

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO.75 OF 2023

DAVID PETER SENGATI.....APPLICANT

VERSUS

NATIONAL HOUSING CORPORATION.....1ST RESPONDENT

THE HON.ATTORNEY GENERAL.....2ND RESPONDENT

NOEL ESTATE COMPANY LIMITED.....3RD RESPONDENT

COURT RULING

13/3/2023

L. HEMED, J

DAVID PETER SENGATI, the applicant in this matter, lodged this application on 21st February, 2023 against **NATIONAL HOUSING CORPORATION, THE HON.ATTORNEY GENERAL** and **NOEL ESTATE COMPANY LIMITED**, seeking for the following orders among other:-

"... 1.0 That this Honorable court be pleased to issue an interim order restraining the 1st and 2nd Respondents their agents and or

servants workmen and any other person acting on their behalf or on behalf of any other person or authority from breaching the lease agreement by evicting the Applicant from land situated at Plot No. 605/00, Apartment No.003, Mindu Street, Ilala Municipality pending expiry of ninety days notice to sue issued to the 1st and 2nd Respondents by the Applicant.

2.0. That the Honourable Court be pleased to issue an interim order restraining the 1st and 3^d Respondents....from interfering in any manner with the Applicants' peaceful enjoyment and possession of the chased premises situated at Plot No.605/00, Apartment No.003, Mindustreet, Ilala Municipality, Pending expire of ninety days' notice to sue issued to the 1st & 2nd Respondents by the Applicant.

3.0. costs of the application be provided for.

4.0. Any other order or reliefs (s) and the court may deem proper and fair to grant."

On 2nd March, 2023, the 1st and 2nd respondents filed a notice of preliminary objection on the following points:

"1. That, the application is incompetent and intendable in law for being preferred contrary to Order XXXVII of the Civil Procedure Code as it has not emanated from the main suit.

2. That, the Application is untenable in law for being frivolous and vexatious thus abusing Court process as the Application by event."

When the matter came for hearing on 13/03/2023, the learned counsel for the applicant, Mr. Fredric Massawe submitted to concede to the second limb of preliminary objection. He stated that the Applicant has already been evicted from the suit premises rendering the matter to be overtaken by events. However, he prayed for waiver of costs.

In reply there to, Mr. Uso Luoga learned State Attorney, could not have objection to the concession. He also supported the prayer for waiver of costs.

Following the submissions made before me, where the applicants have conceded to the 2nd limb of the preliminary objection, I have no option but to uphold it. The fact that the 2nd limb of preliminary

objection suffices to dispose of the application, I find no need of laboring to address the 1st limb of the preliminary objection. From the foregoing, I proceed to dismiss the entire application without costs for being overtaken by events. It is so ordered.

DATED at DAR ES SALAAM this 13th March 2023.



[Handwritten Signature]
L. HEMED
JUDGE
13/3/2023

Court: Ruling delivered in the presence of Mr. Uso Luoga learned State Attorney and Mr. Fredric Massawe learned advocate for the applicant this 13th March 2023.



[Handwritten Signature]
L. HEMED
JUDGE
13/3/2023