

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO.211 OF2002

DELPHINA G. PATRICK PLAINTIFF

VERSUS

THE DIRECTOR, TEMEKE
MUNICIPAL COUNCIL DEFENDANT

LUANDA, J.

JUDGMENT

DELPHINA A. PATRICK (hereinafter referred as the plaintiff) instituted a Civil case against THE DIRECTOR, TEMEKE MUNICIPAL COUNCIL (hereinafter referred to as the Deft) for recovery of TShs.18,713,760, being value of her destroyed or/and lost properties upon demolition of her premises, loss of business interest and costs.

The case proceeded ex parte because the defendant failed to file their written statement of defence in time.

The plaintiff's case is to this effect:- The plaintiff used to own a shop at Temeke Mwisho which contained a number of articles. The plaintiff had a business licence issued by the defendant (Exht P1)

Sometime in May 2001 her premises was marked with an X mark. That according to the plaintiff signified that the site on which her premises stood was needed.

She made an inquiry with the defendant. She was assured that the site was not needed.

On 24/7/2001 around 6.00 a.m. she received a telephone call informing her that her shop was demolished and properties taken. she rushed to the scene. Indeed she saw the shop was demolished and properties were no where to be seen. She thus reported to Chang'ombe police. With police, they went to the defendant.

It was discovered that a Deputy Engineer was the one who issued the demolition order. The defendant was prepared to make good the loss. He directed the plaintiff to submit the list of propertise. The plaintiff did that (Exht P2 Annexature) and made a follow up but to no avail. She finally referred the matter to the lawyer who wrote a demand letter (Exht p2)

Last but not least a notice to sue (Exh P5) was written and dispatched to the defendant as mandated by 3.97 of the Local Government (Urban Authorities), 1982. There was no respond, hence filing of this suit.

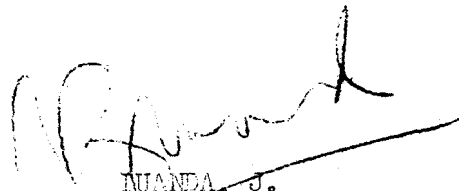
To substantiate her case she produced photographs of her shops before and after the demolition (Exht P3 & P4). The plaintiff is praying for TShs.11,203,700/= as value of her lost goods.

I have carefully gone through the list as well as the pictures. I am satisfied that the amount is not on the high side.

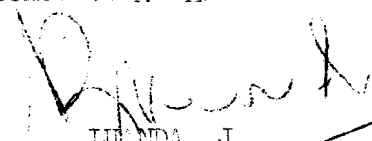
As regards to assets and building, the plaintiff is claiming TShs.2,100,000/-. But she did not say what assets were inside the shop and she did not say how she arrived at that figure. It is a cardinal principle in all civil litigation that he who avers has to prove. The plaintiff failed in this item. Likewise, she did not discharge burden as how she was getting TShs.10,000/= per day.

In the final analysis, therefore, I enter judgement in favour of the plaintiff to the tune of TShs.11,203,700/= plus interest at the court's rate from the date of instituting this case and judgement. Further, from the date of judgement till final payment the principal shall carry interest at bank's rate. The defendant is also condemned to pay costs of this case.

Order accordingly.


LUANDA, J.
JUDGE
23/06/2003

Judgement read over in the presence of Mr Kasikila for the plaintiff and defendant absent.


LUANDA, J.
JUDGE
31/07/2003