

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

AT DAR ES SALAAM

LAND CASE NO. 46 OF 2012

HAMISI FARAJIPLAINTIFF

VERSUS

NATIONAL HOUSING CORPORATION.....DEFENDANT

Date of last order: 16/02/2018

Date of Judgment: 06/04/2018

JUDGMENT

I. ARUFANI, J.

This suit was filed in this court by Hamisi Faraji praying for judgment and decree to be entered against the defendant for the following reliefs:-

- i) A declaration that the defendant's action of terminating the plaintiff's tenancy agreement with defendant without notice is unlawful, null and void.
- ii) A declaration that the defendant's act of distraining the plaintiff's properties is illegal and the plaintiff is entitled to substantial damages as a consequence thereof.
- iii) An order that the plaintiff's tenancy be restored.
- iv) An order that the defendant pay to the plaintiff the sum of Tshs. 28,000,000/= as damages for non-use of the properties distrained, from the 1st August, 2011 to the date of filing the suit, thereafter pay Tshs. 3,500,000/= per

month, from the date of filing the suit to the date when the properties will be returned or their value compensated.

- v) An order that the defendant return the plaintiff's properties or alternatively, pay Tshs. 204,580,000/= which is their value.
- vi) An order that the defendant pay Tshs. 40,000,000/= to the plaintiff as the plaintiff's loss of earning at a monthly income of Tshs. 5,000,000/= from the 1st August, 2011 to the date of filing the suit, thereafter pay Tshs. 5,000,000/= per month from the date of filing the suit to the date of judgment.
- vii) An order that the defendant refund Tshs. 877,507/= to the plaintiff being extra money paid to the defendant as rent.
- viii) An order that the defendant pay Tshs. 32,000,000/= to the plaintiff as expenses necessarily spent by the plaintiff for the newly rented premises up to the date of filing the suit and thereafter pay Tshs. 4,000,000/= per month up to the date when the plaintiff's properties will be returned or their value compensated.
- ix) An order that the defendant pay general damages to the tune of Tshs. 900,000,000/= or as may be assessed by the court, for illegal distraint and/or trespass to the plaintiff's properties.
- x) An order that the defendant pay general damages to the tune of Tshs. 700,000,000/= or may be stated by the court, as stated in paragraph 21 herein.

- xi) An order that the defendant pay Tshs. 300,000,000/= incurred by the plaintiff as costs of refurbishment.
- xii) An order that the defendant refund Tshs. 4,405,920.00 paid by the plaintiff as key deposit money as stated in paragraph 22.
- xiii) An order that the defendant pay 21% interest on item iv, v, vi, vii, viii, xi and xii above, from the date of filing the suit to the date of judgment and thereafter pay interest on decretal sum at court rate of 12% from the date of judgment to the date of payment in full.
- xiv) Costs of the suit.
- xv) Any other relief(s) that the Honourable Court may deem just.

The brief history of the suit is to the effect that, the plaintiff was a tenant in the defendant's premises located at Plot No. 112 Burundi Street, Oysterbay Dar es Salaam (Hereinafter referred to as the demised or suit premises) from the year 2007 up to 30th day of July, 2011 when the tenancy agreement was terminated by the defendant. The plaintiff averred in the plaint that, in 2009 the defendant permitted him to renovate the suit premises which increased its value and changed its use from residential to commercial. He averred further that, on 20th day of July, 2011 the defendant issued to him the rent Tax Invoice for Tshs. 8,622,493.30 and the plaintiff paid the same on the same date together with excess of Tshs. 877,505.00.

The plaintiff stated that, on 1st day of August, 2011 he was denied access to enter into the demised premises and informed his tenancy had been terminated. The plaintiff was aggrieved by the termination of the agreement as he was not issued with notice to terminate the agreement and his properties were unlawfully distrained by the defendant. He said that, despite his oral and written request for his properties to be released but were not released.

The defendant disputed the claims of the plaintiff and averred that, the plaintiff's lease agreement was for two years renewable by issuing one month notice before expiration of the lease agreement. The defendant stated that, the plaintiff's lease agreement expired on 31st day of January, 2011 and the plaintiff did not renew the same. The defendant stated that, after expiry of the lease agreement the plaintiff continued to be in the suit premises without renewal of the lease agreement. The defendant stated that, on 12th day of April, 2011 the plaintiff was issued with notice requiring him to pay the accumulated arrears of house rent within thirty days but he paid the same after the elapse of thirty days.

The defendant stated further that, after the plaintiff failed to renew the lease agreement and failed to pay the accumulated arrears of house rent within the time stipulated in the rent Tax Invoice the defendant recognized the Superior Financing Solution Limited who was subtenant of the plaintiff as a new tenant from 1st day of July, 2011 and allocated the tenancy agreement to the said new tenant.

The defendant denied to have distrained the properties of the plaintiff and denied all other claims of the plaintiff and prayed the same to be dismissed with costs. During the hearing of the suit the plaintiff was represented by Mr. John Kamugisha, learned advocate and the defendant was represented by Mr. Tazan Keneth Mwaiteleke, learned advocate. In the course of hearing the suit and before the defendant closed his case the plaintiff passed away and one Rashid Faraji was appointed to be administrator of the estate of the late Hamisi Faraji. The issues proposed for determination in this matter are as follows:-

1. Whether the plaintiff lease agreement was illegally terminated by the defendant.
2. Whether upon termination of the plaintiff's lease agreement the defendant distrained the plaintiff's properties in the suit premises as alleged.
3. Whether the plaintiff renovated the suit premises as alleged.
4. If issue number 3 is answered in affirmative whether the alleged renovation was made after obtaining the defendant's consent.
5. Whether the plaintiff sublet the suit premises as alleged by the defendant.
6. Whether the plaintiff suffer damages as alleged.
7. What reliefs are the parties entitled to.

The plaintiff testified in this matter on his own as PW1 and told the court that, he had tenancy agreement with the defendant from

2007. He said the house he rented from the defendant was for the residential use and he paid Tshs. 375,000/= to the defendant as a key deposit. The plaintiff said that, later on he applied to change the use of the premises from residential purpose into commercial and his request was accepted by the defendant and required to pay Tshs. 3,700,800/= as key deposit. After paying the said amount of key deposit he was allowed verbally to use the suit premises for commercial purposes and he operated the business of lending money in the suit premises through the company known as Easy Finance Limited.

He said to have continued with the business up to 2011 when he went to the defendant's office to ask for his outstanding rent and he was told by the staff of the defendant that, his tenancy agreement had been terminated and he was required to see the branch manager. The plaintiff said that, after going to the branch Manager he was told the same story by the branch Manager and when he asked for the reason for termination of his tenancy agreement he was not availed with any reason. He said that, from there he was restrained to enter into the suit premises to continue with his business and security guards were placed on the premises who told him he was not allowed to enter into the suit premises. He said to have written four letters to the defendant requesting to take his assets from the suit premises or be informed if they had been confiscated but he didn't get any reply. He tendered the letters annexed to the plaint as MKB 3 and MKB 4 and all of them were admitted in the case as an exhibit P1 collectively.

He said to have left his office furniture and other equipment in the suit premises which are listed in the plaint and its total value is Tshs. 204,580,000/=. The plaintiff said he was not issued with notice to vacate the premises and when his tenancy agreement was terminated he had no any rent arrears. He said on 20th day of July, 2011 he paid Tshs. 9,500,000/= being rent for May, 2011 to August, 2011. He tendered to the court the receipt of paying the rent which are annexed to the plaint as annexure MKB 1 and the same were admitted in the case as an exhibit P2 collectively. He said he was issued with demand notice of paying rent of up to July, 2011 but he paid together with part of the rent of August, 2011.

He testified further that, after being granted permission to change the use of the suit premises he renovated the same by using Tshs. 300,000,000/=. He said the defendant was aware of the said costs. He said he has suffered damages because he was not allowed to proceed with his business in the suit premises hence he lost the income he was getting and his assets were distrained in the premises. He said he was affected psychologically and his reputation was lowered as he was removed from the suit premises. He said he was expecting to stay longer in the demised premises to recover the costs he used in renovating the demised premises and prayed the defendant to be ordered to pay him the reliefs claimed in the plaint.

When he was cross examined by the learned counsel for the defendant he said his last lease agreement with the defendant was

for three years from 2009 to January, 2011. He said further that, after the lease agreement come to an end he applied for another lease agreement and paid rent while awaiting to be given another lease agreement. He said further that, the lease agreement ended on 31st day of January, 2011 and when he requested to renew the same he was allowed orally. He said the Easy Finance Limited started work in 2007. He said he was the shareholder in the company together with Aloyce Mandago and Issack Kasanga who was the Chief Executive Officer of the Easy Finance Limited. He said if notice to vacate the premises was received by Chief Executive Officer it was wrong. He said it is true that there was conflict between him and Issack Kasanga and one Gonzaga. He also said there was misunderstanding between himself and his partner.

Upon being cross examined further the plaintiff said that, he had a debt of Tshs. 8,622,000/= but he paid Tshs. 9,500,000/=. He said he was getting allowance of Tshs. 5,000,000/= as the Director of Easy Finance Limited and said all the documents in respect of the said payment were distrained in the suit premises. He said he got loss as he injected capital into the Easy Finance Limited. He denied to have sublet the premises to any other person and said the defendant raised rent after doing renovation to the demised premises. He said he prayed to be restored to the premises by the defendant without success and denied to know the Superior Financing Solution Limited.

Benit Nicolous Masika testified on the defendant side as DW1 and told the court that, he is an employee of the defendant and on May, 2008 he was an Estate Officer and he was appointed to be the Regional Manager for the defendant's Kinondoni Region from November, 2013. He said he know the plaintiff as he was their tenant in the demised premises from 2007. He said their first contract was for five years and the suit premises was being used for residential purpose. He said that, later on the plaintiff requested to change the use of the premises from residential into commercial use and his requested was accepted. He said they entered into contract of two years commencing from 1st day of February, 2009 and ending on 31st day of January, 2011 with the plaintiff to use the suit premises and copy of the lease agreement for that period was admitted in the case as an exhibit D1.

He told the court that, after expiration of the said lease agreement the plaintiff was not given another lease agreement because the plaintiff did not request the lease agreement to be renewed. He said the plaintiff was supposed to write a letter to the defendant at least one month before the last date of the existing lease agreement to request for renewal of the lease agreement but he didn't do so. He said the plaintiff continued to stay in the premises without any extension and to date he has never requested for extension of the tenancy agreement. He said the rent which the plaintiff was required to pay per month was Tshs. 1,737,760/= including VAT. He said the plaintiff stopped to pay rent from April, 2011 as a result the

defendant issued him with notice to terminate the lease agreement which was admitted in the case as an exhibit D2.

He testified further that, the plaintiff was required through exhibit D2 to pay the rent arrears of two months which was Tshs. 3,431,648.90 but he didn't pay even a single cent. He said after the period given to the plaintiff expired he was invited in their office for discussion about the arrears of rent but he didn't pay any rent up to June, 2011. DW1 tendered to the court the statement of all payment made by the plaintiff to the defendant and the same was admitted in the case as an exhibit D3. He said exhibit D3 shows the debt of the plaintiff together with the penalty up to the 1st day of July, 2011. He said the total debt was Tshs. 8,622,493.30 while rent was supposed to be paid every month. He said on 20th day of July, 2011 the sum of Tshs. 9,500,000/= was paid in the account of the plaintiff but they don't know who paid the same.

DW1 said that, after the said payment being made the defendant deducted its debt and when they made a follow up to the suit premises they found the plaintiff had sublet the suit premises to Superior Financing Solution Limited on the terms known to the plaintiff himself. He said the defendant decided to lease the suit premises to the above mentioned tenant who was found in the suit premises. The lease agreement entered by the defendant and the above new tenant was admitted in the case as an exhibit D4.

DW1 said that, when the plaintiff made the above mentioned last payment the defendant had already leased the suit premises to the Superior Financing Solution Limited who was found in the suit premises. He said the defendant did neither evict the plaintiff nor entered a new tenant in the premises but it recognized the tenant who was found in the suit premises. He said they don't recognize any refurbishment alleged to have been done to the demised premises by the plaintiff. He said they didn't put watchmen in the premises as that is not their duty. DW1 said that, apart from non-payment of the rent the plaintiff also sublet the premises to somebody else and failed to apply for renewal of the lease agreement.

When DW1 was cross examined by the learned counsel for the plaintiff he said that, exhibit D3 shows the plaintiff was their tenant from 12th day of March, 2007 up to 20th day of July, 2011. He also said that, the rent of July, 2011 was paid together with other rent arrears and excess of Tshs. 877, 506.70 and said there is no any other unpaid debt they are claiming from the plaintiff. He said it is true that the plaintiff requested to change the use of the house from residential into commercial and the request was accepted. He said he don't know the business the plaintiff was doing in the suit premises. He said further that, when the plaintiff paid the last rent he knew he had already breached the agreement and said the amount paid in excess is in their possession. He stated that, the tenancy agreement of the plaintiff was terminated officially on 30th day of June, 2011 hence the plaintiff was not supposed to pay the rent of August, 2011.

DW1 said that, when they went to inspect the house they found the people who introduced themselves as the workers of Superior Finance Solution Limited while the plaintiff had written to them he wanted to do business in the suit premises in the name of Easy Financing Limited. DW1 said that, the letters contained in exhibit P1 were addressed to the Director of Property Management of the defendant and said they have not seen the said letter and discussed the same. He said the money paid as key deposit is returned to the tenant if there is no unpaid rent or any damage to the house. He said he don't know if the plaintiff has been refunded the money he paid as key deposit and said what the plaintiff is supposed to do is to take his receipt to the defendant so that he can be refunded his money.

Another witness testified on the side of the defendant is Salha Issa Mswazi, DW2 who told the court that, she is working as a secretary in the Superior Financing Solution Limited which its office is in the house of the defendant located at Burundi Street in Kinondoni District. She said to have started working in the mentioned company from March, 2011 and she remember to have received a letter from the defendant on April, 2011 which had been addressed to Hamisi Faraji. She said that, after receiving the letter she entered the same into their register book and took it to her boss who was Issack Kasanga. When the letter admitted in the case as an exhibit D2 was shown to her she identified the same as the one she received in her office.

When DW2 was cross examined by the learned counsel for the plaintiff she said that, the company where she is working deals with business of lending money to different customers and when she was employed she found tables and Air Condition in the office. She said to have found about five staffs in the company who were Mikidadi, Rutihinda Abdallah, Abeid Issa, a watchman whom she don't remember his name and herself. She said to have managed to know the letter was addressed to the plaintiff and was a notice to vacate the premises as she opened the same. She said the letter was brought to their office by a person from the defendant's office and it was brought by dispatch book and said she didn't know the plaintiff.

After both sides closed their evidence the counsel for the parties prayed and allowed to file their final submission which they duly filed within the time and I commend them for very brilliant and well-articulated submission which will assist the court to a very great extent in determining the issues framed for determination in this matter. However, to avoid unnecessary repetition of what they have stated in their submission I will not reproduce what they have stated therein in this judgment but I will be referring to them in the course of determining the issues which this court is required to determine in this matter.

Now starting with the first issue which is asking whether the plaintiff's lease agreement was terminated by the defendant illegally the court has found the plaintiff is averring that, the termination of

the lease agreement was unlawful as he was not served with notice to terminate the agreement. On the other hand the defendant is maintaining that, the termination of the lease agreement was lawful because the tenancy agreement with the plaintiff expired from 31st day of January, 2011 and he didn't request the same to be renewed after its expiry. They maintained further that, the plaintiff failed to pay the rent as required by the terms of the lease agreement.

After considering the evidence adduced before the court by the parties and the rival submission from the learned counsel for the parties in relation to the first issue the court has found that, the last tenancy agreement between the parties in this matter is that of two years which commenced from 1st day of February, 2009 and expired on 31st day of January, 2011 which its copy was admitted in the case as an exhibit D1. The evidence of the plaintiff in relation to the first issue is that, after expiration of the lease agreement he applied for renewal of the lease agreement and he was allowed orally to continue with the tenancy and he proceeded to pay the rent while awaiting to be given the new lease agreement.

Despite the fact that the plaintiff said in his evidence he continued to pay rent while awaiting to be given another lease agreement but he didn't adduce any evidence before the court to show he was allowed orally to continue with tenancy and he was paying rent on time after expiration of the last lease agreement. The court has found as rightly submitted by the learned counsel for the

defendant the evidence adduced before this court by DW1 which was supported by exhibits D2 and D3 shows that, up to April, 2011 the defendant was claiming the sum of Tshs. 3,431,648.90 from the plaintiff and up to the 1st day of July, 2011 the arrears of rent had raised and reached Tshs. 8,622,493.30.

Although the court was told the plaintiff paid the sum of Tshs. 9,500,000/= which cleared all the rent arrears the defendant was claiming from him and paid the excess of Tshs. 877,507/= but as indicated in exhibit P2, D2 and stated by DW1 the said amount was paid on 20th day of July, 2011. This shows that, although the plaintiff continued to stay in the premises after expiration of the lease agreement and without renewal of the expired lease agreement but he defaulted to pay the rent which as stated by DW1 and indicated in exhibit D1 was supposed to be paid on each month.

Despite the above finding of the court that the plaintiff breached the terms and conditions of the lease agreement by failing to renew the lease agreement and default to pay the rent on time but the plaintiff's main argument as put by his learned counsel in his final submission is that, the termination of the lease agreement between the plaintiff and the defendant was illegal because the plaintiff was not served with notice of terminating the lease agreement as required by the law. The learned counsel for the plaintiff referred the court to Subpart 4 of Part IX of the Land Act, Cap 113, R.E 2002 which governs the issues relating to the remedies and reliefs arising from

leases. This part of the law explain the circumstances upon which a lessor can exercise a right to terminate a lease agreement and what procedure is supposed to be followed in terminating the lease agreement. Section 101 (2) of the said law states that, after the commencement of the Act, a lessor may terminate a lease for non-payment of rent or for breach of any covenant in accordance with the provisions of that subpart of the law.

Section 104 (1) of the above law states that, where a lessor want to terminate the lease agreement on ground that the lessee is in arrears of rent for a period which is not less than thirty days the lessor is required to serve the lessee with a notice of intention to terminate the lease. The mode of serving the notice provided under section 106 (5) of the same subpart of the law requires the service of notice to be effected in person or by registered post address of the lessee physically and where is evading the notice or cannot be served because of any reason the service to be effected by affixing the copy of the notice in a conspicuous place or publish the same in a newspaper circulating in the country.

Now in the case at hand while the plaintiff is denying to have been served with the notice of terminating the lease agreement the defendant through DW1 is maintaining that, the plaintiff was served with notice of intention to terminate the lease agreement dated 12th day of April, 2011 which was admitted in the case as an exhibit D2. As testified by DW2 the said notice was served to her and after

receiving the same and entering it in their register book she took the same to her boss Issack Kasanga. Despite the fact that section 106 (5) of the above referred law provides for the mode of serving the notice of terminating the lease agreement but the court has found that, the lease agreement of the parties admitted in the case as an exhibit D1 contain a clause which is showing the parties agreed on how the notices relating to their lease agreement should be served to each of them. The said clause is number 16 and it states as follows:-

“Any notice to be given under this lease may be given by sending the same by post, by the quickest mail available, by hand, by telex, fax addressed to the party concerned at its last official address as provided in this agreement.”

In the light of the wordings of the above clause of the parties' lease agreement it is the finding of this court that, the parties agreed in their lease agreement that, notices relating to their lease agreement should be served to each of them in the above stated modes which one of them is by serving the notice by hand to the last official address of the party. As stated by DW1 the notice to terminate the lease agreement was issued on 12th day of April, 2011 and served to the plaintiff through his last known place of business and received by DW2 who was working in the premises where the plaintiff was doing his business. Since the clause is not saying the notice must be served to the party in person or physically but to be served through his last official address the court has found that, the service which

was done through the last official place of business of the plaintiff cannot be said it did not meet the agreement of the parties stated in the above referred clause.

The court has come to the above finding after seeing that, despite the fact that there is no evidence adduced to establish Issack Kasanga who was handed the notice transmitted the same to the plaintiff but the plaintiff did not state if he had informed the defendant he had any other official address which would have been used to serve him the notice or informed the defendant the notices addressed to him should not be served to him through the demised premises which he had rented from the defendant and he was carrying on his business. Since the plaintiff was a tenant in the premises where the notice was served as he was doing his business in the said demised premises it cannot be said he was not served with notice to terminate the lease agreement because the notice was served to him through his last official place of business.

As for the argument that, the lease agreement of the plaintiff was terminated at the time when he had already paid all the rent and advance of Tshs 877,505/= as he paid Tshs. 9,500,000/= while the rent arrears up to the end of July, 2011 was Tshs. 8,622,493.30 the court has found it cannot be taken as a ground of finding the lease agreement was terminated illegally because as stated in the case of **TANESCO V. Muhimbili Medical Centre** [2003] TLR 276 acceptance of payment of rent due after issuing notice of termination of tenancy

agreement cannot operate as a waiver of the notice to terminate the lease.

Having find the arguments by the plaintiff and his learned counsel that the plaintiff was not served with the notice to terminate the lease agreement by the defendant and when the lease agreement was terminated he was not in rent arrears have no merit the court has found that, as the court has already find the plaintiff's lease agreement expired on January 2011 and it was not renewed and up to when the notice was written to him on April, 2011 and up to July, 2011 he was in arrears of rent of Tshs. 8,622,493.30 the court has found it cannot be said the termination of the lease agreement by the defendant was illegal. From all what has been stated hereinabove the court has found the answer to the first issue is supposed be in negative.

Coming to the second issue which is asking whether the defendant distrained the properties of the plaintiff in the suit premises, the court has found the plaintiff listed in paragraph 14 of the plaint the properties which he alleged were distrained in the demised premises and said its total value is Tshs. 204,580,000/=. The court has found that, apart from the bear averment and assertion by the plaintiff in his testimony that he had the mentioned properties which worth the stated value in the demised premises but there is no any other evidence adduced before the court to prove the existence

of the mentioned properties in the demised premises and they worth the mentioned value.

Though the plaintiff said in his testimony that, the receipts for buying the said properties and other documents were distrained in the suit premises but he didn't even bother to call any of the person who was working in his company of Easy Finance Limited to support his evidence that he had the mentioned properties in the leased premises and they had the stated value. The court has also find it was not even proved how the value indicated in the mentioned properties were arrived. It was not stated if it was its purchasing price or was just an estimate of their value. The court has also find as rightly stated by the learned counsel for the defendant the plaintiff did not bother to join the Superior Financing Solution Limited which the plaintiff stated in his letter dated 5th day of August, 2011 admitted in the case as part of exhibit P1 that, the defendant decided to hand over to them the house with assets so that they can tell the court if the properties mentioned by the plaintiff were in the suit premises at the time of entering into the demised premises as a new tenant.

Since the plaintiff was of the view that the house and his properties were handed to the mentioned new tenant then he ought to have call any person from the said new tenant or joined them into the matter to explain where is about of his properties which were in the demised demises. The court has considered the argument by the

learned counsel for the plaintiff that, the defendant was supposed to call the said new tenant to testify before this court and come to the view that, as correctly submitted by the learned counsel for the defendant the duty to call the said witness was on the plaintiff as he was the one alleged his properties were distrained in the demised premises which was leased to her. The above view of this court is based on section 110 (1) of the **Evidence Act**, Cap 6 R.E 2002 which states that:-

“Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

Therefore to argue the defendant is the one who was supposed to call the subtenant found in the suit premises for the purpose of establishing the properties of the plaintiff were distrained in the leased premises by the defendant is to turn the burden of proof stated in the above provision of the law into the other way round. As stated in the case of **Lamshore Limited and Another V. Bizanje K. U. D. K**, [1999] TLR 330 referred by the counsel for the defendant in his submission the duty to prove the alleged facts is on the party alleging its existence. The above position of the law was also observed by the former East African Court of Appeal in the case of the **East African Road Services Ltd V. J. S Davis & Co. Ltd** [1965] EA 676 at 677 cited in the submission of the learned counsel for the defendant where it was stated that:-

“He who makes an allegation must prove it. It is for the plaintiff to make out a prima facie case against the defendant.”

As the plaintiff has failed to bring sufficient evidence to proof he had all the properties mentioned in the plaint and worth the mentioned value then it is the finding of this court that, it cannot be said the second issue framed for determination in this case can be answered in affirmative.

With regards to the third and fourth issues which are centering on the issue of renovation of the demised premises the court has found that, though the plaintiff stated in his testimony that he applied to renovate the demised premises and allowed but what is featuring in the evidence of the plaintiff and DW1 is that the plaintiff sought and allowed by defendant to change the use of the demised premises from residential into commercial use. There is nowhere DW1 said the plaintiff was allowed to renovate the demised premises but DW1 said he was allowed to change its use from residential into commercial. If it will be accepted the plaintiff was allowed to renovate the demised premises then it is obvious the alleged renovation was done contrary to what is provided under clause 6 (a) of exhibit D1 which requires renovation of any type to be done after obtaining a written consent from the defendant.

The court has arrived to the above view after seeing the said clause requires consent for any renovation of the demised premises

to be given by the defendant in writing and the plaintiff has not said in his testimony if he got the written consent from the defendant to do the alleged renovation. Apart from lack of evidence to establish availability of the written consent for the alleged renovation the court has also considered the magnitude of the renovation alleged to have been done by the plaintiff in the demised premises which costed him Tshs. 300,000,000/= and come to the finding that, as rightly submitted by the learned counsel for the defendant that renovation would have not been done without obtaining permit from the relevant Government Authority and employ manpower for doing the said work. The court has found that, if he did the alleged renovation why he didn't bring evidence of showing he obtained the permit of doing the alleged renovation to the demised premises from the relevant authority or call any the technician or labourer who did the work of renovation to support his evidence.

The above questions which the court has found have not been answered by the evidenced adduced before this court by the plaintiff have caused the court to find it cannot be said the plaintiff has managed to prove he renovated the demised premises by using the amount of renovation costs stated in the plaint. It is also the view of this court that, even if he renovated the demised premises for the purpose of changing it from residential use into commercial use but there is nowhere he stated he had agreed with the defendant that he would have been entitled to continue to stay in the demised premises as a condition for the renovation he did in the suit premises. It is

from the above reason the court has found there is no sufficient evidence to establish the third and fourth issues can be answered in affirmative.

Coming to the fifth issue which is asking whether the plaintiff sublet the suit premises the court has considered the defendant's averment that the plaintiff sublet the suit premises without her permission which is contrary to Article 8 of the lease agreement and come to the finding that, despite the fact that the plaintiff denied to have either sublet or know the Superior Financing Solution Limited but the court has found there is evidence which shows the said company entered into the suit premises even before the defendant terminated the plaintiff's lease agreement. The evidence of DW2 who said to be the secretary of the Superior Financing Solution Limited which is the tenant found in the suit premises by the defendant shows that, she started work in that company from March, 2011 when the plaintiff was still a tenant in the suit premises.

It was stated by DW2 that, the boss of the Superior Financing Solution Limited was Issack Kasanga who the plaintiff said in his evidence was the Chief Executive Officer of his company Easy Financing Limited which was doing the similar business of lending money in the suit premises after the plaintiff being allowed to change *the use of the suit premises from residential to commercial*. Since the plaintiff was the tenant in the suit premises and Director of Easy Financing Limited which was carrying its operation in the suit

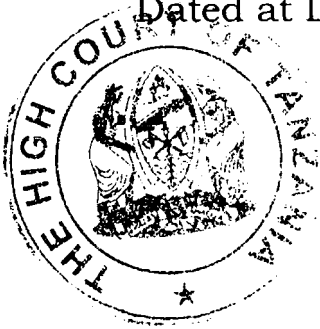
premises there is no way it can be said the mentioned new company would have entered into the suit premises and carried on its business therein without the knowledge of the plaintiff or being sublet the suit premises by the plaintiff.

Under that circumstances the court has found the averment by the defendant that the plaintiff sublet the suit premises to the Superior Financing Solution Limited which is contrary to Article 8 of their lease agreement has not been disproved. This make the court to find the fifth issue is supposed to be answered in affirmative.

Coming to the sixth issue which is asking whether the plaintiff suffered damages as alleged the court has found as all the subsequent issues have been answered in negative it is as the day follow the night that it cannot be said the plaintiff has managed to establish on balance of probability as required by the law that, he suffered any damage. As for the last issue of the reliefs the parties are entitled the court has found the reliefs which can be awarded to the plaintiff is to order the refunded of the money he paid in excess of the arrears of rent he was supposed to pay up to when the lease agreement was terminated which is Tshs. 877,505/=. The court is also ordering the plaintiff to be refunded the money he paid to the defendant as key deposit at the tune of Tshs. 4,405,920/= as it has not been stated there is any damage caused to the demised premises or there is any arrears of rent which has not been paid. The rest of

the claimed reliefs are hereby dismissed in their entirety with no order as to costs. It is so ordered.

Dated at Dar es Salaam this 6th day April, 2018



I. Arufani
I. ARUFANI
JUDGE
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