IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 65 OF 2023

VERONICA ARCHIBALD MASIMBA (AS AN ADMINISTRATRIX OF THE ESTATES OF THE LATE ARCHIBALD Z.D. MASIMBA ....APPLICANT

VERSUS

THE EASTERN AFRICA STATISTICAL TRAINING CENTER.....1ST RESPONDENT

THE MINISTRY OF FINANCE AND PLANNING.....2ND RESPONDENT

HONORABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

23rd & 3rd April 2023

L.HEMED, J.

The applicant in this matter instituted the application under Sections 68(a), 95 and Order XXXVII Rule 1(a) & (4) of the Civil Procedure Code [Cap 33 RE 2019] seeking for the following orders against the Respondents:-

> *"1. This Honourable Court be pleased to make an order restraining Respondents, their agents, servants, assigns (sic), or whatsoever will be acting*

through them from evicting, disturbing or harassing the Applicant in house No.328 located at EAC Chang'ombe area, Temeke Municipality within Dar es Salaam region pending the hearing and determination of a main suit which is pending before this Honourable Court. (sic)

2. Costs of the Application;

3. Any other order(s) as the Honourable Court shall deem fit, just and equitable to grant."

The application is buoyed by the affidavit deponed by one **VERONICA ARCHIBALD MASIMBA**. The respondents confronted the application *vide* the Counter affidavit deponed by one **DR. TUMAINI M.KATUNZI**, the Principal Officer of the 1st Respondent.

The application was heard orally. During hearing, one **Hadson Mchau** learned advocate duly represented the applicant, while **Mr.Ayoub Sanga**, **Mr. Tomas Maushi**, **Mr. Mathew Fuko** and **Zerafina Gotora** learned state attorneys appeared to represent both respondents.

Submitting in support of the application, Mr. Mchau started by adopting the affidavit deponed by the applicant to form part of his submissions. He asserted that the applicant has complied with the three conditions laid down in **Atilio vs Mbowe** (1969) HCD No.284.

The learned advocate argued that the applicant has stated a *primafacie* case in paragraph 5 of the affidavit supporting the application. According to him, the *primafacie* case of the applicant is having lived in the suit premises for long time' and having renovated the suit premises.' He cemented his point by referring the Court to the decision of this Court in **Salim Mbaruk Mohamed T/A Marifa Meadia vs Registered Trustees of Islamic Culture Schools**, Misc. Land Application No.633 of 2021, that the applicant has to demonstrate existence of the cause of action. He also cited the decision of the Court of Appeal of Tanzania in **Abdi Ally Salehe vs Asac Care Unit Ltd & 2 others,** Civil Revision No.3 of 2012 on the question of establishing ***primafacie*** case.

On the 2nd point that whether the applicant will suffer irreparable loss if the application is not granted, Mr. Mchau was of the opinion that if the application will not be granted, the applicant will suffer an irreparable loss

of losing home. He referred the Court to the case of **Abdi Ally Salehe** (supra).

As to the balance of convenience, Mr.Mchau averred that the applicant is likely to suffer more than the respondents are, if the application will not be granted. According to him the applicant has been in the suit premises since 2003 until the year 2023 when she was required to handover the suit premises to the defendants. It was stated that the applicant has effected enormous development over the suit premises. He was of the view that, if the application will be granted the respondents will suffer no loss. He concluded by praying for the Court to grant the application.

In reply thereof, Mr. Sanga learned state attorney adopted the counter affidavit to form part of his submissions and stated that it is a trite law that parties are bound by their pleadings and submissions of the advocates cannot form party of evidence. He substantiated by citing the case of **Said Sultan Ngalema vs Isack Boaz Ng'iwash & 4 others**, Civil Application No.362/17 of 2021.

With regard to the condition stated in the case of **Atilio vs Mbowe** (supra), Mr. Sanga stated that all conditions must be met for the Court to grant the application for temporary injunction. He fortified his argument by citing the case of **Kibo Match Group vs HS Imprest LtD**[2001] TLR 152.

As to whether a primafacie case has been established, the learned state attorney was of the view that the applicant has failed to establish a *primafacie* case. He contended that in the affidavit that support the application, the applicant has stated that the suit premises were given to her late husband by the 1st Respondent to live therein as he was an employee of the 1st respondent.

Mr. Sanga was of the view that since the applicant has acknowledged in her affidavit that they applied to buy the suit house but was not sold to them, vividly shows that the applicant has no *primafacie* case to warrant this Court grant the application. As to the argument that the applicant renovated the suit premises, Mr. Sanga was of the view that, there is no development/renovation effected by the applicant in the premises, and if at all the applicant did effect the same she did so without the approval of the

owner. In the premises, the learned state attorney submitted that no *primafacie* case had been established.

With regard to irreparable loss, Mr. Sanga contended that the applicant in her affidavit deponed to have renovated the suit premises. He stated that if the Court will find that the applicant had renovated the suit premises, she can be easily compensated money-wise. He cited the case of **Christopher Charle vs Commercial Bank of Africa**, Misc. Civil Application No.635 of 2017 where the Court was of the view that loss that can be compensated financially cannot be said to be irreparable one.

On the question of balance of convenience, the learned state attorney submitted that there is no doubt that the 1st respondent is the owner of the suit premises, the only dispute is for compensation for the alleged renovation. He was of the view that the applicant has been in the suit premises since 2007 and has not been paying rent. Mr. Sanga was of the view that in case interim injunctive order is issued, the respondents will suffer more than the applicant will, because the premises ought to be used by the 1st respondent's staff. To fortify his submissions, he cited the

decision of this Court in **Mwakeye Investment LtD vs Access Bank Tanzania LtD,** Misc. Land Application No. 654 of 2016.

In his rejoinder submissions the counsel for the applicant reiterated his submissions in chief. He stated further that there is a *primafacie* case stated by the applicant which is on ownership of the suit premises. He also added that the loss which the applicant is going to suffer if the application will not be granted will only be compensated by declaring her owner of the suit landed property.

From the submissions made by both counsel, I am at one with them that in every application for injunction, the conditions under which the Court base in determining the application for injunctive orders, are as they were set in **Atilio vs Mbowe (1969)** HCD n. 284. The known principles or conditions are:

> *"1. That, on the facts alleged, there must be a serious question to be tried by the Court and a probability that the plaintiff will be entitled to the reliefs prayed for (in the main suit).*

2. That the temporary injunction sought is necessary in order to prevent some irreparable injury befalling the plaintiff while the main case is still pending.

3. That on the balance of convenience great hardship and mischief is likely to be suffered by the plaintiff if temporary injunction is withheld than may be suffered by the defendant if the order is granted."

In the present matter, there is no pending suit instituted by the applicant in respect of the suit premises against the respondents herein. The application at hand is thus one of **Mareva** lodged under section 2(3) of the Judicature and Application of Laws Act, as the alleged 90 days' statutory notice served to the respondents is yet to expire.

Let me start to address as to whether the applicant has demonstrated a *primafacie* case to warrant grant of the application. In paragraph 5 of the affidavit deponed by the applicant to support the application, it has been stated that the suit premises was allocated to the

late **Archibald Z.D. Masimba** as residential house as he was the employee of the 1st Respondent. In her affidavit, the applicant has confessed that the suit premises was allocated to her late husband on 31st December 2003 by virtue of his employment to the 1st Respondent. In paragraph 7 the Applicant has also stated that on 11th day of October 2022 she wrote a letter to the office of the Chancellor of the 1st Respondent requesting for the purchase of House No. 328. However, on 6th October 2022 the 1st Respondent issued statutory notice requiring the suit premises to be handed over to the 1st respondent.

The applicant seems to challenge the notice issued by the 1st Respondent to her to handover the suit premises. Since the applicant does not claim ownership of the suit premises and she admits that they have been living in the suit premises since 31st December 2003 by virtue of the employment of her husband, I am firm to hold that the applicant has demonstrated no *primafacie* case to warrant grant of the application.

As to whether the applicant may suffer irreparable loss in the event the application is not granted, the applicant has stated in his affidavit in paragraph 10 of the supporting affidavit that she has made some

investment in the suit house No.328 which is about to be handed over by the office of the 1st respondent. The applicant claims to have effected some renovation, fixed aluminum windows, doors, roof and sitting room. In **Kaare vs General Manager Mara Cooperation Union (1924) LTD** [1987] TLR 17 , it was stated thus in respect to irreparable loss:

> *" The court should consider whether there is an occasion to protect either of the parties from the species of injury known as " irreparable" before his right can be established...By irreparable injury it is not meant that there must be no physical possibility of repairing the injury but merely that the injury would be material e.g one that could not be adequately remedied by damages."*

In the present case, the applicant has not stated the injury she will suffer in case the application is not granted. In paragraph 11 of the affidavit she has stated that on 23rd January 2023 the office of the 1st respondent issued another notice to the applicant requiring her to hand over the suit premises. However, she has not stated how the said notice to

hand over the premises is going to affect her. It is my opinion that the applicant in her affidavit has not demonstrated the irreparable loss she is going to suffer in case the Court refuses to grant the application.

Besides, the applicant has alleged in her affidavit to make some investment in the suit premises by fixing aluminum windows, doors, roof, and in the sitting room. The fact that the suit premises is not the applicant's property, if at all she will be evicted from the suit premises then the claims for renovation costs (if any) can be compensated monetary wise.

It is settled law that courts will only grant injunctions if there is evidence that there will be irreparable loss that cannot be adequately compensated by award of general damages. In **Hotel Tilapia Ltd v. Tanzania Revenue Authority**, Commercial Case No.2 of 2000 (unreported) it was stated thus:-

> *"...The object of the temporary injunction is to protect the plaintiff against injury by violation of his right for which he could not adequately be compensated in damages recoverable in the action*

if the uncertainty were resolved in his favour on the trial..."

In the affidavit of the applicant, there is no evidence stated that the applicant will suffer irreparable loss that cannot be adequately compensated by way of damages in case the present application is not granted.

The last condition is the balance of convenience. Generally, the balance of convenience has to be in favour of the party who will suffer the greater inconvenience in event the injunction is or is not granted. In the present case, there is no dispute that the suit premises are the property of the 1st respondent. The premises are used to accommodate staff of the 1st respondent. The applicant is not the staff/employee of the 1st respondent. The premises were allocated to the late husband of the applicant who was the employee of the 1st respondent. In the matter at hand, the applicant will not suffer greater inconvenience if we refuse to grant the application. It is the 1st respondent, the owner of the premises, who is going to suffer much if the application is granted. I have deeply digested the submissions

made by the counsel together with the contents in the affidavits, I am convinced that the application is not fit to be upheld.

In the final analysis, I am aware that in **Rornuald Andrea vs Mbeya City Council and 18 others**, Misc. Civil Application No.32 of 2021 it was held that the conditions set in the case of **Atilio vs Mbowe** (**supra**), must co-exist for injunctive orders to be issued. In the present case, the applicant has failed to meet all the three conditions.

From the foregoing, I find the application to have no merits. I proceed to dismiss it with no orders as to costs. It is so ordered.

DATED at **DAR ES SALAAM** this 3rd day of April 2023.

L.HEMED

JUDGE

COURT: Ruling delivered in the presence of **Mr.Stephene Kimaro** for the respondents also holding brief of **Mr. Hadson Mchau** for the Applicant this 3rd day of April 2023. Right of Appeal explained.

L.HEMED

JUDGE

3/4/2023