

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

MISC. LAND APPLICATION NO. 372 OF 2022

(Arising from Land Case No. 169 of 2022)

BISH TANZANIA LTDAPPLICANT

VERSUS

NATIONAL HOUSING CORPORATION1ST RESPONDENT

THE ATTORNEY GENERAL2ND RESPONDENT

Date of Last Order: 05/12/2022

Date of Ex Parte Ruling: 21/02/2023

EX PARTE RULING.

I. ARUFANI, J

This ruling is for the application filed in this court by the applicant under sections 68 (c) and (e), 95 and order XXXVII Rule 1 (a) of the Civil Procedure Code Cap 33 [R.E 2019] read together with section 2 (3) of the Judicature and Application of Laws Act, Cap 358 R.E 2019. The applicant is seeking for an order of temporary injunction to restrain the respondents, their agents, workmen, servants or any person acting under their authority from demolishing or damaging the property located on Plot No. 43 Kinondoni Msasani held under Certificate of Title No. 186155/43 in the name of applicant pending hearing and determination of the suit filed in this court by the applicant.

The applicant is also seeking for an order to maintain the status quo ante as of 6th day of July, 2022, by ordering the first respondent to restore the movable properties of the applicant removed from the suit property at the instruction of the first respondent and to further order the first respondent to dismiss SUMA JKT from the suit property. The application is supported by an affidavit sworn by Amina Abdalla Mzena who is the applicant's Principal officer, and is opposed by a joint counter affidavit of the first and second respondents sworn by Aloyce Donald Sekule, Principal State Attorney for the first and second respondents.

While the applicant was represented in the matter by Mr. Moses Mwitete, learned advocate, the respondents were represented by Mr. Thomas Mahushi, learned State Attorney and Mr. Aloyce Donald Sekule, learned Principal State Attorney. When the matter came for hearing on 14th November, 2022 Mr. Thomas Mahushi prayed the application be argued by way of written submissions and as the prayer was not disputed by the counsel for the applicant it was granted, hence the application was argued by way of written submissions.

Although, the counsel for the parties were given time frame to file their written submissions in the court but it is only the counsel for the applicant who filed his written submission in the court. As there is no reply to the submission of the counsel for the applicant filed in the court by the

respondents and as there is nobody entered appearance in the court to inform it what caused the respondents to fail to reply the submission of the counsel for the applicant, the court took the view that the respondents have failed to contest the submission filed in the court by the counsel for the applicant and decided to determine the application ex parte by basing on the submission filed in the court by the counsel for the applicant.

The counsel for the applicant states in his submission that, the applicant is the registered legal owner of the suit property. He argued that, on 14th March, 2022 the applicant was surprised by being served with a notice issued by the first respondent demanding the applicant to vacate from the suit property on the ground that that the first respondent is the owner of the suit property. He stated the first respondent is mistaking the identity of the suit property as the first respondent has never owned the suit property.

He went on arguing that, on 6th July, 2022 the applicant movable properties were removed from the suit property and the first respondent took over security of the suit property. He stated now the first respondent is intending to demolish the suit property while at all material time the applicant has owned the suit property uninterruptedly and the applicant has no any other property to reside in and carry out its work. He stated the action of the first respondent to evict the applicant from the suit

property and demolish the suit property will cause an irreparable loss to the applicant.

The counsel for the applicant stated that, the principles guiding court in determination of an application for temporary injunction were well elaborated in the case of **ATILIO V. MBOWE** [1969] HCD 284. He stated the principles established in the above cited case are as follows: -

- (a) *The court should consider whether there is a bona fide contest in between the parties.*
- (b) *Its refusal is likely to cause substantial and irreparable injury to the applicant.*
- (c) *On the balance of convenience, the existence of more sufferings by the plaintiff if the injunction is refused than would be the case with the defendant if granted.*

He stated in relation to the first principle that the matter in the present application raises serious bonafide contest between the parties as exhibited by the applicant's ownership of the suit property through the certificate of title and the first respondent's action to remove the applicant's movable properties from the suit premises. He referred the court to the case of **Abdi Ally Saleh V. Asac Care Unit Ltd** Civil Revision No.3 of 2012(unreported) where it was stated that, in granting application for interim injunction the court is required to see only the prima facie case.

He submitted that the present application has meet the first principle for granting the order of temporary injunction sought by the applicant.

He argued in relation to the second principle that, if the order sought will not be granted and the first respondent executed their intention of demolishing the suit property the applicant will suffer irreparable loss as they will have nowhere else to reside and carry out their works and it will render the suit pending in this court useless to the detriment of the applicant. He added that the respondents have nothing to lose if this court will grant the order sought as after determination of the main suit each parties' rights will still be there. He supported his argument with the case of **Total Tanzania Limited V. Alchemist Energy Trading DMCC & Citi Bank Tanzania Ltd**, Misc. Commercial Appl. No. 83 of 2021, HC Com. Division at DSM (unreported) where it was stated if temporary injunction will not be granted the applicant will suffer irreparable loss. He argued that, if the application will not be granted the suit property will be demolished or damaged before the final determination of the main suit and the applicant will suffer substantial and irreparable loss.

He argued in relation to the third principle of balance of convenience that, if the court will not grant the application the applicant will be inconvenience more than the respondents for the reason that the applicant is using the suit property for their daily activities. Therefore, if

the order of injunction will not be granted, the plaintiff will suffer more damages than the respondents. He referred the court to the case of **Salim Mbaruku Mohamedi V. Registered Trustee of Islamic Culture School**, Misc Land Application No.633 of 2021, HC Land Division at DSM (unreported) where it was stated the court is required to weigh and balance the mischief or inconvenience to either side before issuing or withholding the injunction.

He added that for the interest of justice of the present matter the applicants' rights are in jeopardy if the order of injunction sought will not be granted as they will be condemned to vacate the suit premises and the suit property will be demolished and damaged by the first respondent while the main suit is still pending in this court.

He submitted further that the court should restore the status quo ante as of the 6th July 2022. He stated the respondents acknowledged in their joint counter affidavit about existence of the order of injunction granted by Hon. Mwenegoha, J in Misc. Civil Application No. 149 of 2022 prohibiting the respondents from evicting the applicant from the suit property pending institution of the suit in the court. He stated further that, the respondents acknowledge in their joint counter affidavit that they went against the stated order of the court by evicted the applicant from

the suit property. He stated that form the basis of the applicant to pray for restoration of the status quo ante as of 6th July 2022.

He referred the court to the case of **Raymond Focus Mlay V. KCB Bank Tanzania** Misc. Land Application No. 498 of 2021, HC Land Division at DSM (unreported) where it was held that, orders made by the court during or after proceedings binds all parties to the proceedings. He argued that, the respondent disobeyed and disrespected the order of the court by evicted the applicant from the suit premises and leased the same to Wiles France as stated in the joint counter affidavit of the respondents. He prayed the court to intervene by way of interim relief to preserve the pre dispute state until the final determination of the suit pending in the court. At the end he prayed the orders sought in the chamber summons be granted as sought.

After considering the submissions from the counsel for the parties the court has found the issue to determine in this matter is whether the applicant deserve to be granted the orders is seeking in the chamber summons. The court has found that, as rightly argued by counsel for the applicant the conditions governing grant of temporary injunction in our jurisdiction were well laid in the famous case of **Atilio V. Mbowe** (supra) where it was stated as follows: -

- (i) *There must be a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed.*
- (ii) *The applicant stands to suffer irreparable loss requiring the courts intervention before the applicant's legal right is established.*
- (iii) *On the balance of convenience, 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 of it.*

Starting with the first condition of existence of triable issue or a prima facie case the court has found it is required to be satisfied there is a triable issue or in other words the applicant has a cause of action against the respondent. As stated in the case of **American Cyanamid V. Ethicon** [1975] 1 ALL ER 504 the court is required to be satisfied the suit against the respondent is not frivolous or vexatious. The court has found it is deposed at paragraphs 2 and 3 of the affidavit supporting the applicant and it is stated in the submission of the counsel for the applicant that, the applicant is the legal owner of the suit property. The applicant alleged that, on 14th March 2022 they were surprised by being served with a notice from the first respondent demanding the applicant to vacate from the suit property on the ground that the first respondent is the owner of the suit property.

It is deposed further at paragraph 9 of the affidavit supporting the application that on 6th July 2022 the applicant's movable properties were removed from the suit property by the first respondent and the first respondent took over security of the suit property and now the first respondent is bent to demolish the suit property while at all material time the applicant owns the suit property uninterruptedly. It is submitted by the counsel for the applicant that the stated demand notice and all what was done by the first respondent in relation to the suit property is illegal as the first respondent has no any right over the suit property.

The above stated facts which in principle are not disputed by the respondents as there is no reply to the applicant's submission filed in the court by the respondents caused the court to find there is no way it can be said there is no triable issue in the Land Case No. 169 of 2022 pending in this court. The court has found there is a triable issue in the mentioned case in relation to who is the rightful owner of the suit property as each party is alleging to be the rightful owner of the suit property. Consequently, the court has found the first condition or principle required to be established for an order of temporary injunction to be granted has been met in the application of the applicant.

Coming to the second condition for granting an order of temporary injunction which is irreparable loss to be suffered if the order is not

granted the court has found that, as stated in the case of **T. A. Kaare V. General Manager Mara Cooperative Union**, [1987] TLR 17, the court is required to consider whether there is a need to protect either of the parties from the species of injuries known as irreparable injury before right of the parties is determined. Under the guidance of the position of the law stated in the above referred case the court has found that, as rightly argued by the counsel for the applicant, the applicant has demonstrated categorically in his submission the loss he will suffer if the order of temporary injunction is seeking from the court will not be granted.

The court has found the applicant's counsel has argued if the order of temporary injunction will not be granted and the suit property is demolished there is a great possibility of the applicant to suffer irreparable loss. The court has the counsel for the applicant argued that, if the applicant will be evicted from the suit property is and the suit property demolished before final determination of the main suit, the applicant will suffer substantial and irreparable loss. He stated it will not be possible to compensate the applicant by way of monetary payment or return the applicant to the original position if after determination of the suit it will be found the applicant is the lawful owner of the suit premises. The stated arguments caused the court to come to the settled view that the second

condition for granting an order of temporary injunction has been established in the present application that, if the order of temporary injunction will not be granted the applicant will suffer irreparable loss.

As for the third condition for granting an order of temporary injunction which is balance of convenience, the court has found the issue to look here is who is going to suffer greater hardship and mischief if the temporary injunction will not be granted. After considering all what is deposed in the affidavit supporting the application and what is argued in the submission of the counsel for the applicant together with what is stated in the pleadings filed in the Land Case No. 169 of 2022 the court has found the applicant is the one stand to be more inconvenienced than the respondent if the order of temporary injunction sought in the chamber summons will not be granted.

The court has found that, if the suit premises will be demolished the applicant will be deprived of the suit premises before the suit pending in the court is determined and the suit will be rendered useless. On the other hand, the court has found it has not been established the respondents will suffer any inconveniency if the order of temporary injunction will be granted. In the premises the court has found the applicant is the one stand to be more inconvenienced if the order of temporary injunction will

not be granted than the inconveniency which will be suffered by the respondents if the order sought will be granted.

From what have been stated hereinabove the court has found all the three conditions for granting an order of temporary injunction laid in the case of **Atilio V. Mbowe** (supra) have been established in the present application. Consequently, the application of the applicant is granted and the order of temporary injunction to restrain the respondent, their assignee, employees, agents or associates from demolishing or damaging the suit property pending hearing and determination of the Land Case No. 169 of 2022 is hereby granted.

The court is also granting the order of maintaining the status quo ante as of 6th July, 2022 by ordering the first respondent to restore the movable properties of the applicant removed from the suit property and the first respondent to remove the security of SUMA JKT placed on the suit property. In lieu thereof the suit property be placed under the security of the applicant until when the suit pending in this court will finally be determined and no order as to costs.

Dated at Dar es Salaam this 21st day of February, 2023



I. Arufani

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JUDGE

21/02/2023

Court:

Ruling delivered today 21st day of February, 2023 in the presence of Mr. Moses Mwitete, learned advocate for the applicant and in the presence of Mr. Thomas Mahushi, learned State Attorney for the respondents. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

21/02/2023

