

TANZANIA / JUDGMENT

bish tanzania ltd vs national housing corporation 2 others

2022 tzhclandd 614 30 june 2022

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30 June 2022

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.s- IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM MISC. LAND CASE APPLICATION NO. 149 OF 2022 BISH TANZANIA LIMITED APPLICANT VERSUS NATIONAL HOUSING CORPORATION 1[®] RESPONDENT FOSTER AND COMPANY LIMITED 2^{""} RESPONDENT THE ATTORNEY GENERAL 3[^] RESPONDENT

RULING

Date of Last Order: 20. 06.2022 Date of Ruling: 30.06.2022 T. N. MWENEGOHA,³ The applicant seeking for an injunction against the and 2[^] respondents and any person working under their instructions from evicting the applicant in the property located at Plot No. 43, Kinondoni/ Msasani Area, held under Certificate of Title No. 186155/43, in the name of BISH TANZANIA LIMITED, pending the institution of the intended suit, upon expiry of 90 days' Notice of intention to sue the government. The order has been preferred under section 2(3) of the Judicature and Application of Laws Act, Cap 384, R. E. 2019 and Sections 68(c) and (e) 95 of the Civil Procedure Code, Cap 33 R. E. 2019 and supported by the affidavit of Amina Abdallah Mzena, the Principal Officer of the applicant. 7S 7 The application was heard by way of written submissions and ex-parte against the 2^{""} respondent. Advocate Lucky Mgimba appeared for the applicant, while Aioyce D Sekuie, Principal State Attorney, represented the 1[®] and 3^{""} respondent. Mr. Mgimba argued that, under section 2(3) of the Judicature and Application of Laws Act, Cap 384, R. E. 2019, this court has powers to grant injunctive orders before the institution of a suit as held in the case of Registered Trustees of Calvary Assemblies of God (GAG) vs. Steel Pipes Limited, Misc. Land Case Application No.677 of 2019, High Court of Tanzania, at Dar es Salaam, (unreported). That, the applicant has sought of the said orders before instituting the case against the Government subject to Section 6(2) of the Government Proceedings Act, Cap 5 R. E. 2019. He further informed the Court that, the notice of intention to sue has already been served to the 1⁼ respondent since on the 6[^] of April 2022 and it is expected to lapse on the 5[^] of July, 2022. Hence, in the pendency of the statutory notice, the applicant has preferred this application. He went further to argue that, after all the applicant has satisfied the conditions for injunction given in the landmark case of Atilio vs Mbowe,

(1969) HCD No. 284. In reply, Mr. Sekuie challenged the affidavit in support of this application. He insisted that, the facts given in the said affidavit does not suggest that there is a prima facie case between the applicant and the respondent to require this court's attention. The same affidavit does not contain any fact showing that if the application is denied, the applicant will suffer irreparable loss. Lastly, the affidavit in support of the application failed to prove that, on balance of convenience, the applicant stands a chance to suffer greater hardship than the respondents. His arguments were supported by the case of T.A Kaare vs. General Manager Mara Cooperative Union (1984) Ltd (1987), TLR 17. In his brief rejoinder, the applicant's counsel reiterated his submissions in chief. I have gone through the submissions of parties; with the affidavit in support of the application as well as the counter affidavit against it. The issue for determination is whether the application has merit. Based on the applicant's chamber summons, the affidavit as well as the submissions by Mr. Mgimba, it is evident that the application is in the nature of Mareva Injunction. It is also an established fact that Courts have allowed them in several occasions, as in Registered Trustees of Calvary Assemblies of God (CAG) vs. Steel Pipes Limited (supra). Its genesis is derived from the famous English case of Mareva Companies NV vs. International Bulk carriers SA, (1980) 1 All ER 213. As decided in this, courts are emphasized to satisfy themselves on two issues before allowing an application of this nature. One, the applicant's affidavit must show expressly, the intention to institute a case against the Government and further that, some steps have been taken to do so. On this point, I appreciate the facts given under paragraph 5 of the applicant's affidavit which contain the said information, see Salvatory Toyi & 5 Others vs. Uvinza District Council & Another, Misc. Land Application No. 72 of 2020, High Court of Tanzania at Kigoma, (unreported). Two, if it is justifiable and convenient. The Court will allow the application satisfying the same as stated in Abdallah M. Maliki & 545 Others vs. Attorney General & Another, Misc. Land Application No. 119 of 2017, High Court of Tanzania at Dar es Salaam, (unreported). In my opinion, the applicant has satisfied this Court that she deserves the reliefs sought. She has shown in the affidavit of her intention to sue the respondents upon expiry of the notice which is expected to end on the 5th of July 2022. Further, the facts given in the same affidavit when read together with the submissions in support of the application show that, there are triable issues which need to be taken care of by this Court. Hence, justifiable. If the same are ignored, the applicant stand to suffer inconveniences that may lead to irreparable loss on her part, compared to the respondents, see Atilio vs. Mbowe, (supra). Eventually, the application is allowed. The applicant is advised to file her Intended suit immediately after the lapse of the notice served to the government and further, apply for injunction pending the suit filed then. It is so ordered. COU/7 T. N.J. WENEGHA o c> JUDGE 30/06/2022 h- rV PAast

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