

TANZANIA / JUDGMENT

GISLA MUSHI TANZLII

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12 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DODOMA SUB REGISTRY AT
DODOMA MISCELLANEOUS LAND APPLICATION NO. 23442 OF 2024 GISLA ANTHONY
MUSHI..... APPLICANT VERSUS MPWAPWA DISTRICT
COUNCIL..... 1stRESPONDE AHMED OMARY
JUMA..... 2ndRESPOND ATTORNEY
GENERAL..... 3rdRESPOND

RULING

Last Order: 12th November 2024 Ruling: 10th December 2024 MASABO,J:- The application before me is for temporary injunction. The applicant is beseeching this court for a temporary injunction restraining the respondents and their agents from entering and meddling with the activities in compartment No. 92 and 103 located at Mpwapwa Bus terminal in Mpwapwa District pending the hearing and final determination of the Land Case No. 21814 of 2024 before this court. The application is supported by an affidavit affirmed by the applicant, Gisla Anthony Mushi, which has expounded the grounds of the application. From this affidavit, it is deciphered that the applicant is an entrepreneur operating in Mpwapwa town. In 2020 to 2023 he entered into a tenancy Page 1 of 9 agreement with the first respondent over the use of compartments No. 92 and 103 both located at Mpwapwa Bus Terminal. Upon execution of the agreements, he paid the rent and complied with all other conditions of the agreement. Surprisingly, in October 2023 the first respondent served her with a letter with reference number HW/MPW/BU/SK/103 notifying her that she has been reallocated from the said compartment. Subsequent thereto, the 1st respondent in total breach of the agreement invaded compartment No. 103, forcefully evicted the applicant and, unjustifiably, allocated it to the second respondent. The efforts to resolve the matter amicably has proved failure hence this application. After being served with the application, the respondents objected it. The first and third respondents raised a preliminary objection to the effect that the application contravened Order XXVII Rule 2(1) of the Civil Procedure Code. However, on 12th November 2024 they abandoned it. Hence, the hearing of the application which proceeded by way of written submissions. All the parties had representation. The submissions for the applicant were drawn and filed by Mr. Samwel Mcharo, learned counsel whereas those of the first and third respondents were drawn and filed by Mr. Omary Ngatanda, learned State Attorney and those of the second respondent were filed by Thomas Nchimbi, Learned Counsel In support of the application, Mr. Mcharo narrated the background above and

submitted that the three conditions for grant of temporary injunction as stipulated in the case of *Attilio vs Mbowe* (1969) HCD No. 284 has been met. As per the first condition, there is a serious arguable case to be tried on the facts because the applicant was forcefully evicted by the first respondent before the expiry of the tenancy. Two, the forceful eviction occasioned serious damages on the applicant's goods. The court's interference is, therefore, necessary to protect the applicant's interests from an irreparable loss before his legal right is established in the main suit. If the injunction is not granted, the applicant will suffer irreparable loss which will not adequately be compensated by an award of damages as stated in the *case of Kaarevs-General Manager Mara Cooperation Union [1924] Ltd* (1987) TLR17. Three, in comparison, there will be greater hardship and mischief suffered by the applicant from withholding the injunction. The applicant is likely to lose clients, appropriate business location, her goods will be destroyed and he will suffer a loss of trust and integrity. The unlawful eviction from the suit property has caused economic difficulties to her business and if not restrained it shall cause irreparable damages to her. Thus, it is in the interest of justice that temporary injunction be granted. In his reply submission, Mr. Nchimbi adopted the counter affidavit to form part of his submission. He proceeded to submit that as per the case of *Attilio vs Mbowe* (supra), three conditions must be satisfied for an application for temporary injunction to be granted, to wit:- a serious question between the parties to be determined by the court; irreparable loss that she is likely to suffer and the balance of convenience. Expounding on the three conditions, he submitted that on this case the temporary injunction should not be granted because the applicant has not managed to prove any of them. On the first condition, he submitted that the second respondent is a bonafide tenant who acquired the suit property after following and complying with all the procedures. He is not a party to the tenancy agreement, if any, between the applicant and first respondent. Thus there is no legal issue to be determined between the applicant and the 2nd respondent. On irreparable loss, it was argued that the applicant has miserably failed to disclose the risk and irreparable loss she is likely to suffer if the injunction is not granted. It was submitted further that, the 2nd respondent has been using the suit property without interruption for almost one year and for all that time, the applicant has not been occupying the compartment. Thus, there is no irreparable loss likely to be suffered. The damage if any is for breach of contract which can be compensated if the applicant obtains a decree in her favour. On the balance of convenience, it was submitted that, comparatively, it is the second respondent who will suffer more compared to the applicant if the injunction is granted because as stated above, the second respondent has been in occupation of the disputed property for more than one year. In all this period, he has been doing business paying rent to the first respondent and all the necessary government taxes. He has invested his capital in the suit property. His investment will be ruined if the injunction is granted. Resting his submission, Mr. Nchimbi prayed that the application be dismissed for want of merit. For the first and third respondents, Mr. Ngatanda submitted that, the criteria for grant of temporary injunction as set out in the case of *Attilio vs Mbowe* (supra) has not been met. The applicant was evicted from the suit property following her failure to comply with the notice to vacate the suit property. The suit premise was allocated to the second respondent following the applicant's noncompliance with the contractual terms. The allegation that the applicant's goods were destroyed is not true as she was given all her goods after the eviction. The

suit is an afterthought. In regard to irreparable loss, it was argued that it is an afterthought and a submission from the bar. It was not disclosed in the affidavit and cannot therefore attract weight. In fortification he cited the case of Paul Mtatifikolo vs CRDB Bank and Others, Land Case No. 89 of 2005, HC (Unreported) Mpegav Auto Link (T) LTD vs John Frederick Musira Misc. Land Application No. 272 of 2022 [2022] TZHC LandD 12491 TanzLII and T.A.Kaare vs General Manager Mara Cooperative Union (supra). Relying on these cases, he submitted that the applicant is no longer operating in the compartments. Thus, she is unlikely to suffer any irreparable loss. The 2nd respondent stands to suffer more if the injunction is granted because, he is the one in occupation of the suit premise. Furthermore, it was submitted that the damages if any will be compensated if the applicant emerges victorious in the main suit. On the balance of convenience, Mr. Ngatanda argued that the submission by the applicant that she will suffer greater hardship and mischief than the respondents because she is likely to lose clients, appropriate business location and goods and integrity is an afterthought and imaginary as all the goods were handled over to her on 23rd March 2024 and she signed an agreement acknowledging their receipt. Also, for a longtime now she is no longer in occupation of the suit premise. The second respondent who is a lawful tenant has been in its occupation since July 2023. Thus, it the 2nd respondent who stand to suffer an irreparable loss. Similarly, the 1st and 3rd respondents will suffer an irreparable loss as they depend on the rent paid Page 5 of 9 by the 2nd respondent for running of their daily activities. He fortified his argument with the case of Richard William Matibu vs CRDB PLC and Two Others Misc. Land Case Application No. 21 of 2022) [2023] TZHC 16901 TanzLII and Abdi Ally Salehe vs ASAC Care Unit Limited & 2 Others Civil Revision No. 3 of 2012 [2013] TZCA 179 TanzLII and prayed that the application be dismissed as the applicant will not suffer a greater injury if the injunction is refused. Lastly, he cited the case of Christopher P. Chale vs Commercial Bank of Afrika, Miscellaneous Application No. 635 of 2017 [2018] TZHC 2538 TanzLII and argued that for temporary injunction to be granted all the three conditions expounded above must be met and since they have not been met in the present case, the application can not succeed. It should be dismissed with costs. Having carefully considered the submissions filed in this court by the parties and after going through the chamber summons, the affidavit in support of the application, the counter affidavit in resistance thereof and the laws applicable, I am fortified that, the issue for determination is whether the application has merits or put otherwise, whether the circumstances of the present application warrant the restraint order sought. Order XXXVII Rule 1 (a) (b) of the Civil Procedure Code, Cap 33 R.E 2019 have been extensively interpreted and its obtaining principles are, therefore, well settled. As held in the landmark case of Attilio vs-Mbowe (supra) which has been consistently followed and applied by this court and the apex court in numerous decisions and which the parties herein have religiously cited, for a temporary injunction to be granted, it must be demonstrated to the satisfaction of the court that, one: there is a serious issue to be tried, Page 6 of 9 second, that the interference is necessary to protect the applicant from irreparable loss and third, that on the balance of convenience, there will be greater hardship and mischief that will be suffered by the applicant if the prayer is not granted. Starting with the first question, it has been demonstrated through paragraph 13 of the applicant's affidavit that there is a pending case in respect of the suit premise which is yet to be determined by this court. Much as the case number is not stated, the court record shows that the original

case pending between the parties is Land Case No. 21814 of 2024. In that case, the applicant is claiming that the first respondent has breached the tenancy agreement by which she leased two compartments. That, subsequently, she was forcefully evicted from the compartment and the same was leased to the second respondent who is now operating his business therein. The 1st respondent on the other hand has ardently argued that the eviction and the subsequent lease of the compartment to the 2nd respondent were well in order as they are rightful measures, taken after the applicant breached the tenancy agreement. The 2nd respondent has admitted that he is indeed occupying the suit premise. From these facts, I am fortified that there exist a serious triable issue between the parties which is now pending determination in Land Case No. 21814 of 2024. The first condition is, therefore, established. As for the second condition, it has to be demonstrated that if the injunction is withheld, the applicant will suffer an irreparable loss, generally understood as a loss which cannot be adequately compensated by an award of general damages (see *Hotel Tilapia Ltd v. Tanzania Revenue Authority*, Page 7 of 9 Commercial Case No. 2 of 2000 HC (unreported) and *Christopher P Chale v Commercial Bank of Africa*, Misc. Civil Application No 635 Of 2017 HC (Dar es Salaam)). In the present case, none of the paragraphs of the affidavit alludes to the irreparable loss that the applicant is likely to suffer if the present application is not granted. As correctly submitted by the respondents' counsels, the anticipated irreparable loss are mere submissions from the bar which do not and should not attract any weight as they are mere afterthoughts. On the last principle of the greater hardship or mischief, the applicant has submitted that, she is likely to suffer more if the application is not decided in her favour. She has submitted that she stands to lose clients, business location, goods being destroyed and loose integrity to her customers. Looking at the whole affidavit and the submissions herein, I am fortified that this too has not been established as it is deciphered that the applicant is no longer in occupation of the suit premise. The same is under the occupation of the 2nd respondent. As the applicant did not dispute this fact, I do not see how, on the balance of convenience, she will suffer more if the injunction is refused. Her submission and prayer would have made sense had she been in occupation of the suit premise which is not the case. Accordingly, I join hands with Mr. Ngatanda and Mr. Nchimbi that it is the 2nd respondents who stands to suffer more if the injunction is granted because he will have to stop his business pending determination of the main suit. Lastly and as rightly submitted by Mr. Ngatanda and Mr. Nchimbi, it is trite that for the application of this nature to succeed all the three conditions must exist (see *Christopher P. Chale vs. Commercial Bank of Africa* (supra). Page 8 of 9 Accordingly, the applicant herein had to demonstrate all the three conditions and since she has demonstrated just one, the application cannot sail. That said and done the application fails and it is dismissed with costs. DATED and DELIVERED at Dodoma this 10th day of December 2024 J. L. MASABO
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