

TANZANIA / JUDGMENT

dow elef international limited vs andrew shadrack mtweve 2 another 2024 tzhclandd 28 22 february 2024

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22 February 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (LAND TA.VISION) AT DAR ES
SALAAM MISC. LAND CASE APPLICATION NO. 677 OF 2023 DOW ELEF INTERNATIONAL
Limited..... APPLICANT VERSUS ANDREW SHADRACK MTWEVE..X.....
1st RESPONDENT THE REGISTERED TRUSTEES OF THE " ANGLICAN CHURCH OF
TANZANIA.....2nd RESPONDENT XINRONG PLASTIC WASTE INDUSTRY
CO.LTD..... 3rd RESPONDENT

RULING

14/02/2024 & 22/02/2024 GWAE, J The applicant, Dow Elef International Limited has brought this application under Order XXXVII Rule 1 (a), XXXV Rule 2 (1) of the Civil Procedure Code, Cap 33, Revised Edition, 2022 against the respondents named herein. The applicant is paying for temporary injunction in respect of land with Title/Plot No. 2089 located Buza, Temeke District in Dar es salaam Region pending hearing and determination of Land Case No. 347 of 2023 pending before the court. i Through an affidavit of one Emanuel Lucas Kazimoto, the applicant's principal officer who is also the owner, it is stated that the applicant entered into a lease agreement with the 1st respondent for various activities including but not limited to cargo storages and that, she paid rent at the Tune of Tshs. 43, 000,000/-. However, according to the applicant, the 2nd respondent has interfered the lease agreement between the applicant and 2nd respondent by unlawfully leasing the same to the 3rd respondent. It is further stated that, the applicant and her workers are now prevented from accessing the land to perform her duties. The applicant's affidavit is also to the effect that if the sought order is not granted the following anticipated irreparable loss shall occur; One, Danger to peace and impending loss of the applicant's items stored in the disputed piece of land (4 acres) land. Two, lost opportunity costs arising not only from money spent but also expectation of full use of the land and third, the 2nd and 3rd respondent may demolish the structures, hence, inevitable making a return to their original form impracticable. On 23rd October 2023 this court (Arufani, J) issued an interim order of maintaining status quo in respect of the disputed land on 23rd October 2023 against the respondents and their agents or any other person working under their instructions pending hearing of this application. The said court's order was followed by the issuance of summons to be

served to the respondents but the record reveals that, they were served through Ward Executive Office on 13th November 2023. Nevertheless, the respondents did not appear in court nor did they file their counter affidavits to oppose the applicant's application as the case in the main case. ‘/I*’ ■ On 14th February 2024 when this application was called on for hearing, advocate Amini Mshana represented the applicant whereas Ms. Jenipher Singala represented the 1st respondent. The 2nd and 3rd respondent did not enter appearance. Mr. Mshana argued this application be granted and added that despite the fact that, the respondents were served with the temporary injunctive order yet they have not complied with it. On the other hand, Ms. Jenipher did not resist this application. Now, it is the duty of the court to ascertain if there are good reasons or required principles in granting the applications of this nature have been advanced by the applicant to justify this court issue temporary injunction pending hearing of main suit. This Court in Tanzania Breweries Ltd. vs. Kibo Breweries Ltd and another (1999) EA 341) with approval with the judicial precedent in Atilio vs. Mbowe (1969) HCD 284 had these to say; Three conditions must be satisfied before a temporary injunction can be issued:- Firstly, that there must be a serious question to be tried on the facts alleged and a probability that the Plaintiff will be entitled to the relief prayed. Second, that the court's interference is necessary to protect the Plaintiff from the kind of injury, which may be irreparable before his legal right is established. Third, that on a balance of convenience, fherd Will be greater hardship and mischief suffered by the Plaintiff from the withholding of the injunction than will be suffered by the Defendant from the granting of it". Being guided by the above-cited judicial precedents and having closely examined the applicant's affidavit, it goes without saying that, the applicant has succeeded in establishing the necessary principles to be able to secure an order of temporary injunction. These are; One, apprehension of triable issues in the main case. Two, anticipated irreparable loss on the party of the applicant if this application is refused. Three, on, the balance of convenience it is more likely, the applicant may to suffer more hardships to the applicant if the application is withheld including the alleged demolition of some valuable properties. Four, I have also considered the clear fact that, I have no any other set of facts opposing this application from the respondent except the applicant's facts and fifth, in the circumstances and interest of preservation of peace and tranquillity among the parties. That done, the applicant is granted temporary injunction pending hearing of the suit (Land Case No.347 of 2023. Costs of this application shall abide the result of the said main case. The respondents, their agents or workers or any other person working under their instritctions!i8r'e therefore restrained from any kind of lease, trespass, interference in any manner whatsoever in land with Title/Plot No. 2089 located Buza, Temeke District in Dar es salaam Region pending the hearing and determination of the applicant's main case aforementioned It is so ordered >■ JUDGE 22/02/2024

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/dow-elef-international-limited-Temporaryinjunction-tanzlii-2024--6a3ea52d3b1caa912982698d

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