

IN THE HIGHCOURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

MISC. LAND APPLICATION NO 474 OF 2019

(Arising from Land Case No. 199 of 2017)

LATIFA HASSAN

ALIBHAI.....APPLICANT

VERSUS

JAYENDRA J AMARCHAND.....1ST RESPONDENT

RAKHEE JAYENDRA JAGJIWAN.....2ND RESPONDENT

RULING

The applicant seeks for an interim injunction restraining the respondents, their assignees, employees, agents and associates from interfering with the applicant's quite enjoyment in the suit premises. The application is by way of chamber summons made under Order XXXVII Rule 2(1) of the Civil Procedure Code, [Cap 33 R.E 2019], supported by an affidavit affirmed by the applicant, LATIFA HASSAN ALIBHAI. The respondents opposes the application and they have filed a joint counter affidavit to that effect.

Briefly, the dispute at hand concerns ownership of the suit property located at Amani Sikukuu Street, Ilala, Dar es Salaam Region. The applicant claim to own the suit property by purchasing the same from Suchack Flats Limited and the respondents claim ownership of the same property. According to the respondents, the applicant is a mere tenant to the suit premises.

The applicant was represented by Mr. Joseph Samwel, learned advocate while the respondents were represented by Mr. Abbriaty Kivea learned advocate.

Submitting in support of the application, the applicant's counsel argued that the respondents are harassing, and abusing the applicant by erecting several swing Pendulums, emitting sewage water and making the corridors of the suit premises impassable thereby causing the applicant's failure to enjoy the suit premises peacefully. He submitted further that there is a triable case between the applicant and the respondent as they all claim ownership of the same property and they have all attached documents that purport to prove their ownership. The applicant claim to have purchased the suit premises from Suchack Flats Limited since March 1998 and has attached to her affidavit, a share certificate No. 3 and receipts issued to her in respect of property taxes and land rent payments over the suit premises.

The learned counsel referred this court to the decision of **Atilio Versus Mbowe** HCD [1969] on the principles governing grant of temporary injunctions. He understands that granting an injunction is the discretion of the court which may be exercised if the applicant has established existence of three conditions as follows;

- A serious question to be tried on the facts alleged and a probability that the plaintiff will be entitled to the reliefs claimed

- That court's interference is necessary to protect the plaintiff for the kind of injury which may be irreparable before his legal right is established
- That on balance of convenience, there would be a greater hardship suffered by the applicant from the withholding of the injunction than would be suffered by the respondent for granting it.

According to the learned counsel's submission the applicant has established existence of a triable issue between her and the respondents and that, there is a probability that the applicant will be granted the relief sought in the plaint due to evidence of ownership that the applicant has attached to this application and the plaint.

He argued also that, court's interference in this case is necessary as deposed in the applicant's affidavit paragraph 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 17. He is of the view that if the application is granted, the respondents will not suffer anything but, if the same is not granted the applicant will suffer irreparable loss much as the respondent will continue harassing her. As to the balance of convenience, he considers the applicant as the one who will suffer the most because the respondents will continue blocking the applicant's entrance to the suit premises.

In his reply submission the respondent's counsel cited the famous Otilio's case and the case of **T.A KAARE Versus GENERAL MANAGER MARA COOPERATIVE UNION (1984) LTD** [1987] TLR 17(HC) on the necessary conditions to be considered by the court before granting a

temporary injunction. The two cases set three conditions as already highlighted in the applicant's submission in chief.

The learned counsel submitted that, the applicant has not met any of the three conditions for her to be granted temporary injunction. He argued that there is no triable case between the applicant and the respondents because there is no dispute that the second respondent is the lawful owner of the suit premises House No. 26 second floor of the flat situated at Amani Street and Sikukuu, Ilala, Dar es salaam comprised under certificate of title No. 31498 as per the copy of the official search dated 28th November, 2017. He argued further that the applicant's husband was a mere a tenant in the suit premises and disputes arose when the applicant's husband passed away. He submitted further that, in her pleadings and submissions, the applicant has irrevocably and unequivocally admitted to be indebted to the respondents.

According to the respondent's advocate, the allegations by the applicant that she purchased the suit premises from SHUCK FLATS LIMITED are not true as the property alleged to have been bought by the applicant is different from the property in dispute. Thus, the applicant will not be entitled to reliefs sought in the plaint.

Arguing on whether courts interference is necessary, he argued that it is not necessary because the applicant will not suffer anything if the application will not be granted. He submitted that it is the second respondent who will suffer loss in case the application will be granted as she will be deprived of her rent and ownership of the suit premises.

The learned counsel is of the view that the respondent will face greater hardship if the injunction is granted than the applicant. He argued that the applicant has refused to pay rent and vacating from the property. Therefore, if the applicant will continue staying in the house, the respondents' life will be tough. He prayed for dismissal of the application with costs.

In his rejoinder submission, the applicant's counsel disputed the respondents' submission that the applicant has admitted to be indebted to the respondents and reiterated his submission in chief.

I have considered submissions made by both parties and the court record. This being an application for temporary injunction, this court need to consider fulfillment of the three conditions for the grant of temporary injunction as articulated in the famous case on injunctions, **Otilio Versus Mbowe** cited above. I will not reproduce the three conditions extensively as the same has been in the submissions by the parties which also form part of court's record. In brief, the three conditions are the existence of a triable case and possibility of the plaintiff to be awarded the reliefs sought, necessity of the court interventions to avoid irreparable loss to the applicant and balance of convenience, that is, whether the applicant will suffer more than the respondent if the injunction order will not be granted.

In the case at hand, both the applicant and the respondents allege ownership over the disputed house and they have all produced documents regarding such ownership. The respondents argued that the documents attached to the applicant's pleadings are not genuine and investigation

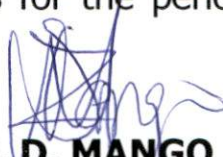
over their genuineness will be conducted. The document alleged to be fraudulently obtained were filed in court on 7th May 2017 and nothing has been initiated on the said investigation. This suggests that probably the documents are not forged and if that is the case there is the possibility that the applicant will be granted the relief sought.

On the second condition, it is the respondents' submission that the applicant has been their tenant for 20 years. This means the applicant has been staying on the disputed premises for all those 20 years. In that regard, if the injunction will not be granted, the applicant might be evicted from the house she believed to hers from the year 1998. In that regard the intervention of this court is necessary to ensure status quo of the suit premise is maintained before the rights of the applicant and the respondent over the suit premises is determined.

This court is of the considered view that granting of the injunction will not cause irreparable damages to the respondents as they will only lose the alleged rent which can be easily remedied if the respondents will be declared lawful owners of the suit premises.

For that reason this court do hereby grant an injunction order against the respondents restraining them from interfering with the applicant's peaceful enjoyment of the suit premises for the period of six months from today. Costs to follow events




Z. D. MANGO
JUDGE
05/11/2020