

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

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 7568 OF 2024

W-CARGO AIRLINE LIMITED.....APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

TANZANIA AIRPORT AUTHORITY(TAA).....2ND RESPONDENT

RULING

27th May & 4th June, 2024

L. HEMED, J.

This is an application for *mareva* injunction. It has been brought under section 2(1) and (3) of the Judicature and Application of Laws Act [Cap 358 R.E 2019] and section 68 (2) and 95 of the Civil Procedure Code, [Cap.33 RE 2019]. The Applicant seeks for the following orders:-

" ...

(a) *That, this Honourable Court may be pleased to grant an order for Temporary injunction against the 2nd Respondent restraining him (sic) its agents, employees, assignees and whomsoever*



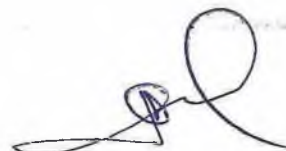
acting under the instructions of the Respondents from interfering with the Applicant's Company Office Premises situated at Julius Nyerere International Airport together with the buildings therein in Ilala Municipality within Dar es Salaam (Hereinafter called 'the suit property') pending hearing and final determination of the intended suit after lapse of 90 days statutory Notice.

(b) ...

(c)..."

The Application has been supported by the affidavit of one John Buyamba, the Principal Officer of the Applicant. The Respondents contested the said application, hence the hearing of the Application. Parties were directed to argue the matter in writing. **Mr. Alex Balomi** learned advocate, acted for the Applicant, while the respondents enjoyed the service of **Mr. Thomas Maushi**, learned State Attorney.

In determining the merit of the application, I will be guided by the conditions laid down in the case of **Atilio v. Mbowe** [1969] HCD 284. In the said case, his Lordship Georgies, C.J remarked that, before granting the order of injunction the court must be satisfied that:



- i. There is a serious question to be tried on the fact alleged, and the probability that the plaintiff will be entitled to the relief prayed.
- ii. The Applicant stands to suffer irreparable loss requiring the court's intervention before the Applicant's legal right is established;
- iii. That 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.

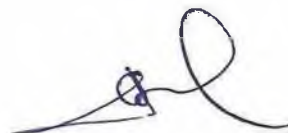
I have carefully considered the rival submissions from both side. The pertinent question is whether the matter at hand has met the above, three conditions. In the instant matter, the Applicant has asserted to be the lawful tenant in the suit property, which is the office premises situated at Julius Nyerere International Airport. According to the counsel for the Applicant, she acquired possession of the rented premises lawful from the 2nd Respondent and that, at all the material times had met all the contractual obligations. He insisted that the Applicant has not operated its airline business because of the non-performance of the contractual obligations by the 2nd Respondent.



In response thereto, the learned State Attorney contended that the Applicant has failed to establish a serious triable issue for the court to invoke inherent powers to grant the sought orders. He was of the opinion that since the Applicant's tenancy agreement lapsed on 31st December 2023, then, the Applicant cannot have a prima facie case to back her prayers for temporary injunction.

It should be noted that, in the instant matter, the Applicant is in an attempt to move this court to grant injunctive orders that she should not be evicted from the suit premises pending expiry of 90 days' notice to sue the respondents claiming to be the lawful tenant of the 2nd Respondent. However, in the affidavit of JOHN BUYAMBA, the principal officer of the Applicant, in paragraph 4, reference has been made to annex 'B' which is the Lease Agreement entered between the Applicant and the 2nd Respondent.

Annexure 'B' is the Lease Agreement No.AE-027/2020-2021/JNIA/NC/32/30 executed by the parties on 8th November 2021. According to the said Lease Agreement, the lease period was from 01st December, 2021 up to 31st December, 2023. Therefore, from the Applicant's own averment, by 1st January 2024, the Applicant was no longer the tenant

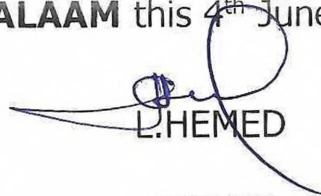


in the suit premises as the Lease Agreement had already lapsed. This being the case, I find no *prima facie* case that the Applicant has managed to establish.

I am aware that for the court to grant the application for injunctive orders, all three conditions must be met cumulatively. This was also held by this Court in, **Christopher P. Chale vs. Commercial Bank of Africa**, Misc. Application No.635 of 2017. In other words, where the Applicant fails to satisfy one condition in **Atilio vs. Mbowe** (*supra*), the court cannot proceed to grant injunctive orders. In this matter, the Applicant has failed to establish *prima facie* case. Therefore, I need not to labour on the other two conditions. The entire application is hereby dismissed. Considering the nature of the parties to the instant matter, each party to bear its own costs. It is so ordered.

DATED at DAR ES SALAAM this 4th June 2024




L. HEMED
JUDGE