

TANZANIA / JUDGMENT

east africa racket sport club v tanzania bulding agency another 2024 tzhclandd 25 16 february 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC LAND
APPLICATION NO. 65 OF 2024 EAST AFRICA RACKET SPORT CLUB APPLICANT Versus
TANZANIA BUILDING AGENCY RESPONDENT ATTORNEY GENERAL 2nd RESPONDENT

RULING

14th to 16th February, 2024 E.B. LUVANDA,J The Applicant mentioned above Is seeking for an interim order commonly mareva Injunction, to pprotect her rights and possible eviction by the First Respondent on the leased pray ground located at Onnela Village, MasakI KInondonI Dar es Salaam Region, pending expiry of ninety days notice to sue. In the affidavit in support of the application, the Applicant grounded that if the injunction Is not granted, she will be evicted from the leased area which will cause her to suffer more Irreparable and unbearable loss since she Invested more than Tshs 200,000,000; there Is ongoing competitions In the leased property which In case of denial of injunction, will cause multiple suits against the Applicant, will cause loss of jobs by the employees on the suit ground where the Appiicant will be sued for unfair termination; the Appiicant made severai improvements on the land including clearing debris and trash to create modernized parking lots, upgraded lightening systems and renovated washrooms. In the joint counter affidavit, the First and Second Respondents stated that the First Respondent issued termination letter after the Applicant failed to comply with the terms of the lease agreement specifically clause 3.11 and 3.12. That the Applicant acknowledged the breach of contract through a letter dated 26/10/2023. That the Applicant agreed to use the second gate and to built a wall to avoid disturbance to the neigbours around, which the Applicant defaulted the same. That the First Respondent gave an offer to the Appiicant to reallocate to another play ground, the Applicant deciined the offer. That the First Respondent stand to suffer more because is having apartments surrounding the play ground with number of tenants, if the Applicant shali continue with chaos on the piay ground, then the First Respondent will loose more than 50,000,000 on her business being one month rent. Mr. Shehzada Walli learned Advocate for the Applicant cited the case of Atilio vs. Mbowe (11969) TLR 17, to support his proposition that there is a triable issue regarding the lease agreement for reasons that the First Respondent without any color of right terminated the agreement and ordered the Applicant to leave the premises, arguing

there is a triable Issue to be determined by the Court on the validity of termination. He cited the case of Abdi Ally Salehe vs. Asae Acrellnit Limited & Two Others, Civil Revision No. 3/2012 CAT. Regarding irreparable loss, the learned Counsel submitted that irreparable loss mean the injury which are substantial or material one that is to say one cannot be adequately compensated for in damages. He cited Cosmos Properties Limited vs. Exim Bank Tanzania, Misc. Civil Application No. 584/2021 HC Dsm, T.A. Kaare vs. General Manager Mara Cooperative Union (1987) TLR 17. He submitted that the Applicant has invested more than 200,000,000, she is hosting international competitions, hence if this order is denied multiple suits shall follow, employees will lose jobs and eventually institute suits against the Applicant for unfair termination. He submitted that the Applicant has collected subscription fees from members who have been promised that they will enjoy the service for the whole term, arguing this has a monetary and reputational damage. Regarding balance of probability, the learned Counsel submitted that the Applicant will suffer more due to several improvements made to the land including clearing all debris and trash to create parking lots and up grading lightening systems. He cited the case of Sigori Investment (T) Ltd & Another vs. Equity Bank Tanzania Limited & Another, Misc. Land Application No. 56 of 2019 HC DSM. In reply, Ms. Lilian M. Irumbe learned State Attorney for the Respondents submitted that the lease agreement between the Applicant and First Respondent was terminated on 17/10/2023. She submitted that there was various meetings between the parties regarding tenancy on the First Respondent where the Applicant was informed that she was in violation of the tenancy use or agreement and the condition for the demised property. She submitted that there is valid termination of the disputed lease agreement, arguing that there cannot be any basis for claim of legitimate expectations for agreement which the Applicant claims before this Court. She submitted that there is no serious question to be tried on the disputed property based on the facts alleged by the Applicant. The learned State Attorney submitted that the First Respondent made efforts in attempt to stop the Applicant from misusing the tenancy agreement, but ended in vain, as the Applicant failed to comply to rules and regulations agreed in the lease agreement where by the First Respondent terminated the lease agreement on 17/10/2023, arguing which fact was acknowledged by the Applicant. She submitted that in order to avoid disturbances and embarrassments to the Applicant, the First Respondent planned to offer another play ground to the Applicant but still the Applicant dishonoured the offer. She submitted that the Applicant is a trespasser who is not entitled to the protection sought in this Court. She cited the case of Lawrence Mageza t/a Jopen Pharmacy vs. Fatuma Omary & Another, Civil Case (sic. Appeal No 333/2019 CAT. She submitted that the termination of the lease agreement was effectively communicated to the Applicant on 17/10/2023, arguing if the Applicant entered into any agreement with his clients while aware that the lease agreement had been terminated, the First Respondent cannot be blamed, arguing the Applicant did it at her risks. She submitted that the Applicant to continue receiving subscription whilst the lease agreement was terminated is unprofessional conduct. She submitted that the Applicant can be compensated by monetary value if the Court will find out that there is any kind of injury/damages inflicted to (sic, suffered) by the Applicant. She submitted that it is the settled principle that irreparable loss is assessed when the Applicant complied with the law and not violating it (British Tobacco(U)Ltd vs. A.G. of the United Republic of Uganda; E.A.). She submitted that the Applicant failed to demonstrate that

they will suffer on irreparable loss If the application Is not granted. She submitted that In this occasion the Respondents will suffer more Injury than the Applicant If the injunctive order will be granted, arguing the Respondent will loose her beneficial tenant surrounding the play ground for the distustance caused by the Applicant. The learned State Attorney submitted that balance of convenience Is completely not In favour of the Applicant, arguing If the application Is granted as prayed by the Applicant, the First Respondent will suffer hardship than the Applicant. She submitted that the First Respondent Is not receiving rent from the Applicant, and the latter does not show any Intention to vacate the property. She submitted that the government Is not receiving any VAT from the Applicant who is occupying the suit premises Illegally. She cited the case of Aihaj Muhidin A. Ndoianga & Another vs. The Registrar of Sports & Sport Association & Others; Taxage (T) Ltd vs. TRA Civil Case No. 119/1998. On rejoinder, the learned Counsel for Applicant submitted that the Respondent argued that there was violation of the agreement while the Applicant argues that there was no any violation whatso over, argued there is a triable issue to be determined. He cited the case of Fantuzzi Investment Ltd vs. Mwananchi Engineering & Contraction (sic). Company Ltd, Misc. Land Application No. 1398/2022 HC DSM. He submitted that the Respondent failed to set out the irreparable loss that she will get if the injunction is granted in favour of the Applicant. He reiterated that the Applicant invested over Tshs 200,000,000/=; is hosting international competitions; employees will lose their jobs, the Applicants have collected subscription fees from members. He submitted that the Applicant is at a greater hardship than the Respondent. He submitted that on the balance of inconvenience it is the Applicant who will suffer more than the First Respondent if this application will be denied. The land mark case of Atilio vs. Mbowe (supra) sets out conditions to be considered by the Court before granting interlocutory injunction;

1. There must be serious questions to be tried on the facts alleged and a probability that, the Plaintiff will be entitled to the relief prayed.
2. That the court's interference is necessary to protect the Applicant from the kind of injury which may be irreparable before his legal right is established.
3. That, on the balance of Inconvenience there will be greater hardship and mischief suffered by Applicant from the withholding of the injunction than will be suffered by the defendants from granting It. Herein the learned Counsel for the Applicant submitted that there are triable Issues regarding the lease agreement, for reason that the First Respondent without any colour of right terminated the lease agreement and ordered the Applicant to leave. In the counter affidavit, the Respondent attached a letter dated 26/10/20223 annexure TB2, which was crafted by the Applicant addressed to the First Respondent in response to the letter by the First Respondent for termination of a lease agreement annexure TB1 to the counter affidavit. Essentially in annexure TB2, the Applicant acknowledged the raised issues and made commitment to address the concerns about their club, at paragraph two it reads; 'We understand thatthe concerns have causedinconvenience to the residents in the vicinity of our dub, and we sincerely apologize for any disruption. We want to assure you that we are committedto resolving theseissuesand workingin harmony with the community" In other

words, this is a concession to the breach of terms and conditions of the lease agreement annexure TB3 to the counter affidavit, specifically clause 3.3.11 which precluded the Applicants to annoy or disturb the lessor or occupiers of any adjoining or neighbouring premises. Therefore in the circumstances where the Applicant breached the terms and conditions of a lease agreement, legally speaking she is not entitled to protection. In other words, on the face of it, there is no any triable issue in so far as the termination of a lease agreement is concerned, this is for obvious reasons that the Applicant has conceded to have been in breach. In that way, it can be said that there is no equitable right to which the Applicant will be entitled. In the case of *Mareva Compania Naveira SA vs. International Bulk Carriers, SA* the *Mareva* (1980) 1 ALL ER 213, cited by the learned Counsel for the Applicant, it was held; 'There is one qualification to be made. The Court will not grant an Injunction to protect a person who has no legal or equitable right whatever. That appears from *North London Railway Co. vs. Great Northern Railway Co.* But subject to that qualification, the statute gives a wide general power to the Court' Therefore I go along with the argument of the learned State Attorney that there is no serious question to be tried on the disputed property or termination of a lease agreement as a case may be. On the second condition, the learned Counsel for Applicant pleaded that the Applicants is hosting international competition, employees will lose their jobs, the Applicant has collected fees from members who were ensured will enjoy the service for the whole term of the fees paid and that the Applicant invested more than 200,000,000/= However, neither in the affidavit nor in the submission in chief the Applicant made a break down or explanation accounting for the alleged investment at the tune of Tshs 200,000,000/= At a certain point in the affidavit, the Applicant asserted that she indulged in making several improvements on the leased premises such as cleaning debris and trash, creating parking lots and upgrade lighting system. Nevertheless the Applicant avoided to say category if those activities could cost such a colossal amount. Be as it may, the Applicant failed to substantiate the alleged investment. Importantly, even if it is assumed that the purported investment and improvement were done or effected, still they can be capable to be atoned by way of damages in case the court will rule in her favour. 10 The Applicant did not state as the alleged international competition will be hosted for how long, neither mentioned a specific dates for commencement or completion. The alleged subscription fees, were not stated an amount paid, neither contract for membership attached nor depicted a number of purported member who alleged contributed. The alleged employees were not stated their total number, remuneration, whether permanent or temporary or day worker. Therefore the Applicant was merely alleging without vindicating the alleged facts. Hence the argument by the learned State Attorney that the Applicant failed to demonstrate that they will suffer irreparable loss if the application is not granted, is taken as a valid argument. I therefore hold a view that balance of convenience tilt in disfavour of the Applicant. This is because the First Respondent's tenants and residents or community at the vicinity are affected by the disturbance and chaos caused by the Applicant's club and operations as per her confession in annexure TB2. The application is dismissed with costs. E. B. VA D >■ s 16/()2/2024 V- 11 ' Ruling delivered in the presence of Mr. Shehzada Waiii learned Counsel for Applicant and

Ms. Edna Mwanguiumba iearned State Attorney from the First Respondent. E.B. LUVA,
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