

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

**MISC LAND APPLICATION NO. 25968 OF 2023**

(Arising from Land Case No. 25883 of 2023)

**LUWAMA TRUCKS PARTS COMPANY LIMITED.....APPLICANT**

***VERSUS***

**THREE ROAD COMPANY LIMITED.....1<sup>ST</sup> RESPONDENT**

**SERAFINA LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

07<sup>th</sup> to 12<sup>th</sup> March, 2024.

**E.B. LUVANDA, J**

This is an application for temporary injunction made under the provision of section 68(e), order XXXVII Rule 1(a) and (b), 2(1) of the Civil Procedure Code, Cap 33 R.E. 2019. The application is by convention form of chamber summons supported by an affidavit sworn by LU QiWEI who is the General Manager of the Applicant. The reliefs sought are for an interim order to be issued by this Court restoring *status quo ante* with regard to Plot No. 39, Mikocheni Light Industrial Area, Kinondoni (suit property), this Court to issue an interim order restraining the Respondents or their agents from subsequently, upon restoring the *status quo ante*, the Respondent be restrained from evicting the Applicant

and interfering with the Applicant's peaceful and quiet possession of the suit property.

The grounds taken in the affidavit is that there is a long sublease agreement entered between the Applicant and First Respondent (as per annexure LTPCL1) for a period of nine years commencing from 01/04/2022 ending on 31/03/2031, with a grace period of two years holiday on payment of rent, coupled with a condition for the Applicant to erect a single storey godown on the suit property.

All these were alleged to have been made aware to the Second Respondent who blessed the same. It was pleaded that, the Applicant completed construction of her single storey of godown in June 2022 at a cost of USD 197,000 as evidenced by annexure LTPCL 3 to the affidavit and continued with peaceful enjoyment of the use of the suit property, running his business smoothly, with reputable name and trust in the market, until on 03/11/2023 when she was unlawfully and forcefully evicted by the First and Second Respondent, the exercise which was completed on 03/11/2023. The Applicant pleaded to have suffered serious economic loss for failure to service her clients, including reputation injuries.

In the counter affidavit, the First Respondent substantially noted the averments by the Applicant and heaped blame to the Second Respondent for declining the letter of the First Respondent who matched with an offer of USD

5,150,000 and proposed to engage on the negotiated price, for reason that the Second Respondent had invited the general public on advert with the offer of USD 4,500,000 less than the one offered by the First Respondent.

The Second Respondent in her counter affidavit confirmed the eviction of the First Respondent to have took place on 09/11/2023, accusing the First Respondent for breachling the terms of the lease agreement for unlawfully occupying the property despite the lease agreement being terminated on 09/10/2023, unlawful subleasing without adhering to the proper procedures, continuing construction on the property after the date of termination, failure to pay rent, failure to obtain a written consent for subleasing. She stated to had communicated to the First Respondent, with eviction notice, and blamed the latter for not communicating it to the Applicant.

Mr. Fredy Juluius Sanga learned Counsel for Applicant submitted in line with the three usual conditions for the grant of temporary injunction; establish a prima facie case involving a series issue to be tried; likely to suffer irreparable loss and necessity of the court interference to protect the Applicant; balance of convenience, the Applicant to suffer more in the situation an order is no granted. The learned Counsel aligned the facts deposed in the affidavit as recapped above, along the three conditions precedent for the grant of temporary injunction. The learned Counsel for Applicant submitted that the Applicant

fulfilled all her obligation under sublease agreement submitted that there is a triable issue, queried as to how possible for the Applicant to procure building permit in the name of the Second Respondent without her knowledge and permission or consent.

The learned Counsel submitted that the Applicant has demonstrated cause and all conditions for granting an interim order exist, to warrant this court to exercise its discretionary powers.

Mr. Kisusi Rashid learned Counsel for the First Respondent submitted that the facts of this case does not warrant granting the said temporary injunction against the First Respondent, arguing the three test above have not been met. He submitted that the question as to who evicted the Applicant either the First or Second Respondent can only be resolved during trial. Regarding loss, the learned Counsel said in the event the Plaintiff win the case can sue the Second Defendant for damages. He submitted that both the Applicant and First Respondent have been evicted by the Second Respondent, arguing an injunction cannot be issued in favour of the Applicant against the First Respondent in the circumstances.

Mr. Elisante Frank learned Counsel for Second Respondent, submitted that the Applicant failed to establish serious questions to be determined for reason that the Applicant has no cause of action against the Second Respondent, citing

clause or paragraph seven of the lease agreement. He submitted that the Applicant has not attached anything proving that there was an acknowledgment by their party to have accepted the terms of the lease agreement. He submitted that if the Applicant's claims in the main suit are proved, the same can be remedied by compensation. He submitted that the Applicant have been evicted long ago and is not in the premises to date. He submitted that balance of inconvenience, the Second Respondent is likely to suffer irreparable loss than the Applicant.

On rejoinder the learned Counsel for Applicant submitted that a suit between the First and Second Respondent was for tenant and land lord relationship while herein it is between sub tenant and tenant relationship. He submitted that the Applicant have a cause of action against both Respondents, for reasons that the Second Respondent admitted to have involved in evicting the Applicant and acknowledged the presence of the Applicant in the suit premises. He submitted that the court will be invited to determine whether the eviction was lawful. He submitted that the Applicants right for quite possession and enjoyment of the suit premises need to be protected, arguing the same cannot be easily quantified.

Frankly speaking, this application is untenable, I will explain reasons for the said untenability..

One, the Applicant is a subtenant, clause 7.1 of a lease agreement provide that the tenant (who is the First Respondent) shall be entitled to sub lease the demised premises subject to a written approval from the land lord. The written approval was not made available for court appraisal, in view of establishing where there is any triable issue or valid cause of action as between the Applicant and Second Respondent.

Two, the First Respondent was served with a fourteen days notice to match the offer of sale dated 06/06/2023, in compliance with clause 5.8 of a lease agreement, but the First Respondent failed to match the offer. The explanation by the First Respondent that she responded and matched to the offer via a letter of Ms. Kazi Attorney's dated 13/06/2023 annexure TRC 1, is unsatisfactory, because therein they were complaining to have been taken by surprise, and said they are trying to raise fund and requested for an extension of one month. In clause 5.8 of a lease agreement, there is no such remedy or leeway for extension beyond the 14 days.

Three, the Applicant did not prove in her affidavit regarding compliance with clause 7.2 which require the sub tenant to acknowledge in writing to accept the terms of the lease agreement.

Four, the First Respondent was given ninety days notice for ending of occupancy which expired on 09/10/2023. Therefore as from thereon, the First Respondent including the subtenant were occupying the suit property unlawful.

Five in Misc. Land Application No. 574/2023 between the First and Second Respondent, where the tenant was battling with the same eviction, this Court ruled that the Applicant therein failed to meet the two conditions precedent for the grant of injunction, or restrain the intended eviction.

Finally, the eviction subject to this application was carried out on 09/11/2023, the Applicant are no longer in occupation of the demised premises. To my view, granting an order for restoring *status quo ante* in the circumstances I have explained above, will be nothing rather causing a chaos. In fact balance of convenience tilt in favour of the Second Respondent who will invariably suffer more irreparable loss.

Six, the Applicant failed to avail a written consent from the Second Respondent allowing the Applicant to erect a single storey godown interms of clause 4.4. of a lease agreement.

Therefore the Applicant failed to meet the threshold for grant of temporary injunction.

The application is dismissed with costs.

E. B. LUVANDA  
**JUDGE**  
12/03/2024

Ruling delivered in the presence of Mr. Fredy Julius Sanga learned Counsel for Applicant, Mr. Kisusi Rashid learned Counsel for First Respondent and in absence of Mr. Elisante Frank learned Counsel for Second Respondent.



E. B. LUVANDA  
**JUDGE**  
12/03/2024