

TANZANIA / JUDGMENT

car truck distributors limited vs mkb company ltd another 2022 tzhclandd 198 31 march 2022

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31 March 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND APPLICATION NO.688 OF 2021 (Originating from Land Case No. 169 of 2021) CAR TRUCK DISTRIBUTORS LIMITED APPLICANT VERSUS MKB SECURITY COMPANY LIMITED 1st RESPONDENT M/S GSM 2ND respondent

RULING

Date of Last Order: 23.02.2022 Date of Ruling: 31.03.2022 T. N. MWENEGOHA 3. The application was brought under section 95 of the Civil Procedure Code, Cap 33 R. E. 2019, supported by the affidavit of Shabir Abji, the Director of the Applicant Company. The applicant is seeking for an order of maintenance of status quo ante pending the determination of the Land Case No. 169 of 2021. Her intention is to re-occupy a landed property, located at Plot No. 181/A, Mbozi Road Industrial Area, Dar Es Salaam, with Certificate of Title No. 186081/27. As of now, the suit property is being occupied by the 1st respondent, acting under the instructions of the 2nd respondent. The application was heard by way of written submissions. Advocate Marcey Constantine Kanoni appeared for the applicant, while the respondents enjoyed the legal services of Advocate Jovin M. Ndugi. Submitting in support of the application Advocate Kanoni, was of the view that, an order for status quo ante aims at preventing the respondents from acting or interfering with the property of the applicant in whatever manner until when the main case is fully determined. He went on to submit relying on the case of Atilio vs. Mbowe (1969) HCD 284, and in which the three conditions precedent to the grant of temporary injunction were outlined that, there should exist a prima facie case. That, the court's interference is necessary to prevent the applicant from suffering an irreparable loss and lastly is that, on balance of convenience, there will be greater hardship and mischief suffered by the applicant if the order of injunction is not issued compared to the respondent if it is not issued. The applicant's counsel insisted that, these conditions apply in the same way in this application. That, we have a pending case, which is Land Case No. 169 of 2021, where the court is invited to decide on a serious question of law as to who is the rightful owner of the suit property. On the second issue of preventing the applicant from suffering irreparable injury, it was maintained that, the respondents after occupying the

suit land, have demolished some parts of it. That, if this order is not issued, they will continue to damage the property in question, thereby leading to irreparable sufferings on part of the applicant. Lastly, on balance of probability, the applicant stands to suffer greater hardship than the respondent, owing to the fact that, the applicant is the lawful owner of the suit property. The applicant's counsel cited the case of Property Investment Limited vs. First National Bank Limited & Another, Misc. Civil Application No. 285 of 2020, High Court of Tanzania, At Dar Es Salaam (unreported), where it was observed that. "Therefore, an order for maintenance of status quo ante and injunction is granted restraining the respondents, their agents, servants and workmen from disposing the landed property being plot 1219 located at Msasani peninsula are with CT No. 23263 in Kinondoni District within Dar Es Salaam pending determination of the main case." In reply Mr. Jovin Ndugl for the respondents, was of the view that, the submissions by the applicant's counsel that, the order of status quo ante and injunction are similar as both intend to prevent the respondent from acting or tampering with the suit property is misconceived. Therefore, the applicant's case is distinguishable in this case as the same is only giving rules for consideration for allowing the application for injunction. It has nothing to do with the order of status quo ante as it is a different order from the order for injunction. The respondent's counsel went on to argue that, the instant application is not tenable as it was brought under section 95 of the Civil Procedure Code, Cap 33 R. E. 2019. It is well settled that; section 95 of the Civil Procedure Code, do not independently confer any power to the court or any right to litigants. This position is in the case of MIC Tanzania Ltd vs. Hamis Mwinyijuma & Another, Misc. Civil Application No. 222 of 2018(unreported) and the case of Tanzania Electric Supply Company Ltd (TANESCO) versus Independent Power Tanzania Ltd (IPTL) & 2 Others, Consolidated Civil Appeal No. 19 & 27 of 1999. In his rejoinder, the counsel for the applicant maintained that, the aim of status quo ante is to prevent the property, hence the principles governing the order of temporary injunction apply in the maintenance of status quo ante. It is because both orders aim at preventing the suit property. Having considered the submissions by parties in line with the affidavit in support of the application as well as the counter affidavit opposing this application, the issue worth of determination is whether the instant application has merit or not. In plain language, the phrase "Status Quo Ante" means the situation that existed before. As stated in the affidavit in support of this application, at paragraphs 4-9, the applicant lost possession of the suit property on October, 2021. This is when the respondents took control of the landed property in question. By this application in my opinion, the intention of the applicant is to re-occupy the suit property which the same is under the respondents as we speak. Therefore, she wants to use this court to legalise her reoccupation of the suit property. As argued by the respondents' counsel, this application is not tenable, not because of the enabling provision used by the applicant in moving this court, that is section 95 of the Civil Procedure Code, Cap 33. However, the main reason for not allowing this is that, the application will be as good as a premature determination of the main case. For the foregoing reasons, I dismiss the instant application for lack of merits. Costs to follow the event. Dated at Dar es Salaam this 31st Day of March, 2022. T. N.!!4«tfEhttG0HA W JUDGE iSl L-'f \\w^ \ ! >/'J

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