

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

LAND APPEAL NO. 32 OF 2018

(Arising from Misc. Land Application No. 43/2018 of the District Land
and Housing Tribunal for Tabora)

**TABORA MUNICIPAL
COUNCIL.....APPELLANT**

VERSUS

**AMANI LAURENT.....1ST RESPONDENT
CLEMENT MSELE.....2ND RESPONDENT
YUDA JOSEPH OTARU.....3RD RESPONDENT
BABUU MWACHA.....4TH RESPONDENT
MMARY KALLY.....5TH RESPONDENT
K. K LORRY.....6TH RESPONDENT**

JUDGMENT

Date of Last Order: 10/02/2021

Date of Delivery: 19/02/2021

AMOUR S. KHAMIS, J:

This appeal arises out of a ruling of the District Land and Housing Tribunal for Tabora in Miscellaneous Land Application No. 43 of 2018.

In that application, Amani Laurent, Clement Msele, Yuda Joseph Otaru, Babuu Mwacha, Mmary Kally and K. K

Lory moved the district tribunal for an order to restrain the Tabora Municipal Council from demanding rent and closing or interfering with their shops till 31/05/2022 at the expiry of the agreements.

The applicants further sought an order for declaration that Tabora Municipal Council was in breach of the agreement signed on 31/05/2012 and payment of Tshs. 5,000,000/= to each of the applicants as general damages.

In the affidavit deposed by Kamaliza Kamoga Kayaga, a then advocate for the respondents herein, it was stated that:

"2. That the Applicants were allocated areas to build Kiosk Shops in Kachoma area on 12/7/2007. The Kiosks were to be build in accordance with the building plans issue and proposed by the Respondent at an estimated costs of Tshs. 3,200,000/=. Copies of the letters dated 12.7.2007 are collectively annexed and marked as Annexure "A" to form part of this application.

3. That after the Completion of the Kiosks a dispute arose between the applicants and the Respondents whereby the applicants filed Land Application No. 84 of 2009 that was determined in favour of the Applicants.

7. That despite the applicants protest in writing on 28/2/2015 and on 5/3/2018, the respondent refused to open the shops till the rental charges for January to March 2018 was paid. Copies of the correspondence between the applicants and the Respondent are collectively annexed and marked "F".

8. That the applicant's shops have shop items including foodstuff that are likely to expire or to be damages the respondent's conduct.

9. That in closing the applicants shops the Respondent is in breach of the agreements signed on 31/5/2012 and has interfered with the economic interest of the applicants who are entitled to general damages.

10. That on 6.3.2018 the applicants were forced by respondent to pay the all demanded rental charges for January to March 2018 to have their shops reopened in breach of the agreements. Copies of the receipts are collectively annexed and marked "G' "

In a counter affidavit sworn by Theodora J. Chuwa, a solicitor with Tabora Municipal Council, the respondents' claims were generally disputed and the deponent further stated that:

“7. That the contents of paragraph 9 of the applicant’s affidavit are strongly denied because the applicants voluntarily wrote the letter to the respondent to pay rent charges.”

In a ruling dated 13th Aug 2018, the trial chairman found that Tabora Municipal Council had breached the agreement of 31/05/2012 and thus made the following orders:

1. That the respondent (Tabora Municipal Council) is restrained from demanding rent and closing or interfering with the applicants’ shops till 31/05/2022.

2.The respondent (Tabora Municipal Council) is ordered to pay Tshs. 3,000,000/= to each of the applicants as general damages for the breach of the agreement of 31/05/2012 between the applicants and the respondent (TMC).

3.That the respondent is ordered to refund or pay back the forcefully collected rental charges of the months of January, February and March 2018 to each applicant as the act was unlawful and contrary to their agreement.”

Aggrieved by the said ruling, Tabora Municipal Council filed a petition of appeal in this Court premised on three grounds, namely:

1. That the Hon. Chairman erred in law and facts by entertaining the applicant's Misc. Application No. 43 of 2018 whose facts had been conclusively determined by the tribunal.

2. That the Hon. Chairman erred both in law and facts by entertaining and conclusively determining the applicant's Misc. Application No. 43 of 2018 which arose from Land Application No. 49 of 2011 and originating from Land Application No. 84 of 2009 which had been conclusively determined by the District Land and Housing Tribunal.

3. That the Hon. Chairman erred both in law and facts and misdirected itself by considering and basing its determination in Misc. Land Application No. 43 of 2018 on an agreement which was concluded and signed subsequent to the first agreement which was the point in dispute in Land Application No. 84 of 2009 and Application No. 49 of 2011.

Before me, Tabora Municipal Council was represented by its solicitor, Mr. Kulaba G. Doto whereas Mr. Kelvin Kayaga, learned advocate, acted for the respondents.

The appeal was disposed of by way of written submissions and both parties timely acted on the schedule set by the Court.

Having read the grounds of appeal, the advocates' rival submissions and the trial tribunal's records, I am of the view that the trial tribunal misdirected itself in entertaining Misc. Land Application No. 43 of 2018.

The misdirection was in twofold: that the respondents had sought for an order to restrain the appellant from demanding rent which was interlocutory in nature but there was no pending suit as the law requires.

Secondly, the respondents sought a declaratory order for breach of agreement and general damages, which are substantive reliefs in a suit, in absence of a proper suit against a local authority contrary to Section 106 (1) and (2) of the Local Government (Urban Authorities) Act, Cap 288 R.E 2019.

In the circumstances, the appeal is meritorious and thus granted. The impugned ruling of the District Land and Housing Tribunal for Tabora in Misc. Land Application No. 43 of 2018 is hereby quashed and set aside with costs.

It is so ordered.



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AMOUR S. KHAMIS
JUDGE
19/02/2021

Judgment delivered this 19th day of February 2021 in the presence of Mr. Magesa Juma Amos (Solicitor) for the Applicant and Mr. Kelvin Kayaga learned Advocate for all respondents.



A handwritten signature in blue ink, appearing to read "B.R. Nyaki".

B.R. NYAKI
DEPUTY REGISTRAR
19/2/2021