

TANZANIA / JUDGMENT

northern hunting enterprises t ltd vs kibo guides another 2004 tzhccomd 66 16 july 2004

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TZHCCOMDDECIDED
16 July 2004

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM NOTHERN HUNTING ENTREPRISES LTD APPLICANT/PLAINTIFF VERSUS 1.KIBO GUIDES LIMITED 2.TANGANYIKA WILDERNESS CAMPS LTD RESPONDEN-T~NDANTS This application was filed under a certificate of urgency. The applicant prays for inter alia, the following orders:-

1. That this court grant a mandatory injunction ordering the removal of the camps that the respondents have erected within the boundaries of the applicant's two hunting blocks namely Longido Game Controlled area and Burunge Game Controlled area, ..for purposes of conducting tourist activities.
2. That this court grant a temporary injunction restraining the respondents by themselves, their servants or their agents from entering and conducting any form of tourism within the boundaries of the applicant's two hunting blocks ...
3. Costs of this application. When this matter (together with its main suit) came before this court, summons were issued as the procedure is. However the respondents refused to accepUacknowledge service of the same as elaborately stated by the process server, Mjungwa C. Duma's affidavit:- Mimi, Mpingwa C. Duma wa Super Auction Mart \$ court Broker, Mwislam, Mtu mzima wa S.L.P. 45001 Oar es Salaam, ninathibitisha kama ifuatavyo:-
 1. Kwamba Mahakama Kuu ya Tanzania Kitengo cha Biashara siku ya tarehe 8/7/2004 ilinikabidhi SUMMONS FOR APPEAR AND FILING WRITTEN STATEMENT OF DEFENCE ili niwapelekee wadaiwa wa commercial case No.33/2004 ambapo Mdai ni Northern Hunting Enterprises (T) Ltd dhidi ya Wadaiwa wawili ambao ni Tanganyika Wilderness Camps na Kibo Guides Ltd zote za mjini Arusha zikiwa zinapatikana katika anuani moja.
 2. Kwamba siku ya tarehe 9/7/2004 nilikwenda mjini Arusha kwa ajili ya kuzipeleka Summons hizo kwa Wadaiwa. Nilipofika mjini Arusha moja kwa moja nilikwenda katika Mahakama Kuu ya Tanzania kanda ya Arusha kwa ajili ya kupata endorsemenet ya Summons hizo.

3. Kwamba baada ya Summons hizo kuwa endorsed na kwa maelekezo niliyopata kutoka kwa Mdai, nilikwenda katika barabara ya Oljoro katika eneo la Mbanda village zilizopo ofisi za makampuni ya Tanganyika Wilderness Camps Ltd na Kibo Guides Ltd kwa ajili ya kuapa summons hizo.
4. Kwamba nilipofika katika ofisi hizo ambazo zote zipo sehemu moja nilimkuta sekretari wa kampuni hizo. Na nikajitambulisha kwake pamoja na kumweleza dhumuni la mimi kwenda pale. Baada ya kumweleza dhumuni langu pale kwao, sekretari huyo ambaye alikataa katakata kunitajia jina lake, aliniambia kwamba nisubiri kidogo ili yeye awasiliane na Mkurugenzi wake.
5. Kwamba baada ya sekretari wa wadaiwa kuwasiliana na mkurugenzi wake, aliniambia kwamba kapewa maelekezo na huyo mkurugenzi wake kwamba asizipokee summons hizo kwa kuwa madai yaliyopelekwa na mdai mahakamani dhidi yao ni upuuzi mtupu na wao hawako tayari kutoa ushirikiano wowote kuhusiana na swala hilo.
6. Kwamba nilipotaka kumwelewesha umuhimu wa wao kuzipokea summons hizo, sekretari huyo alinifukuza ofisini hapo na kumwita mlinzi wa getini wa Makampuni hayo ambaye alikuja akanikunja shati langu na kunisukumiza nje ya ofisi zao huku akizitupa ovyo ovyo zile summons nilizotaka kuwapa.
7. Kwamba nilirudi Mahakama Kuu ya Tanzania Kanda ya Arusha ambapo nilipatiwa process-server wa mahakama hiyo ili niende nae tena ili labda wakimwona mtu kutoka mahakama ya hapo hapo Arusha wangeweza kuzipokea Summons hizo, lakini process-server huyo aitwaye David Millia alipofika pale katika ofisi za wadaiwa, yule sekretari alikataa kuzipokea summons hizo, na kwa kushirikiana na mlinzi wa makampuni hayo walimfanyia fujo process-server huyo na hata tai aliyovaa wakaichana.
8. Nathibitisha kwamba yote niliyosema ni kweli tupu.
9. Pamoja na kiapo hiki naambatanisha na tiketi za usafiri niliyotumia kwenda Arusha na kurudi Oar es Salaam pamoja na usafiri wa Taxi niliyotumia nilipokuwa Arusha. Therefore when the application came for hearing before me and having considered thoroughly the uncontroverted contents of the above affidavit, I ordered the hearing to proceed in the absence of the respondents. The applicant's prayers are based on the facts before this court as clearly stated in Mohsin M. Abdalla's affidavit. For purposes of clarity, I reproduce the said affidavit hereunder as follows:-
 1. That I am Director of the Applicant Company and therefore conversant with the facts I am about to depone to hereunder.

2. The Applicant Company entered into Agreement with the DIRECTOR OF WILDLIFE of the MINISTRY OF NATURAL RESOURCES AND TOURISM whereby in exchange for valuable consideration the Applicant Company was given rights to conduct tourist hunting within the boundaries of LONGIDO GAME CONTROLLED AREA in ARUSHA REGION and BURUNGE GAME CONTROLLED AREA in MANYARA REGION.
3. That it was an implied term of the Agreement that the Applicant's rights over the two hunting blocks was exclusive and that no other entity would be allowed to conduct tourist hunting or any other form of tourism within the boundaries of the two hunting blocks.
4. That on divers dates the Respondents have entered into the two hunting blocks set up camps and go on to conduct tourist activities from these camps including photographic and walking safaris within the two hunting blocks contrary to the Agreement and the law of the land.
5. That at present the Respondents have erected camps within the two hunting blocks for the purpose of conducting tourist activities.
6. That if the Respondents' camps are not removed and they are not restrained from conducting tourist activities within the two hunting blocks the Applicant will suffer irreparable injury because:-
 - (a) The applicant willnot be able to conduct tourist hunting within the two hunting blocks without the danger of stray bullets injuring and perhaps even killing the Respondents' employees and the tourists that the Respondents will be taking around the hunting blocks at the same time as the Applicant's tourist hunting parties and the Applicant will lose revenue and its reputation will be irreparably injured.
 - (b) The Applicant will not be able to avoid violent confrontations as has occurred in the past between the Applicant's employees and those of the Respondents which will further irreparably injure the Applicant's reputation and clientele. I annex hereto marked NHE - A -1 copies of correspondence detailing previous violent confrontations and clearly showing the damage it has had on the Applicant's business and I crave leave of this Honourable Court to adopt them as forming part of this affidavit.
 - (c) That the Applicant's clients who have booked safaris have threatened to cancel them unless they are given assurances that the Respondents will not conduct tourist activities within the two hunting blocks during the season that commences on the 1st July 2004. I annex hereto marked NHE - A - 2 copies of bookings and I crave leave of this Honourable Court to adopt them as forming part of this Affidavit.
7. That I believe that the inconvenience that the Applicant will suffer if this application is not granted outweighs the inconvenience that the Respondents will suffer if the application is granted because:-

- (a) The Respondents are conducting tourist activities in the two hunting blocks illegally anyway and will not therefore lose any monies in terms of underutilized quotas or overheads.
 - (b) The Respondents can conduct their tourist activities in the National Parks at no extra cost while the Applicant can only conduct its tourist hunting in the two hunting blocks.
 - (c) That the Respondents camps are easily removal without undue inconvenience because they are not permanent structures but consist of only canvas and thatched "makuti" tents.
8. That all what is stated in paragraphs 1 to 7 inclusive is true to the best of my own knowledge. I have carefully considered this application and do concur with the same. Accordingly I grant the prayers sought, namely,
- (1) That the respondents are ordered to remove their camps that have been erected within the boundaries of the Applicant's two hunting blocks namely Longido Game Controlled Area and Burunge Game Controlled Area for purposes of conducting tourist activities.
 - (2) A temporary injunction is granted restraining the Respondents by themselves, their servants or agents from entering and conducting any form of tourism within the boundaries of the Applicant's two hunting blocks mentioned above until the determination of this suit.
 - (3) The Applicant is awarded costs of this application. ~ Sgd: Dr. S. . BWla JU GE 16/7/2004
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