

IN THE HIGH COURT OF TANZANIA
DAR- ES -SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

LAND CASE NO 33 OF 2016

BARETTO HAULIERS (T) LIMITED..... PLAINTIFF

VERSUS

MAHAMOOD MOHAMED DUALE.....DEFENDANT

JUDGEMENT

9th February & 3rd March 2021

Rwizile. J

Paul Andrea Reuben Sozigwa, owned a parcel of land at Tom Estate at Kurasini. Some times in 2009, before he went for medical checkup in Finland, he donated to his son Moses Paul Sozigwa, powers of Attorney to look after his property, described as CT No. 186103/35, plot No. 19, Tom Estate. On return from medical checkup, he agreed with his wife, to terminate the Matrimonial Cause No. 63 of 2007, that was pending at Kisutu RM's Court. They agreed to dispose of their house which was rented by the plaintiff under the authority of the donee of powers of attorney Moses Paul Sozigwa. Upon being informed of the sale, Moses Paul Sozigwa refused to return the powers of Attorney donated to him by his father.

Adrea Paul Sozigwa and his wife successful sold the house to the defendant at the consideration of 600,000,000/=.

It would appear, the said property turned out to be a subject of dispute in Land Case No. 157 of 2012, before this court, between Barretto Hauliers (T) LTD and Moses Paul Sozigwa (plaintiffs) on one hand and Mahamood Mohamed Duale(defendant) on the other. The plaintiff in that case, was however not successful. This court (Teemba J as she then was) was satisfied that the landed property belonged to the defendant. This was done on 21st day of August 2015.

It has been pleaded by the plaintiff that on 26th September 2015 the defendant forceful evicted her without lawful authority from the premises. He said, he had an appeal and a notice to that effect served on the defendant. In the eviction process, businesses were destroyed, pulled from his yard motor vehicles with trailers, 18 containers loaded with parcels for export, forklifts and other equipment without proper handling and care. As the result, the plaintiff suffered damages. He therefore filed this law suit for the judgement and decree against the defendant for the follows;

- i. A declaration that the eviction done by the defendant was illegal
- ii. An order for reinstating the plaintiff into the suit premises
- iii. Payment of 355,000,000/= being specific damages caused to the motor vehicles, trailers and forklift
- iv. Payment of 300,000,000/= for business loss
- v. Payment of interest at commercial rate of 30% from the date of damages

- vi. Payment of interest at the rate of 12% from the date of judgement to the date of full settlement
- vii. Costs of the suit and
- viii. Any other relief that this court will deem just to grant

The defendant in his statement of defence claimed no liability by stating that the premises were indeed abandoned by the plaintiff. He therefore took possession of the property because it belonged to him. There was nothing illegal.

The plaintiff, at the hearing was represented by Magusu Mugoka while Roman S Lamwai represented the defendant. The plaintiff called three witnesses namely Jude Barretho (Pw1), Herman Caridade De-mello (Pw2) and Rev. Moses Paul Sozigwa (Pw3). The defence, on the other hand, called two witnesses. Mahamood Mohamed (Dw1) and Adam Haruna Dachi (Dw2).

When the case closed, upon hearing, final closing submissions were filed. The rival submissions by the lawyers endeavored to answer four issues agreed;

- a. Whether the defendant was unlawfully evicted the plaintiff from the suit land
- b. If the first issue is answered affirmatively, whether defendant damaged any motor vehicle parked in the premises
- c. Whether the defendant removed 18 containers loaded with parcels from the suit premises
- d. To what reliefs are the parties entitled.

Before delving into the merits of the case, I have to deal with the point raised by the defence that the plaint is not properly before this court for contradicting order VI. R 14 and 15 of the CPC. The plaint was signed by both Richard Barretto as the principal officer and the counsel for the plaintiff while the same was verified by the principal officer of the plaintiff instead of a party to the pleadings. It was submitted that since the same was signed by lawyer and Mr. Richard Barretto who did not testify to that effect, it should be taken that the pleadings were filed without any authority. It should be therefore not acted upon because it was signed by the person not authorized to do so. Further, that the verification was also not in line with law as it was not signed by the party.

On the other hand, Mr. Roman submitted that the defendant does not have the case to answer. He based his finding in the case of **Daikin Airconditioning (E.A) Ltd vs Harvard University** [1996] TLR 1. I have to state the law first before going into details of the decision on this point. The law as stated by Mr. Roman is order VI R. 14 and 15. For ease of reference, it can be shown thus;

Rule 14.

Every pleading shall be signed by the party and his advocate (if any); provided that, where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Rule 15.

-(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

It is explicit under rule 14 that a party or his advocate may sign the pleadings. In the absence of the party his advocate or any other authorized person may sign. In the case at hand the pleadings-plaint was signed by the plaintiff's advocate and an officer authorized to signed the same. I do not see any fault. The defence counsel has submitted that Richard Barretto did not testify in court even though he was present. That, according to him, casts doubt as to whether he was authorized. I have to clearly say here that the law does not provide that there must be evidence to prove that a person who signed the pleading must be authorized. It is enough to have a signature of the principal officer as it is in this case. I have no doubt that Barretto was not an authorized officer as the defence puts it.

On the second limb of his point, it was pegged under rule 15. As shown above, the rule clearly states that verification can made by the person proved to have been acquainted with facts. In my considered view, there is no reason to suppose that the principal officer who signed the same was not acquainted with the facts of the case. I therefore find no merit in the point raised. Having so held, it is important to note that the plaint was properly before the court. On whether or not the plaintiff did not make the case out for the defendant to answer that is a matter of evidence, which I will resort to shortly when analyzing evidence procured by the plaintiff.

The first issues.

Mr. Magusu submitted that the plaintiff was under the lease agreement in the suit land as per exhibit P3. According to him, basing on evidence of Pw1 and Pw2, it was submitted that the plaintiff was invaded by at least 30 people brought by the defendant on 26th September 2015. They forced Pw1 out of the premises. He ran away and reported the matter to the police. This evidence of Pw1 and Pw2 was also supported by Pw3 who said, he as the lessor, did not understand why the plaintiff was evicted because he was still under the lease agreement. Basing on the evidence, it was the view of the plaintiff that eviction made without any court order is unlawful. He asked this court to answer this issue in the affirmative.

For the defendant, it was submitted that the plaintiff had no valid lease agreement. The lease agreement, it was submitted, had expired since 2013, two years before the alleged eviction. According to Mr. Masumbuko, eviction of the lease agreement does not require the court intervention. Dw1, testified that upon obtaining a judgement in Land Case No. 157 of 2012 against the plaintiff, he initiated the eviction process. He testified that upon doing so, he was told by Dw2, the local government leader that the premises were vacant. He therefore decided to take possession of his property.

On my party, I have to state here that as shown before. This court in Land Case No. 157 of 2012, which was between the same parties, made an order discharging the lease that was entered between the plaintiff and Pw3. Upon doing so, the parties were given duties. The same judgement was tendered for examination by the court. It is exhibit D1. The decree stated that;

- *The plaintiff (Barretto) is entitled to an amount of rent stated in the lease agreement which ended in January 2013. The same is calculated from February 2013 to the date of vacant possession.*
- *The defendant (Mahamood Mohamed) is also to recover the amount, if any, paid to the 3rd party (Moses Paul Sozigwa) in respect of the addendum lease Agreement aimed to recover the period of 2013 to 2019.*
- *The 3rd party who was blamed for the whole saga was condemned to pay costs of the case.*

From the decision of the court, first, it is not true that the plaintiff was in a lease agreement since the decision of this court had terminated and discharged the same. He was therefore entitled to be paid what he was to be paid and then leave the premise. Second, there is no evidence that the plaintiff was paid the said amount. Still, the defendant did not prove that the plaintiff was to vacate the premises before payment as the court decreed. The evidence by Dw2 did not categorically say so. The defence submission that the defendant was executing the terms of the lease were not there because each had been allocated a portion of his duty to fulfil.

It is also not proper to submit that in discharging a lease agreement the defendant did not need assistance of the court. I am not sure whether that is the position of the law. The defence lawyer did not cite any to back up his assertion.

Even if it could be assumed that the plaintiff was to be evicted without assistance of the court still, he was entitled to a notice, and indeed a sufficient notice. The judgment that the defendant banks on, was delivered on 21st August 2015. The eviction took place on 26th September 2015. This is definitely not more than one month after the judgement. I even believe, time to appeal had not lapsed. This is perhaps the reason why the plaintiff claims had a notice filed with an intention to appeal. In my considered view therefore, the plaintiff was evicted and it was unlawfully so. The defence evidence that the plaintiff ran away from the suit land leaving it vacant was not proved. This therefore answers the first issue in the affirmative.

The second and third issues in my view are a bit similar. I have to deal with the same together since they hinge on whether there is proof that the defendant damaged the motor vehicles. The two issues in my view are purely a matter of evidence to prove. The plaintiff submitted basing on the evidence that since the premises were ransacked by the defendant, he caused damages to his motor vehicles. The same were removed from the parking yard where he also lived. That was proved according to him by exhibits P4, P5 and P7. The exhibit shows the vehicles and forklift have been grounded due to illegal eviction.

It was further submitted that the plaintiff's 18 containers were taken from the yard by the defendant. According to Mr. Magusu, the same containers were parked with parcels for export. This, he submitted, was proved by exhibit P6. He went on saying, exhibits P5 and P7 are also showing the same.

On my examination of the exhibits, P4 is a sale agreement, P5 is tax invoice, P6 is a piece of the newspaper with a story about selling of the suit land while P7 is a bundle of receipts. The same did not show damage to any motor vehicles. It does not even show that there were containers. The evidence only shows the plaintiff had deals with the persons mentioned therein. They do not show they were current, future or passed dealings. The plaintiff being cast with the duty to prove the case, she has to show, how many cars, types of cars and the extent of their damage. This also happens to containers. Section 110, 111 and 112 of the Evidence Act are a good guidance. The plaintiff's evidence, as submitted by the defence is not good enough to prove the allegations. I think, I may add, that plaintiff was not only bound to prove that the motor vehicles were damaged but also had to first show that they indeed existed. He did not show any evidence to prove that there were motor vehicles. She cannot therefore prove they were damaged when she did not prove they existed. I am therefore in agreement with defendant that the 2nd and 3rd issues have been answered in the negative.

The last issue is simple to deal with. Mr. Magusu submitted that the plaintiff, lost business with his customers, such as Mbeya Cement. He claimed for specific damages to the tune of 355,000,000/=. It has been held that, it is not enough to plead specific damages. They should apart from being pleading, be strictly proved. The amount claimed was not proved in any form. The plaintiff simply brought exhibits like P1, P2 and P3. He also tendered P8 and P9. In all, they have shown the plaintiff's invoices and such like things.

They do not show how did he arrived at the figure claimed or any amount less. The evidence produced falls short of the standard required. Failure to prove so renders her case weak. I have said before, that the plaintiff had lost a case against the defendant before he was evicted. He was therefore at the risk of loosing business. Even if there could be no eviction, still the plaintiff had already passed through a legal process. He was therefore to prove that had earnings before the eviction and how the same dropped following these uncalled-for events. This was important because it would assist this court to gauge the amount of compensation even in general damages. Failure of the plaintiff to show any of such loss, this court as a court of law, cannot do the guess work to simply award the amount of damages without first having been informed of the extent of damage that the defendant caused. In the final analysis, as I dismiss the counter-claim, I enter judgement for the defendant with costs.

A.K. Rwizile

JUDGE

03.03.2021

 Recoverable Signature

X 

Signed by: A.K.RWIZILE

