

TANZANIA / JUDGMENT

angelinabelo john kwingwa vs tanzania building agency and 2 others 2024 tzhclandd 50 28 february 2024

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28 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND APPLICATION NO. 63 OF 2024 ANGELINABELO JOHN
KWINGWA..... APPLICANT VERSUS TANZANIA BUILDING
AGENCY.....1st RESPONDENT TWINS AUCTION MART COMPANY
LIMITED..... 2nd RESPONDENT THE HONORABLE ATTORNEY GENERAL..... 3rd
RESPONDENT

RULING

05 January, 2024 & 2ff- February, 2024 L. HEMED, J. This is an application for mareva injunction. It has been brought under section 2(3) of the Judicature and Application of Laws Act [Cap 358 R.E 2019] and section 95 of the Civil Procedure Code, [Cap. 33 R.E 2019]. The Applicant, ANGELINABELO JOHN KWINGWA is seeking for an. interim order to restrain the respondents, TANZANIA BUILDING AGENCY, TWINS AUCTION MART COMPANY LIMITED and THE ATTORNEY GENERAL from evicting her from the suit property, Plot No. 53 Block 24 Bunju "B" Kinondoni District, Dar es Salaam region pending expiry of the ninety (90) days' notice of intention to sue the Respondents. i The Application has been supported by the affidavit of Angelinabelo John Kwingwa. It has been challenged through the counter affidavit of one Suzan S. Ulula. In her affidavit to support the application, the applicant has asserted to be the owner of the suit property located on Plot No. 53 Block 24 Bunju "B" Kinondoni District, Dar es Salaam. The basis of the instant application is the 14 days' notice of eviction served to her by the 2nd Respondent who did so on behalf of the 1st Respondent. It has been averred by the applicant that she purchased the suit property form the 1st Respondent and has invested more than Tshs. 150,000,000/= in the finishing work of the interior and exterior parts of the property. According to the Applicant, she stands to suffer more than the Respondents if the injunction is not issued because the action being taken by the Respondent's if completed will leave her and her family without a place to stay. To substantiate the averment, Mr. Joseph Mailu Msengezi, learned advocate for the Applicant insisted that the application is in conformity with criteria! laid down in the case of Atilio vs Mbowe (1968) HCD 284. 2 According to him a prima facie case has been established as there are legal issues that need to be addressed before the court in the intended

suit. He also told the court that with regard to the 2nd and 3rd conditions, the Applicant has managed to demonstrate that she will suffer irreparable loss more than the respondents may do if injunctive order is granted. In response to the applicant's submission, Ms. Lilian Mirumbe, learned state Attorney who was acting for the 1st and 3rd respondents, contended that the condition in *Atilio vs Mbowe* (supra) have not been met. She stated that the affidavit and the submission of the applicant made in support of the application do not disclose facts which suggest existence of question of law or facts to be tried by this court. She added that there is no sale Agreement of the suit property as a proof that the Applicant purchased the suit landed property. In her view, no prima facie case that has been demonstrated by the Applicant. Ms. Mirumbe submitted further that the 1st Respondent is the registered owner of Plot No. 53 Block 24 Bunju 'B' Kinondoni District. The suit property and therefore the applicant is a trespasser to it. She was of the view that if injunctive orders are made, then the respondents are the one to suffer much than the Applicant. The learned state attorney argued further that since the applicant is not the owner of the suit premises then no irreparable loss she is going to suffer if the injunctive order is not granted. She put reliance on *British Tobacco (U) Ltd vs AG of Republic of Uganda*, EACJ. The learned state attorney ended up by praying that the application should not be granted. Having gone through the submissions made by both learned counsel, it is apt to determine the question as to whether the instantaneous application has merits. I am at one with the learned counsel that the guiding principles for determination of the instant Application are those stated in the case of *Atilio vs Mbowe* (supra) that: -

1. The applicant must demonstrate the presence of prima facie; case
2. Whether the applicant is likely to suffer an irreparable loss.
3. Balance of convenience between the applicant and the respondents. Let me start with the 1st principle of presence of 'prima facie'. I have revisited the affidavit in support of the application the Applicant claims ownership of the suit landed property. She has asserted to have purchased it and renovated the property. The Applicant has also established facts that she is now living in the suit house together with her family. On the other hand, the Respondents have contended that they have never sold the suit property to the Applicant. In their opinion, the presence of the Applicant in the suit property amounts to trespass. From the contentions views between the Applicant and the respondents, the issues of whether the applicant is the lawful owner of the disputed land and or is the trespasser to it, are vividly found and need to be resolved in the main case. Whether the applicant will have sufficient evidence to prove her allegations, in my view, is not the question to be determined at this stage. I am holding so because if we embark ourselves in assessing evidence of the applicant in respect to her allegation of ownership of the suit land it will amount to prejudging the applicant's main case before the due time. From the foregoing, I am satisfied that the applicant has managed to establish a prima facie case. The 2nd condition for the court to grant application for injunctive orders is that the applicant must demonstrate that she/he will suffer irreparable loss which cannot be adequately compensated by award of general damages. It is well known that the object of temporary injunction is to protect the plaintiff 5

against injury by violation of his right for which he could not adequately be compensated in damages. This was insisted by this court in Hotel Tilapia Ltd vs Tanzania Revenue Authority, Commercial Case No. 2 of 2000. In the instant case, the Applicant has stated to be using the suit premises as a dwelling home. According to the applicant, she lives herein with her family. The Applicant averred that if the respondents will be allowed to evict among other thing, she is going to loose the place to stay. Does the said loss constitute an irreparable loss? I understand that the loss of home can be recovered through damages if at all she is going to win the main case. However, there are psychological injuries associated with loss of place to leave. Those kind of injuries cannot be easily be compensated by damages. In the circumstance of this case, I find that the loss of home to the applicant and the mental anguishes associated thereto, constitutes irreparable loss. The last condition is the balance of convenience. Under this condition the court is bound to ascertain who is going to suffer much between the Applicant and the respondent if the application is granted and when it is refused. In the present case the applicant is going to be evicted from the suit premises and rendered homeless if the court will refrain from interfering. 6 If the court will grant the application and letter on the respondents found to be owners of the suit property then it will be easier to compensate them through mesne profit in case the court find the Applicant trespasser. Therefore, I find that the applicant is the one who is likely to suffer loss than the respondents in case the court refuses to grant the application. In the final analysis, I find all conditions have been met. The Application is thus worth to be granted. In the upshot I make the following

orders:

1. The respondents are restrained from evicting the Applicant from House on Plot No. 53 Block 24 Bunju 'B' Kinondoni District, Dar es Salaam until the expiry of ninety (90) days notice of intention to sue which is to expire on 20th March 2024.
2. Each party to bear its own costs. DATED at DAR ES SALAAM this 28th day of February, 2024.

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Prepared on 13 October 2026 · Esheria