

TANZANIA / JUDGMENT

ADACI HOLDINGS LTD SCANNED

COURT
TANZLIIDECIDED
31 July 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA LAND DIVISION AT DAR ES SALAAM MISC. LAND CASE
APPLICATION NO. 11047 OF 2024 ADACI HOLDINGS LTD..... APPLICANT VERSUS
TANZANIA POSTS CORPORATION..... 1st RESPONDENT ATTORNEY
GENERAL..... 2nd RESPONDENT

RULING

24h & 31st July, 2024 L. HEMED, J. ADACI HOLDINGS LIMITED is the Applicant in the instant Application. It has been brought under section 2(3) of the Judicature and Application of Laws Act, Cap. 353, sections 68(e) and 95 of the Civil Procedure Code, Cap 33 and sections 46(1), (2), (e) and (3) of the Arbitration Act, Cap.15. The Applicant seeks for the following orders: "1. That, the Honorable court be pleased to issue order of interim injunction (Mareva injunction) to restrain the 1st Respondent from evicting the Applicant at plot No.1863,Block "I" Nyaiaii curve, Masaki Kinondoni Municipality, Dar es salaam- Tanzania which the Applicant has i leased and developed by building five (5) frames shoppes, one (1) restaurant, several toilets and making other substantial improvements as agreed in the long term lease agreement between the Applicant and 1st Respondent herein, pending, referring of the dispute to arbitration as highlighted in the agreement which sufficient notice has already been issued.

2. That, costs incidental to this Application be provided for.

3. Any and further relief the court shall deem just and fit to grant/" The Application has been supported by the affidavit of one CIDY REGINALD GAMA the principal officer of the Applicant. The respondents TANZANIA POSTAL CORPORATION and ATTORNEY GENERAL challenged the application through the Counter Affidavit of one HADIJA NTIMIZI, Principal Officer of the 1st Respondent. Hearing was conducted by way of written submissions. Ms. Jesca Shengena, Principal State Attorney acted for the respondents while the Applicant enjoyed the service of Mr. Elisa Jones Mndeme, advocate. Submission were promptly filed pursuant to the schedule directed by the court. 2 I have deeply gone through the rival submissions to find out if the application has merit or not. I am aware that, this is an application for Mareva injunction. The only difference between this kind of application and the other ordinary applications for temporary injunction is the pendency of main suit in court. However, the guiding conditions in determining both the ordinary applications for temporary injunctions and those of Mareva injunctions are the same. It should be also noted

that the guiding principles/conditions were laid down in the very famous case of Atilio V. Mbowe (1969) HCD 284 that:

1. The applicant must demonstrate existence of prima facie case;
 2. He should be able to demonstrate that if the order is withheld, he is likely to suffer irreparable loss;
 3. On the balance of convenience, the applicant should show that he will suffer more if the order is withheld than the respondent will, if the application is granted. 3 In the instant case, the Applicant has asserted to have entered into a long term Lease Agreement with the 1st Respondent which is to expire in
2032. According to the Applicant's averments, it was agreed in the Lease Agreement that the Applicant would develop a building in the disputed property containing five (5) shopping frames, one (1) restaurant, (3) toilets
- (1) kitchen room and a security office for a cost of Tshs. 149,136,102.82/=. The applicant has alleged further that she proceeded to perform the contract by constructing the buildings as agreed in the lease agreement however while the construction works were on going, on the 20th November 2023, the Applicant was served with a letter from the 1st Respondent demanding her to stop the development. The 1st Respondent has also served the Applicant with the notice of termination of the lease agreement and for her to vacate from the suit premises. In her opinion, the said notices to terminate the lease agreement and the notice to vacate from the suit premises without considering the massive development effected by the Applicant in the suit property constitute a triable issue. The counsel for the respondents rebutted that there is no triable issue as the notice to stop the development was issued to the Applicant by the 1st Respondent, due to the fact that the Applicant had commenced construction 4 prior to the approval of the request of additional land made by the 1st Respondent to the Municipal council. She contended that the Applicant violated the provisions of the law by not complying with the statutes, rules, orders, regulations and all Government requirements. The preceding rival arguments between the Applicants advocate and the learned state attorney exhibits presence of triable issue regarding the long term Lease Agreement. It is my firm opinion that, at this stage the court does not need to go into detail to examine whether or not the 1st Respondent was justified to issue notice for termination of the lease agreement and the preceding notice to the Applicant to vacate the suit premises. This will be function of the Arbitral Tribunal or court that will have the opportunity to scrutinize evidence to be adduced. From the foregoing, I find prima facie case to have been established. This signifies that the 1st condition has been met. The 2nd condition is on the possibility of the Applicant to suffer irreparable loss. I have gone through the affidavit deposed to support the application and found that at paragraph 25.0, it has been averred thus; "25.0 That, the Applicant is a real estate company with a reputable image in the industry and was to 5 operate a hospitality business in the premises based on reputation and trust, the premises is also to be accommodated with clients and guests of the

Applicant. In case this Application is not to be granted, the eviction shall tarnish the reputation of the Applicant in the industry and that no money can repair such loss that in circumstances that the eviction is stopped the 1st Respondent does tend to suffer any loss with injunction order." I have read the counter affidavit and the respondents submissions against the application and could not find any counter argument or fact deposed against the Applicant's averment regarding the possibility of suffering irreparable loss incase the application is refused. I am on the same page with the counsel for the Applicant that loss of reputation as stated in paragraph hereinabove cited, cannot be repaired by damages. In that regard, I find that the Applicant has managed to demonstrate irreparable loss which she may suffer incase the application is refused. The last condition is on balance of convenience. The respondents in the counter affidavit and submissions to oppose the application have not said anything as to what loss are they going to suffer if the court proceeds to grant the application. Since the respondents have demonstrated no 6 possible loss or their part upon grant of the application, I consider that the respondents will suffer no loss if the Application is granted. In the end, I find merit in the application and the same is granted without costs to the effect that STATUS QUO at plot No. 1863, Block 'T' Nyalali curve Masaki, Kinondoni Municipality Dar es salaam to be maintained pending expiry of the statutory notice served to the respondents herein. It is so ordered. DATED at DAR ES SALAAM this 31st July 2024. Li HEMED JUDGE 7

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/314790/source_file/924be2c939f29856/ADACI_HOLDINGS_LTD_SCANNED.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/adaci-holdings-ltd-marevainjunction-tanzlii-2024>

Prepared on 14 October 2026 · Esheria