

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 228 OF 2023

(Arising from Misc. Land Application No. 372 of 2022)

NATIONAL HOUSING CORPORATION 1ST APPLICANT

THE ATTORNEY GENERAL 2ND APPLICANT

VERSUS

BISH TANZANIA LTD RESPONDENT

Date of Last Order: 27/07/2023

Date of Ruling: 17/08/2023

RULING

I. ARUFANI, J

The applicants filed the instant application in this court urging the court to discharge, vary and set aside the ex parte ruling and drawn order issued on 21st February, 2023. The application is made under Order XXXVII Rule 5, Sections 68 (e) and 95 of the Civil Procedure Code Cap 33 [R.E 2019] together with any other enabling provisions of the law. The application is supported by an affidavit sworn by Mr. Lukelo Samwel, learned Principal State Attorney of the applicants and opposed by counter affidavit sworn by Mr. Charles Y. G. Sarkodie, Director of the respondent's company.

The background of the application is to the effect that, initially the respondent (in the instant application) filed in this court Misc. Land Application No. 372 of 2022 seeking for among other orders, an order of

temporary injunction to restrain the applicants (in the instant application), their agents, workmen, servants or any person acting under their authority from demolishing or damaging the respondent's property on Plot No. 43 Kinondoni/Msasani, held under certificate of Title No. 186155/43 in the name of the respondent pending hearing and determination of Land Case No. 169 of 2022 pending in this court.

In addition to the stated prayer, the respondent prayed the court to grant an order of maintaining the status quo ante as on the 6th day of July, 2022 by ordering the applicants to restore the movable properties of the respondent removed from the suit premises at the instruction of the first applicant and the first applicant be ordered to dismiss the security of Suma JKT from the suit premises.

When the foregoing mentioned application came for hearing on 14th November, 2022, Mr. Thomas Mahushi, Learned State Attorney prayed the application be argued by way of written submissions and the prayer was not disputed by Mr. Moses Mwakibete who was representing the applicant in the stated application. After granting the prayer the court set a schedule for the counsel for the parties to file their written submissions in the court. The counsel for the applicant in the stated application filed their written submission in the court as ordered by the court but the

counsel for the respondents failed to file their written submission in the court.

As the counsel for the respondents failed to file their written submission in the court and they also failed to appear in the court on the date when the matter was coming for fixing a ruling date the counsel for the applicant prayed the court to proceed to determine the application ex parte. The court granted the prayer and proceeded to prepare the ex parte ruling which was delivered on 21st February, 2023 and granted the applicant the orders she was seeking from the court. Now the applicants have filed the instant application in this court urging the court to discharge, vary and set aside the ex parte ruling and drawn order issued by the court in the foregoing application.

When the instant application came for hearing the applicants were represented by Mr. Aloyce Sekule, learned Principle State Attorney and the respondent was represented by Mr. Beatus Malima, learned advocate. The counsel for the parties prayed and allowed to argue the instant application by way of written submissions and their prayer was granted. The counsel for the applicants argued the application by raising three issues which read as follows: -

1. *Whether it was just for this honourable court to enter ex parte ruling and drawn order while the respondents (herein the applicants) had yet filed a counter affidavit.*
2. *Whether the grounds to grant ex parte injunctive orders made by this court in the Misc. Land Application N. 372 of 2022 on 21st day of February, 2023 against the applicants were sufficient.*
3. *Whether the circumstances in the suit property warranties execution of the ex parte drawn order.*

The counsel for the applicants stated in relation to the first issue that, before the court entered the ex parte ruling in Misc. Land Application No. 372 of 2022 it was supposed to consider the merit of the court affidavit filed in the court by the applicants which by itself substantiated the good faith cause for the applicants to defend their interests in the matter.

He stated in relation to the second issue that, the applicants failed to comply with the schedule of the court of filing their written submission in Misc. Land Application No. 372 of 2022 due to circumstances which were beyond their control as shown in the affidavit supporting the application. He submitted that, the proviso to Rule 1 of Order XXXVII of the Civil Procedure Code restricts in mandatory term for the injunctive order to be entered or granted against the Government. He stated the applicants are purely entities of the Government as by virtue of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020.

He stated the provision of the Civil Procedure Code referred hereinabove states that, an order granting a temporary injunction shall not be made against the Government, but the court may in lieu thereof make an order declaratory of the rights of the parties. He submitted the court may have slipped the pen to issue injunctive orders against the Government and argued the stated reason itself suffices to move the court to vary, discharge or set the injunctive order granted by the court.

He cited in his submission the case of **Atilio V. Mbowe**, (1969) HCD 284 which established three principles or tests for determination of an application for an order of temporary injunction. The principles or test established in the cited case are as follows; (1) There must be serious question to be tried on the facts alleged and the probability that the plaintiff will be entitled to the relief prayed (2) The applicant must establish he will suffer irreparable loss if the order of temporary injunction will not be granted and what is sought to be prevented is done before the applicant's right is established and (3) The applicant must show he will be more inconvenienced than the respondent if the order of temporary injunction will not be granted.

He stated in relation to the first principle of prima facie case between the parties that, the plot in dispute in the main suit which is No. 43 held under Certificate of Title No. 18155/43 was acquired on 27th August, 1971

by the President of the United Republic of Tanzania under the Acquisition of Buildings Act, No. 13 of 1971 and placed into the ownership of the Registrar of Buildings who was mandated to receive, own in trust for the Government and manage the properties acquired by the Government under the cited law. He argued that, acquisition of the stated suit property terminated ownership of Mr. Mohanlal Mathuradas Dewani who was the owner by then or his purported trustees claiming title or interest in the suit property.

He went on stating that, the Acquisition of Buildings Act was repealed and the National Housing Act, 1990 [Cap 481] was enacted which established the first applicant who became the successor of the properties which were under the ownership of the Registrar of Buildings. He argued that, the respondent who is plaintiff in the main suit has no any legal entitlement in the suit property which can justify an injunctive order to be granted in her favour. He referred the court to the case of **Ninga Zakayo & 159 Others V. Kigoma Municipal Council**, Misc. Land Application No. 9 of 2022 where after finding there is no case which had been stated in the affidavit and its annexures the court dismissed the application.

He argued in relation to the second principle of irreparable loss to be suffered by the plaintiff if the injunctive order will not be granted that, the suit property is now allocated to another bona fide tenant who pays rent

to the first applicant which contributes to the national economy at large. He stated if the injunctive order will be maintained, the applicants will suffer serious irreparable loss and the same will affect the economy at large due to loss of income through the rent paid by the stated bona fide tenant.

He argued in relation to the third principle of balance of convenience that, the same is still favouring the applicants because there is no harm if the injunctive order will be discharged and set aside than if it will be maintained. He stated the respondent is neither in possession nor in allocation as tenant to the suit premises. He stated if the injunctive order will be maintained it will cause undue hardship to the applicants and if varied the respondent will have nothing to lose pending determination of the main suit.

As for the third issue, the counsel for the applicants stated that, in 2022 the first applicant issued 30 days' notice to the respondent demanding vacant possession in respect of the suit property. He stated after expiration of the notice period the respondent was evicted from the suit property by the first applicant and the first applicant leased the suit property to another person. He argued that, the circumstances in respect of the suit property have changed because while the injunctive order was sought and granted but the first applicant has already allocated the suit

property to another tenant who has his own security and is no longer using the security of Suma JKT alleged by the respondent or referred in the order of the court. He added that, the use of the suit property has changed from being used as a store and now is being used as a residential premises and the tenant is in physical occupation with his family.

He submitted that, even if the stated ground will not suffice to warrant challenging the ex parte ruling and drawn order issued by the court but it is in the interest of justice to discharge and set aside the injunctive order because the circumstances under which it was issued have changed. He stated restoring the respondent into the suit property will cause hardship to the tenant who is in physical occupation with a valid tenancy agreement. He further submitted that execution of the drawn order shall seriously create both legal and economic chaos on the party of the applicants and to the bona fide tenant. Finally, he prayed the application be granted with costs.

In reply the counsel for the respondent argued that, the counsel for the applicants stated they are dissatisfied by hearing of the matter ex parte while they had filed a counter affidavit in the matter. He stated that, although it is stated at paragraph 14 of the affidavit supporting the application that the applicants failed to comply with the order of the court requiring them to file their written submission in the matter due to

circumstances which were beyond their control but there is no mention or evidence adduced to show what or which were those circumstances.

He stated as the applicants have failed to inform the court the circumstances caused them to fail to file their written submission in the court as ordered by the court, the stated ground remain unproven and the court cannot act on unproven statement. He submitted the court was justified to proceed to determine the matter ex parte against the applicants, notwithstanding the fact that the applicants had filed their counter affidavit in the court.

He argued that, setting aside ex parte order of the court is entirely on discretion of the court and the stated discretion ought to be exercised judiciously. He submitted the stated judicial discretion can only be exercised if there are sufficient material before the court upon which the court may act judiciously. He supported his submission with the case of **Valerian Moses Bandungi V. Gozbert Cleoplace & Another**, Misc. Land Application No. 23 of 2022, HC at Bukoba (unreported) where it was stated that, in an application for setting aside ex parte judgment the court is required to exercise its discretionary power of allowing or rejecting the application judiciously.

He argued that, the affidavit of Mr. Lukelo Samwel has no material facts to supporting the application, and as there is no material facts to

support the application the court cannot exercise its discretionary powers to vary, discharge or set aside the ex parte ruling and the drawn order. He stated the applicants cannot be dissatisfied by an order of the court which is a result of their own making. As for the argument that there is a change of circumstances, the counsel for the respondent stated the applicants are telling the court it is the law in this country to throw out the respondent from its own registered property so that the applicants can lease it to another person. He submitted that is not the law in this country.

He referred the court to the cases of **Valerian Moses Bandungi** (supra) and **Willie J. O. E. Mrema V. Abdallah Ally Msaki**, Land Appeal No. 13 of 2022, HC at Moshi (unreported) where it was stated one of the principles of equity is that no one should benefit from his own wrong. He stated what the applicants are attempting to do is illegal because there was an order of this court issued on 30th June, 2022 in the case of **Bish Tanzania Limited V. National Housing Corporation & Another**, Misc. Land Application No. 149 of 2022, HC Land Div. at DSM (unreported) which restrained the applicants from interfering with the respondent's ownership to the suit property pending expiration of 90 days period within which to institute a suit in the court against the Government. He argued the stated period was expected to expire on 6th July, 2022 but prior

expiration of the stated period of time the applicants evicted the respondent from the suit property. He submitted that shows the applicants are seeking to benefit from their own wrong.

He argued that as the applicants breached the order of the court issued in Misc. Land Application No. 149 of 2022 which restrained them from interfering with ownership of the respondent to the suit property when they evicted the respondent from the suit property, they cannot be heard complaining that the circumstances of the suit premises have changed. He stated the applicants' attempt to lease the suit property to another person is disobedience of the court's order which is a classic case of court contempt. He stated it is beyond imagination that the same person who has disobeyed the order of the court is now seeking the court to set aside its order in favour of the same person who breached the order of the court on the ground that there is a change of circumstances.

He argued in relation to the issue of the court to issue an injunctive order against the Government that, the stated ground was supposed to be raised as an objection at the point when the application was preferred. He stated the applicants kept quiet without doing so until when the court delivered its ruling. He submitted the applicant cannot be allowed to raise the stated ground at this stage of the matter. He argued that, if the applicants were aggrieved by the ruling of the court the remedy available

to them is to appeal against the stated decision of the court after determination of the suit.

He submitted in alternative that, the proviso to Order XXXVII Rule 1 of the Civil Procedure Code does not restrict the court to granting an injunctive order against the Government, when the conditions for granting an injunctive order have been met. To support his argument, he referred the court to several cases and stated the injunctive order was sought therein against the Government and granted. One of the cases cited in his submission to support his argument is the case of **Ally Kondo Mshindo & 700 Others V. Kinondoni Municipal Council & 2 Others**, Misc. Land Application No. 822 of 2015, HC Land Div. at DSM (unreported).

He also cited in his submission the cases of **Tanzania Sugar Producers Association V. The Ministry of Finance & Another**, Misc. Civil Case No. 25 of 2003 and **V. G. Chavda V. The Director of Immigration Services & Another**, [1995] TLR 125 where it was stated there is no statutory provision in the Civil Procedure Code which restricts or otherwise fetters the court's inherent jurisdiction when it considers it is absolutely necessary to make such orders as may be necessary and it is imperative in the interest of justice and good governance to grant such an order.

He submitted that, in the circumstances of this case where the applicants ignored the order of the court in Misc. Land Application No. 149 of 2022 the court cannot vacate, or vary the temporary injunction order issued in Misc. Land Application No. 372 of 2022. He submitted that, maintenance of that order is necessary and imperative in the interest of justice and good governance and for the proper administration of justice in the country. He stated that, alternatively, the first applicant cannot hide under the back of being Government institutions because as provided under section 3 (2) (b) of the National Housing Corporation Act, the first applicant is a body corporate which is capable of being sued and to sue. He based on the above stated reasons to pray the court to dismiss the application with costs.

In his rejoinder the counsel for the applicants reiterated what he argued in his submission in chief that, injunctive order shall not be granted against the Government. As for the appeal against the interlocutory order, he stated it is a general rule that you cannot appeal against interlocutory order unless it has a status of finalizing the matter. He cited in his submission the case of **Managing Director Souza Motors Ltd V. R. 192 Gulamali & Another**, [2002] TLR 405 to support his argument that a decision or order on preliminary nature is not appealable unless it has the effect of determine the suit to its finality.

As for the capacity of the first applicant to sue and be sued on her own name vis a vis being a government institution, he referred the court to sections 25 and 26 of the written Laws (Misc. Amendments) Act No. 1 of 2020 which amended Sections 6 and 16 of the Government Proceedings Act, Cap 5 R.E 2019. He stated the first applicant cannot sue or be sued independently as the position it was before enactment of the foregoing cited provision of the law. He submitted that, if the ex parte ruling and drawn order will not be set aside the applicant will not enjoy the exclusive profit as the National Real Estate Firm as per the agreement thereby entered and it will expose the applicants to all consequences relating to breach of contract. Finally, he prayed the application be granted and the costs to follow the event.

After considering the rival submissions from the counsel for the parties the court has found the major issue to determine in this application is whether the applicants' application deserve to be granted. In determine the stated major issue I will try to answer the minor issues and arguments raised in the application by the counsel for the applicants and the reply made thereof by the counsel for the respondent. I will start with the first issue which states whether it was just for this honourable court to enter ex parte ruling and drawn order while the applicants had already filed a counter affidavit in the matter.

The court has found the counsel for the applicants stated in his submission that the court was supposed to consider the counter affidavit they had filed in the court which showed their good faith cause for defending their interests. The court has failed to see the good faith cause the counsel for the applicants states they have shown in defending the applicants' interests by merely filing a counter affidavit in the court and failed to file in the court their written submission as ordered by the court. The court has been of the view that, although the applicants had filed their counter affidavit in the court to dispute the application filed in the court by the respondent but the applicants were required to comply with the order of the court required them to file in the court the written submission in reply to the submission of the respondent.

Failure by the applicants to file their written submission in the court as ordered by the court and failure to appear in the court when the matter was scheduled to come for mention with a view of fixing a ruling date shows nothing but a gross negligence on the part of the applicants. The stated view of this court is getting support from the case of **Minjingu Mines Fertilizers Ltd V. Montero Tanzania Limited**, [2017] TLR 376 where although the respondent had filed in the Court of Appeal an affidavit in reply, but the Court of Appeal allowed the application to

proceed ex parte after seeing the respondent had failed to lodge its written submission in the Court as required by the law.

Since the applicants failed to file their written submission in the court and as they failed to appear in the court on the date when the matter was fixed to come for ascertainment of compliance of the order of filing the written submissions in the court, the court has found it was justifiable for it to enter ex parte ruling in favour of the respondent notwithstanding the fact the applicants had filed their counter affidavit in the matter.

The court has also come to the stated finding after seeing that, although it is deposed at paragraph 14 of the affidavit supporting the application that failure of the applicants to comply with the order of the court was due to circumstances which were beyond their control but as rightly argued by the counsel for the respondent the stated circumstances are not disclosed anywhere being in the affidavit or submission filed in the court to support the application.

The court has considered the argument by the counsel for the applicants that the court was supposed to consider the merit of the applicants' counter affidavit in its ruling but find the counsel for the applicants has not disclosed the interests or merit he argued is in the counter affidavit of the applicants which if it was considered would have

caused the court to find it was unjustifiable to grant the order of temporary injunction the respondent was seeking from the court.

To the contrary the court has found what is deposed in the counter affidavit of the applicants as appearing at paragraphs 5 to 10 of the stated counter affidavit of the applicants is principally a history of ownership of the suit premises to the applicants which is supposed to be considered and determined in the main suit pending in the court. That is because the alleged ownership of the applicants in the suit premises is in contention with the respondent in the suit pending in this court. In the premises the court has found it was justifiable to grant an order of temporary injunction the respondent was seeking from this court notwithstanding the fact that the applicants had filed their counter affidavit in the court.

Coming to the second issue which asks whether the grounds to grant the injunctive order granted by the court in the impugned ruling against the applicants were sufficient, the court has found the counsel for the applicants argued the said issue in two limbs. The first limb is that, by virtue of the proviso to Rule 1 of Order XXXVII of the Civil Procedure Code, injunctive order should have not been granted against the applicants as they are Government entities and the second limb is that the principles set in the case of **Attilio V. Mbowe** for granting or refusing to grant an injunctive order were not established by the respondent.

Starting with the first limb the court is in agreement with the counsel for the applicants that, by virtue of section 6 and 16 of the Government Proceedings Act, Cap 5 R.E 2019 as amended by sections 25 and 26 of the Act No. 1 of 2020 cited hereinabove, the applicants are Government Institutions. The court is also in agreement with the counsel for the applicants that, the proviso to Rule 1 of Order XXXVII of the Civil Procedure Code states an order granting a temporary injunction shall not be entered or granted against the Government but the court may in lieu thereof make an order declaratory of the rights of the parties.

Although the cited proviso of the law states as indicated hereinabove but the stated proviso of the law has been traversed by our court in number of cases and stated it is not taking away or fettering jurisdiction of the court to grant an order of temporary injunction against Government where the circumstances of a suit justify the stated order to be granted. One of the cases where it was stated so is the case of **Tanzania Sugar Producers Association** (supra) cited in the submission of the counsel for the respondent.

After the court considered the preliminary objection raised in the proceedings of the foregoing cited case that an order of temporary injunction cannot be issued against the Government, it followed the interpretation of the law made in the case of **V. G. Chavda** (supra) and

overruled the stated preliminary objection and proceed to entertain the application for temporary injunction. Therefore, from the position of the law stated in the cited case which I have no reason to differ with the same the court has found as rightly argued by the counsel for the respondent an order of temporary injunction can be granted against Government where circumstances of a case allow the same to be granted.

The question is whether the circumstances of the matter in Misc. Land Application No. 372 of 2022 upon which the order of temporary injunction was granted against the applicants who are Government Institutions justified grant of the stated order of temporary injunction. The court has found the circumstances of the mentioned application was to the effect that the respondent stated she was evicted from the suit premises by the first applicant and its properties were removed from the suit premises by the same applicant.

The court has found when all those were being done, there was already a dispute over ownership of the suit premises between the first applicant and the respondent and there was an allegation by the respondent that the first applicant was threatening to demolish the suit premises before determination of their dispute over the ownership of the suit premises. The stated circumstances moved the court to find it was justified to grant the order of temporary injunction the respondent was

seeking from this court. The stated finding of this court is getting support from the case of **V. G. Chavda** quoted in the case of **Sugar Producers Association** (supra) where it was stated that: -

"Except to autocrats, it must be intolerable that, in a democratic society like ours, courts should be impotent to grant a temporary injunction in favor of an individual who complains of unwarranted or oppressive use of statutory powers by a government minister or official. It should be made perfectly clear, I think that this Court can halt the bulldozer of the State before it squashes the right of an individual, company or society",

The court has found it was further stated in the case cited hereinabove that, it is now settled, that, where anybody's rights, are threatened to be transgressed, by the Government, the same has no shield, or immunity against injunctions at all. In the light of what was stated by the court in the case I have referred hereinabove and all what I have stated hereinabove, the court has found the circumstances of the matter justified it to grant the order of temporary injunction the respondent was seeking from the court against the applicants who are Government Institutions.

Coming to the second limb relating the principles laid in the case of **Attilio V. Mbowe** (supra) the court has found it is true that the foregoing cited case laid down three principles which are supposed to be established

before the order of temporary injunction is granted. The stated principles as rightly stated by the counsel for the applicants, which were also used by the court in arriving to what was granted in the impugned ruling of the court are as follows; existence of serious issue (prima facie case) requiring determination by the court, irreparable loss to be suffered by the applicant if the order of temporary injunction is withheld and the balance of convenience between the parties if the injunctive order is granted or withheld.

Starting with the first principle of prima facie case the court has found the counsel for the applicants explained how the first applicant became owner of the suit premises. He stated the suit premises was acquired by the President of the United Republic of Tanzania on 27th August, 1971 from Mr. Mohanilal Mathuradas Dewan and placed into the ownership of the Registrar of Buildings and in 1990 the ownership of the suit premises was transferred to the first applicant. After considering the stated submission and going through the plaint filed in the court by the respondent, the court has found the applicants are now challenging the respondent's averment that it is the registered lawful owner of the suit premises.

Since each side is alleging to be the lawful owner of the suit premises the court has found there is a prima facie or serious issue of ownership of

the suit premises which is in existence between the parties. The court has found all what have been stated in the submission of the counsel for the applicants and what was deposed in the counter affidavit of the applicants, which the counsel for the applicants argued was supposed to be considered by the court in its impugned ruling, are matters which cannot be determined at this stage of the matter. They are matters which can be determined after receiving evidence to prove or disprove the same in the trial of the suit pending in the court. The foregoing finding of this court is getting support from the case of **American Cyanamid Co V. Ethicon Ltd** [1975] 1 All ER. 504 where it was stated at page 510 that:

"It is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to the facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

From what is stated in the above quoted excerpt and all what I have stated hereinabove the court has found there is nothing to make it to find it was wrong for the court to find the respondent has a prima facie case or serious issue requiring consideration and determination of the court. It is because of the above stated reasons the court has found the first

principle for granting the order of temporary injunction was present in the impugned ruling of the court.

Coming to the second principle relating to irreparable loss to be suffered if the injunctive order would have not been granted, the court has found the counsel for the applicants has argued if the order of temporary injunction issued by the court will not be varied, discharged or set aside the applicants will suffer irreparable loss. He argued that is because the first applicant has already leased the suit premises to a bona fide tenant who is paying rent to them and the Government will lose revenue from the rent paid by the stated tenant.

The court has found the counsel for the respondent disputed the stated argument and submitted the applicants cannot be heard on the stated argument. His argument is that, the first applicant evicted the respondent from the suit premises at the time when there was an order of the court issued in Misc. Land Application No. 149 of 2022 restraining the first applicant from interfering with the ownership of the respondent to the suit premises. The court has found that, although the foregoing argument by the counsel for the respondent was not disputed by the counsel for the applicants in his rejoinder but the stated order of the court has not been availed to the court to see what was stated therein.

However, the court has considered the arguments from both sides in relation to the stated ground and come to the finding that, there is no dispute that the respondent was in occupation of the suit premises and it stated its employees were using the suit premises. There is also no dispute that the respondent's properties were removed from the suit premises by the first applicants and there was an allegation of threat from the first applicant that the suit premises was about to be demolished by the first applicant. That being the circumstances of the matter the court has found there is no way it can be said the respondent would have not suffered irreparable loss if the order of temporary injunction would have not been granted against the applicants.

The court has considered the loss of revenue the counsel for the applicants stated the first applicant will suffer if the ex parte ruling and drawn order of the court will not be varied, discharged or set aside but failed to see how loss of rent can be said is an irreparable loss. To the view of this court and as stated in the case of **Christopher Chale V. Commercial Bank of Africa**, Misc. Civil Application No. 635 of 2017, HC Com. Div. at DSM (unreported) irreparable loss is the loss that cannot be adequately compensated by way of award of damages or atoned by way of monetary compensation.

Since loss of rent is a loss which can be calculated as its actual amount is known, the court has found there is no way it can be said the loss the applicants will suffer if the ruling and drawn order of the court will not be varied, discharged or set aside is an irreparable loss. The above stated finding caused the court to come to the settled view that, the court was justified to grant the respondent the order of temporary injunction in the matter because the second ground for granting an order of temporary injunction was more established in her favour than the applicants whose allegation of loss of rent is a loss which can be remedied by way of monetary compensation.

As for the third principle of balance of convenience the court has found the counsel for the applicants argued that, as the respondent is not in possession of the suit premises she will not be inconvenienced if the order issued by the court will be varied, discharged or set aside. The court has considered the stated argument but failed see anything material stated in the affidavit supporting the application or argued in the submission of the counsel for the applicants showing the principle of balance of convenience was not established in the impugned ruling of the court so as to say the court is required to vary, discharge or set it aside.

To the view of this court and as stated in the second principle required to be considered while granting or refusing an order of temporary

injunction, the court has found it is the respondent who stand to be more inconvenienced if the order of temporary injunction will be varied, discharged or set aside than the applicants who entered into a lease agreement with a tenant in respect of the suit premises while knowing there is a dispute over ownership of the suit premises that has not been determined by a lawful organ. In the premises and as found in the impugned ruling of the court, the applicants are seeking to be varied, discharged or set aside, the court has found there were sufficient grounds for granting the respondent the order of temporary injunction she was seeking from the court against the applicants.

With regards to the last issue which asks whether the circumstances in the suit property warrants execution of the ex parte drawn order the court has found the counsel for the applicants stated that, the circumstances in the suit property does not warrant execution of the ex parte ruling and drawn order to be carried out as it has changed. The court has found the counsel for the applicants argued the stated execution cannot be carried out because the suit premises has already been leased to another person who is in physical occupation of the suit premises with his family. He stated even the Suma JKT who were providing security service in the suit premises are no longer offering the stated service as the tenant occupying the suit premises is using his own security service.

The court has found there is nothing which can cause execution of the ex parte drawn order issued by this court to be inexecutable because as stated by the counsel for the respondent the tenant the applicants argued is in the suit premises was leased the suit premises while already there was dispute over ownership of the suit premises between the first applicant and the respondent which was not yet being determined by any lawful organ.

After considering the stated circumstances, and what was stated in the case of **Willie J. O. E. Mrema** and **Valerian Moses Bandungi** (supra) it is the view of this that, it cannot be said the tenant who was leased the suit premises while there was dispute over ownership of the suit premises has more justification of using the suit premises than the respondent who was evicted from the suit premises while contesting the eviction and is alleging is the lawful registered owner of the suit premises.

As for the argument that Suma JKT are no longer in the security of the suit premises the court has found that, as the alleged new security was placed on the suit premises by the person leased the suit property by the first applicant, and the first applicant was ordered by the court to remove the stated security from the suit premises, it cannot be said the stated new security service cannot be removed from the suit premises as ordered by the court. The court has found even the argument that the

purpose of the suit premises has changed from being a store into residential premises is not change of circumstances which can be said will render execution of the drawn order of the court inexecutable.

In totality of all the reasons stated hereinabove the court has found the applicants have not managed to establish the application deserves to be granted. Consequently, the application is dismissed in its entirety for being devoid of merit. After considering the circumstances of the matter, the court has found it is proper for the interest of justice to make no order as to costs in this matter. It is so ordered.

Dated at Dar es Salaam this 17th day of August, 2023.



Court:


I. Arufani
JUDGE
17/08/2023

Ruling delivered today 17th day of August, 2023 in the presence of Mr. Thomas Mahushi and Ms. Ndigwako Mwakajwanga, learned State Attorneys for the applicants and in the presence of Mr. Beatus Malima, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.




I. Arufani
JUDGE
17/08/2023