

TANZANIA / JUDGMENT

20130306 TZHC Dar es Salaam

COURT
TZHCDECIDED
6 March 2013

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,, , \ .. p ./;,. ~ IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND
CASE NO. 10B OF 2011 GERALD SEBASTIAN MAGASHI & 20 OTHERS PLAINTIFFS
VERSUS TANZANIA BUILDING AGENCY DEFENDANT

RULING

A.F. Ngwala,J. On 5 th December, 2012, Mr. Balomi the learned counsel for the Plaintiffs prayed for an Order to allow the Plaintiff to continue to occupy the suit premises while this matter is pending in Court because on the 24 th October, 2012 the Plaintiff were evicted from the suit property without the eviction Order or a Court Order that justifies the conduct of evicting them. In Reply Mr. Busamambu, admitted that the defendants had evicted the Plaintiffs from the suit premises because the Order of temporary injunction that was issued on 3 rd July, 2009 had expired. Its life span was only six months. As the Applicants had never applied for extension of time, and there was no Order from 1 'l,, the Court to prevent the Defendant/Respondent from evicting the Plaintiff, they proceeded to do so. Mr. Busamambu, insisted that there is no abuse of the Court process in anyway because the eviction was conducted legally and it was justified In rejoinder Mr. Balomi contended, as the Respondent was aware of the pending Application for determination and they preceded to conduct the eviction without any order to recover rent that act is an abuse of the Court process. In view of the foregoing submissions it is quite clear from the proceedings in record and the defendants counsel submission that after the expiry of the injunction the defendants never renewed the said Order; It is also clear from the Defendants counsel that the Plaintiffs were evicted from the suit premises without the Court's Order. Mr. Balomi is praying that "The applicants Status Quo be maintained by allowing them to continue to occupy the suit premises while the matter is pending in Court, And that the defendants should show cause why they proceeded to evict the Plaintiff while the matter was pending in Court." 2 J In determining the said prayer, in my considered view it is imperative to understand that Interim Orders or Temporary Injunctions are not perpetual. Injunctions last for six months only as provided for Under Order XXXVII Rules 2 & 3 of the Civil Procedure Code [Cap. 33 R.E. 2002] specifically Rule 3 of the said Order that reads as follows:-

3. in addition to such terms as the keeping of an account and giving security, the Court may order grant injunction under Rule 1 and 2 and such order shall be in force for a period specified by the Court but not exceeding svc months. Provided that the Court granting the

injunction may, from time to time extend such period for a further period which in the aggregate shall not exceed one year. Upon being satisfied on the application of the holder of such Court Injunction that the applicant has diligently been taking steps to settle the matter complained of and such extension sought is in the interest of justice necessary or desirable.

3 .J Much as I do not condone the act of the defendant. And I see that their act is purely an abuse of the Court due process, However, in view of the above quoted provision, it is obvious that After the lapse of the statutorily provided period for injunction a party in whose favour the injunction was granted has the duty to renew it or must renew the Order. Short of that the injunction cannot be valid in this case. In the circumstances of this case therefore, the court cannot act upon the prayer without the concerned party having complied with the said provision. Accordingly the prayer to restore the Plaintiffs is not granted, Let the Plaintiffs take a proper cause 1n this matter. It is so ordered. ~) A.F. Ngwala, JUDGE 06/03/2013. Delivered in Court this 06 th day of March, 2013, A.F. Ngwala, JUDGE 6/03/2013. 4 'J 06/03/2013 Coram A.F. Ngwala,J. For Plaintiff/ Applicants All Absent th Except the 9th, 12 , 17 and 4 Defendants who are present th th For Defendants/Respondents : Miss Lesulie Stat Attorney assisted by Lilian Kitosi and Edine Munogulomba from Tanzania Building Agency. Order: 1. Hearing of the Objections on 15/07/2013. A.F4Jt;ia; JUDGE 06/03/2013. 5

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