

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND CASE NO. 92 OF 2007

DONALD J. MWAKIPESILE.....PLAINTIFF

VERSUS

KIMBEMBE AUCTION MART LIMITED.....1ST DEFENDANT
THE NATIONAL HOUSING CORPORATION.....2ND DEFENDANT

Date of the Last Order: 21/7/2014

Date of the Judgment: 3/9/2014

JUDGMENT

The plaintiff Donald, J Mwakipesile dully represented by Mr. Geoffrey Martin legal counsel has filed a suit against Kimbembe Auction Mart Limited and the National Housing Co-operation (first and second defendants respectively. The second defendant is represented by Mr. Sekule legal officer.

The plaintiff in proving his claims narrated before the court that, he was a tenant in respect of the office premises at the Matasalmat building since 1978 and later transferred to the suit premises situate at plot No. 2311/8 apartment

0108 Samora Avenue. (ID 1 tendered as the allocation letter).

The plaintiff further stated that on 30th August, 2006 the first defendant without any cause at all, wrote him a letter alledging that he had abandoned the suit premises and gave him a 14 days' notice to render vacant possession (letter tendered as ID2).

Having been suspicious of the first defendant's letter, the plaintiff wrote the first defendant a letter requiring the same to confirm whether at all they had been appointed by the second defendant to work on their behalf. Surprising the first defendant has kept quite todate (a letter tendered as ID 3).

Having waited for a long time the plaintiff suddenly travelled to see his children in the U.S.A. While there on or about 7th day of November, 2006 the first defendant at the instance of the second defendant without any court order forced their entry into the suit premises and mercilessly evicted him and took away everything to an unknown place(s). Due to the fact that the plaintiff was outside the

jurisdiction of this country he could not in any way report the matter to any law enforcement agency in Tanzania.

Upon his return from the U.S.A. on 4th day of December, 2006 he was astonished to find new people alledging to be tenants of the second defendant. He also found all valuable documents, filing cabinets, sofas, furniture and money 35,000,000/= missing as everything had been cleared up. He tried to get in touch with the second defendant's branch manager but all in vain. This was due to the fact that they never left behind any physical address. As a result of the whole episode he became traumatized and went through sleepless nights and nightmares.

He has now come praying for the following damages and loss:-

1. Physical Cash 35,000,000/=
2. Properties assets and valuable documents all valued at Tshs. 30,000,000/=
3. Mental anguish and general damages valued at Tshs. 335,000,000/=

Loss of business. The plaintiff further prays for judgment and decree against the defendants jointly and or severally as follows:-

- a) A declaration that the plaintiff is the lawful tenant of the second defendant in the suit premises till February, 2008 renewable
- b) Special damages of Tshs. 65,000,000/= as pleaded
- c) General damages as shall be assessed by the court
- d) Interest on (a) and (b) From the date of the cause of action at the commercial rate of 26% p.a till date of judgment and thereafter at the court rate, of 12% p.a from the date of judgment till full and final payment
- e) Return of and/or compensation of all properties, documents e.t.c removed from the office by the first defendant
- f) Any other or further, orders directions which the court may deem fit in the interest of justice

g) Costs

PW2, CONSTANTINO MOSES CONSTANCE the plaintiff's sole witness narrated of how he had witnessed the plaintiff being evicted from the suit premises. He remembers it was sometime in November, 2006 while clearing his employer's office (Trans Africa Forwarders) that he heard noise from the plaintiff's office. Having rushed to the scene he found the plaintiff's employee (the late Tika) crying out that they were being evicted in absence of her boss and they had forced their way in and taken away all the properties.

The second defendant on the other hand had DW1, Humphrey Kishimbo as the only witness who stated their case as follows:-

The plaintiff was indeed their client as a tenant on plot No. 2311 department 106 Samora. Having not paid rent, they were forced to serve him with a one month notice. There after what followed was a 14 days' notice from the court broker (Exhibit D1). The plaintiff did respond through a letter admitting to be in rent arrears (Exhibit D2) and indicated that he was waiting for money. Having waited for long the

second defendant instructed a debt collector to deal with the plaintiff and the reply was such that the plaintiff was not interested in paying the debt. Moreover the plaintiff had sublet the premises to someone else. In view of the plaintiff's moves the second defendant hired the services of the first defendant to evict him. (collectively Exhibit D4). Having successfully evicted the plaintiff they never found any money in the premises. The plaintiff was not around but they had not been notified his absence from the country.

In regards to the mental torture DW1 clarified that they notified the plaintiff in January and evicted him in November, a time enough for him to have been mentally prepared for anything. In consideration of the testimony of DW1, he prayed the case be dismissed.

Having gone through the evidence as above the issues that were framed by the court were;

1. Whether the plaintiff was a tenant of the second defendant
2. Whether the eviction was lawful.

3. Whether the plaintiff suffered any damages as a result of the defendant's eviction

4. What reliefs are the parties entitled to if any?

Starting with the first issue this should not detain me much as all the evidence of PW1, PW2 and DW1 point out that indeed the plaintiff was the tenant of the second defendant. All the documentary evidence also point out the same.

The second issue is also to be answered in the affirmative as the plaintiff clearly states that he had received the 14 days' notice from the first defendant but was suspicious as to the legality of these people. DW1 also has tendered evidence to the effect that not only was the plaintiff issued with a 30 days' notice to clear his rent arrears but was also issued with an eviction notice of 14 days by the first defendant who had been commissioned by the second defendant. As the law was followed to the letter it suffices to state that the eviction was lawful.

Coming to the third issue, the plaintiff has pleaded mental anguish, loss of business, loss of hard cash, properties and valuable documents.

There is clear evidence from the record that the plaintiff had ample time to deal and settle the matter. There is no evidence to show that he was taken by surprise or even suggesting a sudden action by the second defendant. The plaintiff had been notified well in advance of his rent arrears and ultimately the intended eviction but for some reason he did not clear his rent arrears and left the country without even notifying the second defendant. As to the loss of business this too lacks evidential proof as the plaintiff has not proved of how the defendants actions had interfered with his business. All there is was his default in paying rent of which he had admitted.

The allegation of loss of properties this too is far fetched as the plaintiff had been aware that the first defendant was the one to evict him. He knew where his land lord was (second defendant) but did not bother to follow up as to the whereabouts of the first defendant and preferred to lodge claims to the court.

There is a claim for loss of hard cash 35,000,000/=. Upon the eviction process. To be fair one wonders as to how the plaintiff at the given time could have left such a colossal amount of money in the suit premises. More so as averred by DW1 if the plaintiff had such a huge amount of money how come he could not pay the demanded rent. Even so, it was upon the plaintiff to prove that the said money indeed existed at the time of the eviction. Throughout the trial the plaintiff did not show any proof of the existence of this amount.

Having elaborated as above I answer the third issue in negative.

Lastly, on the issue of reliefs, I find as the second defendant had already evicted the plaintiff and taken possession of the suit premises the matter ended there. On the part of the plaintiff he was facing the music of having occupied the suit premises and not having paid rent and proceeding to desert the premises. It follows therefore the only relief for the plaintiff is to pay for costs of this suit as it stands dismissed for lack of merits.

B.R. MUTUNGI

JUDGE

3/9/2014

Read this day of 3/9/2014 in presence of Plaintiff and in presence of AloyceSekule for the respondents.

B.R. MUTUNGI

JUDGE

3/9/2014