by written submissions.

Submitting in favor of the Application, Mr. Alex Mashamba Balomi, counsel for the applicant insisted that, the applicant is entitled to the reliefs sought. That, there exist a prima facie case between the applicant and the respondents. That, the Applicant has no chance to succeed in the said case and further that, if the Application is denied, the applicant will suffer irreparable injuries. That, on balance of convenient, the applicant stands to suffer greater harm than the respondents. He cited several cases including the case of **Kibo Match Group Limited versus Impex Limited (2001)**

**TLR 152.** Also, the case of **Philemon Joseph Chacha & Another versus South African Airways (Prop) Ltd & Others (2002) TLR 248.**

On the other hand, Mr. Manoro, learned State Attorney for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, quoted the case of **T.A Kaare versus General Manager mara Cooperative Union (1984) Ltd (1987) TLR 17.** He insisted that, the conditions set for Injunction in **Atilio versus Mbowe (1989) HCD 284,** must be met conjunctively and disjunctively as stated **Christopher P. Chale versus Commercial Bank of Africa, Misc. Civil Application No. 635 of 2017(unreported).** That, there are no triable issues between the applicant and the respondents. There are no contractual relationships between the applicant and the 2<sup>nd</sup> respondent.

That, it is the applicant who has been living in the 2<sup>nd</sup> respondent's house without paying rent. Therefore, there is no case to be tried by this Court. As for the loss, it is likely to occur to the 2<sup>nd</sup> respondent than the applicant, as the applicant is the one who failed to honor her contractual obligations. On balance of convenient, the 2<sup>nd</sup> respondent will suffer greater harm than the applicant.

In rejoinder, the applicant's counsel reiterated his submissions in chief.

Having heard the submissions of parties and also gone through the affidavit in support of the Application and the counter affidavit against it, the issue for determination is whether the Application has merits or not.

As noted above, the instant Application is a Mareva Injunction, preferred in absence of a pending case. It enjoys an exemption from the general rules, that, for Injunction to exist, there must be a pending suit. This being the case, the other rules governing an ordinary Injunction cannot apply *mutatis*

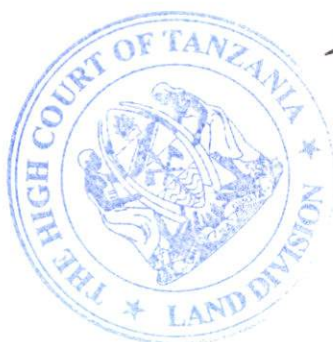
*mutandis* in the Mareva Injunction. Hence the conditions given in Atilio vs. Mbowe's case (supra), may not necessarily exist conjunctively in favour of the applicant and still the Court can allow the prayers before it. What matters are the tests given in the landmark case of **Mareva Companies Naviera SA versus International Bulk carriers SA, (1980) 1 All ER 213**. These are as follows; Firstly, the applicant in her affidavit must show her intention to institute the case and has taken steps to do so and that was done in the applicants' affidavit. see annexure A.

Secondly, if it is justifiable and convenient, the Court should allow the Application as stated in **Abdallah M. Maliki & 545 Others versus Attorney General & Another, Misc. Land Application No.119 of 2017, High Court of Tanzania at Dar es Salaam, (unreported)**.

On the basis of the conditions stated above and in light of the mentioned authorities, I find merits in this Application. The same is allowed. The respondents are restrained from evicting, demolishing, interfering or whatsoever from the applicant's rented suit property in respect of the portion of a residential premises, situated on Block B.1 at Masaki 1 Flats, along Masaki area in Kinondoni Municipality within Dar es Salaam pending the expiry of Statutory Notice of 90 days of the intention to sue the government.

The applicant is to institute the intended suit immediately after the expiry of the 90 days' notice of intention to sue the government. Also, she should apply Injunction pending the suit to be filed.

Ordered accordingly.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**17/10/2022**