

TANZANIA / JUDGMENT

MISC

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND APPLICATION CASE No. 19161 OF 2024 W. CARGO AIRLINE
LIMITED..... APPLICANT VERSUS HON. ATTORNEY GENERAL.....
1st RESPONDENT TANZANIA AIRPORT AUTHORITY(TAA)..... 2nd
RESPONDENT

RULING

2nd September, 2024 L. HEMED, J. This Application has been presented before this court by the one W- Cargo Airline Limited under sections 68(e), 95 and Order XXXVII Rule 2(1) of the Civil Procedure Code [Cap.33 R.E 2019. The Applicant seeks for temporary injunctive order that the 2nd Respondent, Tanzania Airport Authority (TAA) be restrained from interfering the Applicant in the suit premises pending determination of the main suit. i The matter has been determined *ex parte* following the respondents' reluctance in filing counter affidavit and or entering appearance despite being duly served. At all the time when the matter was called, Mr. Alex Balomi, learned advocate appeared for the Applicant. When called to address the Court, he prayed the court to adopt the affidavit deposed to support the application. This is an application for temporary injunction, the guiding conditions are those outlined in the case of *Atilio vs Mbowe* (1969) HCD 284. In the said case the court laid down the following three(3) conditions to be considered by the court prior to grant or refuse the application for injunctive

orders:

- i. There must be a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed; ii. The Applicant stands to suffer irreparable loss requiring the courts intervention before the Applicants legal right is established; iii. That on the balance of convenience, there will be greater hardship and mischief suffered by the 2 plaintiff from withholding of the injunction than will be suffered by the defendant from granting it. It has been averred that, the Applicant is the tenant of the 2nd Respondent in the suit premises situated at Julius Nyerere International Airport, within Hala Municipality in Dar es Salaam. The 2nd Respondent has served the Applicant with notice to vacate from the suit premises of which the Applicant challenges it. According to the Applicant, there is a dispute between the parties arising from the Lease Agreement. The

Applicant has asserted that the Applicant acquired possession and thereby significantly improved the said rented premises and that at all the material times had met all the contractual obligations. It has also been stated that if the Applicant is left to be evicted forceful, she will suffer irreparable loss in business. Let me start with the 1st condition on whether in the matter at hand, prima facie case exists. It has been stated in the affidavit supporting the application that there is a dispute between the parties emanating from the lease agreement executed by the parties. The Applicant alleges that the 2nd Respondent has failed to perform its 3 contractual obligation. I am aware that the Applicant has already instituted Land Case No. 17632 of 2024 against the respondents for breach of lease agreement and for specific performance. From what I have observed in the affidavit, prima facie case has been established. The second condition is on whether the Applicant has managed to show that, she will suffer irreparable loss in case injunctive orders will not be granted. The Applicant has stated to have invested heavily in the suit premises and that if evicted he will suffer irreparable loss in terms of loss of business. I have considered the naked fact that the Applicant is a company dealing with airline related business in the suit premises and once evicted it will definitely lose its reputation in business. In my opinion, loss of reputation cannot be compensated through monetary means. It is my firm view, that the 2nd condition has been met. The 3rd condition is on balance of convenient between the parties. In the circumstance of this case, It is the Applicant who is going to suffer greater hardship than the 2nd Respondent if the injunctive order will not be granted. I am holding so because, if the court refrain from granting the application, the Applicant is going to be 4 evicted from the suit premises and suffer the consequences of eviction thereof. On the part of the respondents, if injunctive orders are granted, still they will have the right to be paid the rent claimed (if any). In the final analysis, I find all conditions in Atilio vs Mbowe(sr//ra) have been met cumulatively. In that regard, I proceed to grant the application to the effect that STATUS QUO to be maintained in the suit landed property pending determination of Land Case No. 17632 of 2024. Each party to bear its own costs. Order JUDGE 5

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