

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 25976 OF 2023**

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

**VERSUS**

**THE HONORABLE 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**

*14/3/2024 & 08/4/2024*

**RULING**

**A. MSAFIRI, J**

This is an application for temporary injunction brought under Order XXXVII Rule 2(1) and Section 68 (e) of the Civil Procedure Code, Cap 33 R.E 2019, (herein the CPC). The applicant Dayness Philemon Mbaga is praying for the order of this Court to temporarily restrain the respondents (the 2<sup>nd</sup> and 3<sup>rd</sup> respondents) from evicting, illegally and arbitrary increasing services and rental charges, further trespassing or doing anything whatsoever in connection with the suit property in respect of a portion of a residential premises situated on Block B.1 at Masaki 1 Flats along Masaki area in Kinondoni Municipality within Dar es Salaam, *Alle.*

pending hearing and final determination of the pending suit in this court.

The application is supported by the affidavit of the applicant herself. The respondents have also filed their counter affidavits contesting the application. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have filed their joint counter affidavit which was deposed by Geoffrey A. Timothy, the Principle Officer of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The 3<sup>rd</sup> respondent's counter affidavit was sworn by one Anna Edward Mejala, a Principal Officer of the same.

The hearing was conducted by way of written submissions, and the submissions by the applicant was drawn and filed by Mr. Alex Mashamba Balomi, learned Senior Advocate. He started his submissions by adopting the contents of the applicant's affidavit. He urged this court to disregard the contents of the counter affidavits of the respondents as they do not substantially attack the cumulative ingredients reflected in the supporting affidavit.

Mr Balomi submitted further that the affidavit of the applicant has established cumulatively all the ingredients necessary for granting an order for temporary injunction. He name them as; 1) There is prima facie likelihood of success, 2) Refusal to grant this application is likely to cause substantial

*Alles.*

and irreparable injury to the applicant, 3) on balance of convenience, the application be granted pending determination of the main suit.

Mr Balomi averred in his submission that the 1<sup>st</sup> respondent is secretly carrying on business of petrol station and in breach of the long term agreement and without any colour of right or justification whatsoever has been in occupation and operation of the suit property not for the initial purpose brought in him.

The counsel for the applicant prays for the temporary injunction on the strength of the supporting affidavit and the same be granted with costs. To cement his submission, he cited a litany of cases which I have all taken into consideration while determining this application.

In their reply submissions, which was drawn and filed by Charles Mtae, State Attorney, the 1<sup>st</sup> and 2<sup>nd</sup> respondents vehemently denied the applicant's claims. He submitted that the applicant was a tenant in the suit premises for a period of one year commencing from 1<sup>st</sup> January, 2021 up to 31<sup>st</sup> December, 2021 and that the lease agreement was never extended hence the applicant is the trespasser in the suit premises who have no prima facie case against the respondents.

*Alle.*

Mr Mtae submitted further that the applicant is not a lawful tenant in the suit premises and has been occupying the same by virtue of the court's order to the detriment of the respondents. He averred that it is the respondents who are suffering great loss as the applicant continues to reside in the suit premises without paying any rent by virtue of the court's order. He prayed that the application be dismissed with costs.

On the 3<sup>rd</sup> respondents, they did not file their sreply submissions as the counsel for the 3<sup>rd</sup> respondent Mr Edson Kilatu claimed that they were never served with the applicant's submission in chief. However, since they filed their counter affidavits, the court regarded only the contents of the said counter affidavit.

There was no rejoinder from the applicant.

Having heard the submissions from the parties and read the contents of the affidavit and counter affidavits thereto, my major task is to determine whether this application is meritorious. It is trite law that the Court's power to grant injunction is predicated upon the applicant meeting the three conditions set out in the celebrated case of **Atilio vs. Mbowe (1969)HCD No.284**. This case has been referred in the numerous cases as correctly submitted by Mr. Ballomi, counsel for the applicant who has referred this

*Atle*

court to various cases which have reiterated the principle set in the case of **Attilio vs.Mbowe(supra)**. Among such cases referred to this court is the case of **Kibo Match Group Limited vs. H.S Impex Limited** (2001) T.L.R 152.

The three conditions as pointed out by the counsel for the applicant are briefly that first; there must be a prima facie case/serious questions to be tried, second, the court interference is of necessity to prevent irreparable injury befalling the applicant and third, the balance of convenience.

I will start the determination of the application by analyzing on whether the first condition on establishment of a serious issue (s) to be determined by this Court has been met. Doing that, I have to be careful not to dig deep into the merit of the case. At this stage, the Court's only obligation is to see whether there is a bonafide contest between the parties and serious question to be tried. It was held in the Court of Appeal's case of **Abdi Ally Salehe vs. Asac Care Unit Limited & 2 others**, Civil Revision no. 3 of 2021, CAT at Dar es Salaam (unreported), that at this stage, the Court cannot prejudice the case of either party.

Holding to the above principle, in the present matter, having looked at the contents of the plaint, the affidavit, and counter affidavits, it is clear that the

*Attilio*



applicant is/was a tenant of the 2<sup>nd</sup> respondent and at some time, they had entered a lease agreement whereby the applicant is occupying the suit premises as a tenant. The applicant claim that she had met all contractual obligations including timely payment of rent as covenanted in the lease agreement. She claims that she has been a sitting tenant in the suit premises for over twenty years (20).

The applicant has averred that the 2<sup>nd</sup> respondent has breached the lease agreement when, without justification or consent of the applicant, has engaged the services of the 3<sup>rd</sup> respondent who is now arbitrarily increasing the service charges and seeking to recover rent forcefully from the applicant. That despite the fact that the applicant has no outstanding rent liabilities, she has been subjected to series of harassments. That on 1<sup>st</sup> November 2021, the 3<sup>rd</sup> respondent acting on the 2<sup>nd</sup> respondent's instructions, he has given the applicant 30days' notice in respect of outstanding service charges arrears in the sum of TZS 2,200,000/=.

On their side, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have vehemently denied the applicant's claims and have argued that the lease agreement between the applicant and the 2<sup>nd</sup> respondent was for one year only and has already *ended.*

expired since 2021 and that the applicant is now a trespasser in the suit premises.

Reading the submissions by rival parties, I am satisfied that there is a serious issue which is contested by the parties which establish a prima facie case to be determined by the court. Hence, I find that the applicant have managed to establish the first condition.

However, this is not the case on the second and third conditions. The applicant have failed totally to demonstrated how she is going to suffer irreparably if this application will not be granted. She has also failed to show how she is likely to suffer more than the respondent on the balance of convenience.

The applicant was obliged to establish the said two conditions in her affidavit and then elaborate more in the submissions before the court. But she has failed to do so either in her affidavit or in the submissions before the court by her advocate.

Reading the affidavit, it is on paragraph 10 where the applicant has stated that she is likely to suffer gross economic loss if the sought order is not granted. She has explained that since the commencement of the lease agreement and now for more than twenty years, the applicant at her own

*Alls.*

costs which has never been refunded, she has been forced to discharge contractual obligations of the respondents. But this court finds that the economic loss averred in the affidavit is in monetary form so can be reparable. Even the reliefs sought by the applicant in the main suit are all on monetary terms as the applicant has based her claims on the increase of amount of rent and services charges.

At paragraph 14 of the affidavit, the applicant claims that she was made to execute the voidable agreement which contains unfair terms and conditions whereby there is increase of service charges and rental charges. She said that on balance of probabilities, she is the only one who will suffer much. However, she did not state how she will suffer much by increase of rental and service charges.

On their side, the 2<sup>nd</sup> respondent who is the landlord has submitted that it is them who have been suffering by the acts of the applicant. That she has been illegally occupying the suit premises without any payment and this has caused the 2<sup>nd</sup> respondent to suffer loss arising out of unpaid rental and service charges.

In the written submission before the court, the counsel for the applicant besides citing a litany of cases, has failed to demonstrate how the principles

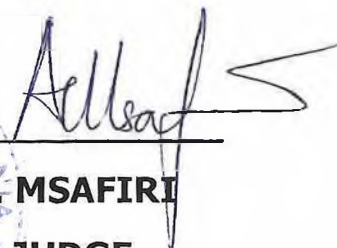
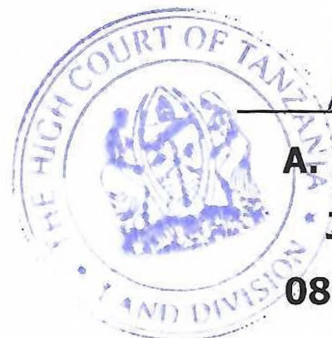
*Ally.*



established or observed in the cited cases has been applied or complied with in the instant application.

To sum up, the applicant has failed completely to establish the two conditions which are necessary in the applications for injunctions as this one. Although the applicant has managed to establish the first condition of existence of prima facie case, it is trite law that the three conditions has to be cumulatively established before the court can exercise its discretion and grant the sought orders.

For the above reasons, this application is hereby dismissed with costs.  
It is so ordered.

  
  
**A. MSAFIRI**  
**JUDGE**  
**08/4/2024**