

TANZANIA / JUDGMENT

dira company ltd vs laconar company ltd 2021 tzhclandd 116 23 march 2021

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23 March 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND REVISION NO. 28 OF 2020 (Arising from the Ruling and Drawn Order of the District Land and Housing Tribunal for Kinondoni at Mwananyamaia delivered by Hon. R. Mbilinyi, Chairperson dated 03rd July, 2020 in Misc Land Application No. 458 of 2020) DIRA COMPANY LTD..... APPLICANT VERSUS LACONAR COMPANY LTD..... RESPONDENT

RULING

S.M. MAGHIMBI, J: The application before me was filed under the provisions of Section 41 & 41A (3) as amended by G.N. No.7 Vol.99 dated 25/09/2018 and Section 43(l)(b) of the Land Disputes Courts Act, Cap. 216 R.E 2019 ("The Act"). The applicants were seeking for the following orders:

1. That this Honorable Court be pleased to call for, and examine the records of Misc. Land Application No. 458/2020 to satisfy itself to the legality, correctness and propriety of the ruling and drawn order made thereon by Hon. Mbilinyi, Chairperson on 03/07/2020.
2. That the Honorable Court be pleased to quash the said ruling and drawn order made in Misc. Land Application No. 458/2020 dated on 03/07/2020.
3. Costs of this application be provided for by the respondent, and
4. Any other relief(s) as the Honorable Court may deem fit and just to grant. The application was supported by an affidavit of Mr. Jimmy Charles Rwehumbiza, the applicant's principle officer dated 28th day of July, 2020 along with the submissions made thereto as per the order of the Court. On her part, the respondent strongly countered the application vide a counter affidavit sworn by Mr. Joseph Nestory, a principal officer of the respondent dated 11th day of September, 2020. The application was disposed by way of written submissions following a court order dated 02/11/2020. Both parties filed their submissions accordingly, the applicant's submissions were drawn and filed by Mr. Andrew Kanonyele, learned Counsel while the respondent's submissions were drawn and filed Mr. Armando Swenya, learned Counsel. Before going into the merits or otherwise of this application, I find it only prudent that from the gathered facts, the brief background of the matter that has led to the revision

beforehand are narrated. The suit property is branded as "FOOD POINT" on Plot No. 83, Ada Estate, Kinondoni Municipality where the parties herein were tenant and landlord respectively. Upon a dispute in payment of rents, on the 16th day of December, 2019, the respondent herein instituted Land Application No. 608 of 2019 ("The Application") before the District Land and Housing Tribunal for Kinondoni ("The Tribuna I")- He was seeking for orders, inter alia, of eviction of the applicant herein from the suit property and payment of rent arrears at the tune of Tshs. 64,880,000/=. In due course of the pendency of the application, the Applicant herein filed a Misc. Land Application No. 458 of 2020 ("the Misc. Application") on allegations of the respondent's consistent harassment and embarrassment to the Applicant including attempts of forceful eviction. In the said Misc. Application, the Applicant moved the tribunal for interim orders of staying the eviction pending determination of the Application. While dismissing the Misc. Application, the tribunal further ordered the applicant herein to vacate the suit premises within 14 days of the date of the delivery of the ruling. It is the ruling of this Misc. Application that is a subject of the current revision. Mr. Kanonyele's main argument is that the controversial Ruling contains an order for the Applicant to vacate from the premises in dispute within fourteen days from the Ruling date as if the parent suit is fully determined. He therefore challenged the legality, correctness and propriety of the said Ruling and Drawn Order on reasons of irregularity. On his part, Mr. Swenya's submissions first challenged the propriety of this application on the ground that the ruling in Misc. Application was on interlocutory orders emanating from an application which is still pending at the Tribunal, arguing that this court has no jurisdiction to entertain the current application. He supported this argument by citing the decision of the Court of Appeal in the cases of Vodacom Tanzania Public Limited Company Vs. Planetel Communications Limited, Civil Appeal No. 43/2018 and MIC Tanzania Limited & 3 others Vs. Golden Globe International Services Limited, Civil Application No. 1/16 of 2017 whereby in both cases the Court of Appeal, while interpreting Section 5(2)

- (d) of the Appellate Jurisdiction Act, declined to have jurisdiction to entertain the appeal on the reason that the main suits were still pending in the respective trial courts. He also argued that the applicant has not highlighted any illegality or impropriety of the tribunal's decision as the tribunal did not see the merits in the Misc. Application. He argued that the Application had several prayers including vacant possession and that it was not in any way related to the Misc. Application. He concluded that in the Misc. Application, the applicant failed to prove the fundamentals for granting temporary injunction as provided for in the case of Atilio Vs. Mbowe, 1969 HCD 268. The respondent's prayer was that the application is dismissed. I have gone through the records of this application and considered the submissions of both parties. In brief, Mr. Swenya's argument that this court has no jurisdiction is unfounded because according to Mr. Kanonyele, the orders of the court had the effect of determining the rights of the parties in what was contended in the Application. My perusal of the records found that indeed, there is grievous irregularity on the ruling of the tribunal. In the application at the tribunal, the respondent herein had moved the court for orders, inter alia, of eviction of the applicant herein from the suit premises. The ruling

in the Misc. Land Application was to be only to the extent of whether or not the applicant should be granted a temporary injunction during the pendency of the suit. It was to therefore end at the dismissal of the application and no subsequent orders of eviction of the applicant were to be made because that was not a subject of the application before the Honourable Chairman. However, the subsequent orders of the court in the Misc. Application had the effect of determining the rights of the parties in what was contended in the main Application, meaning that the applicant's right of occupation of the suitland which was in contention at the tribunal, was determined without him being afforded the right to be heard. In the case of Patrobert D. Ishengoma Vs. Kahama Mining Corporation Ltd (Barrick [Tanzania] Bulyanhulu and 2 others, Civil Application No. 172 of 2016 (unreported) the Court of Appeal, while sitting in Mwanza had this to say when the party's right to be heard was denied: "It is settled that, the law that no person shall be condemned without being heard is now legendary. Moreover, it is trite law that any decision affecting the rights or interests of any person arrived at without hearing the affected party is a nullity, even if the same decision would have been arrived at had the affected party been heard." As far as the records are, since the main relief sought in the main application included the order of eviction of the applicant herein, it was a serious irregularity for the tribunal to issue that order while determining the Misc. Application. Owing to that, the ruling of the tribunal is hereby reversed and the same shall end where the tribunal dismissed the Misc. Application for want of merits, specifically where it held "In the premises chamber application dismissed for lack of merits." The subsequent order for the applicant to vacate the suit premises is hereby set aside. The order for costs issued therein also remains intact. It should however be noted that the revision of the ruling in Misc. Application does not in any way mean that the applicant herein has been granted an injunction to remain in the suit property. The only effect of this order is that it brings the parties to the original position as if the Misc. Application had not been filed at the tribunal because the same was dismissed. I make no order as to costs of this application. Dated at Dar-es-Salaam this 23rd day of March, 2021 6

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Prepared on 14 October 2026 · Esheria