

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY**  
**AT MWANZA**  
**LAND CASE NO. 12 OF 2019**

**THE BOARD OF TRUSTEES OF THE NATIONAL**

**SOCIAL SECURITY FUND .....PLAINTIFF**

**versus**

**M/S BELMONT FAIRMOUNT HOTEL LIMITED .....DEFENDANT**

**JUDGMENT**

14<sup>th</sup> & 30<sup>th</sup> July, 2021

**RUMANYIKA, J.:**

Against M/s Belmont Fairmount Hotel Limited (the defendant), according to record the plaint filed on 11/11/2019, The Board of Trustees of the National Social Security Fund (the plaintiff) claimed shs. 996,834,000/= being the outstanding rent for the period between December, 2017 and 5<sup>th</sup> October, 2019 inclusively and costs of the subsequent eviction carried out on 6/10/2019, interest, costs and, as usual, any other reliefs this court may fit and equitable to grant.

Mr. Mgeta Frank, learned state attorney appeared for the plaintiff he was assisted by Aisha Salehe a legal officer. The defendant was

represented by Messrs George Mshumba and Inhard Mshongi learned counsel.

The issues from the outset proposed by the parties and were adopted by the court on 20/4/2021, they were: -

1. Whether the plaintiff is entitled to payment of rent arrears to the tune of shs. 986,834,000/= as at October, 2019.
2. Whether the parties fulfilled their contractual obligation.
3. Whether the plaintiff is entitled to payment of eviction costs from the defendant to the tune of shs. 5,349,000/=
4. Reliefs that the parties are entitled to.

Frola Ndutta (49), the sole prosecution witness stated that she worked with the plaintiff in Mwanza as Senior Administrative officer and over saw staff matters inclusive of assets among other duties. That with respect to the fully furnished commercial premises and the present case, but for a term of 5 years ending up in December, 2021, the defendant was their tenant (copy of the lease agreement admitted as Exhibit "P1") the parties having had mutually witnessed and verified it all and the defendant occupied the premises effective from 16/10/2016 and he had two (2) months grace period for some minor renovation but he nevertheless partly

paid the semiannually agreed rent irrespective of several promises to pay in April, 2017. Then they served him 30 days eviction notice (copy – exhibit “P2”). That in September, 2017 the parties sat down and amongst them they deliberated on it with a view of harmonizing the rent (Photostat copies of the minutes of the meeting and a letter were admitted as Id “DI” and Exhibit “P3”) respectively. That also in writing, eventually from shs.60.0m the rent was reduced to shs. 45.0m only per month (copy of the letter – Exhibit “P4”). That as partial defaults now persisted, yet again the plaintiff served the defendant two notices one dated 30/11/2018 (rent stood at shs. 689 million plus, and another one of 5/9/2019 (copies admitted as Exhibit “P5”) collectively. The on such behalf Yono Auction Mart evicted the defendant on 05/10/2019 much as the aggregate rent arrears now stood at shs. 991 million plus, copy of the respective summary rent arrears-Exhibit “P6”. The witness wound up the plaintiff’s case.

Dw1 Mr. Philemon Tei (45) stated that he worked with the defendant as the Executive Director, the defendant’s tenant with effect from January, 2017 for a term of 5 years and the Hotel contained a restaurant, a conference room, 38 bed rooms and swimming pool (copy of the tenancy agreement identified). That the plaintiff covenanted where need arising to

maintain and repair the building inclusive of the structural equipment, air condition, hot water, cardboards, electrical installation etc. The rent was semiannually payable in advance. That due to the defective elevator, fire extinguishers and unpleasant kitchen floor tiles, in writing they put it all to the plaintiff's attention on 3/10/2017 (copy(s) of the letters Exhibits "D1" & "D2"). That it took the plaintiff three (3) good months to fix the defects hence the delay in commencement of the business much as, for that reason a number of customers kept away and the business went so down that long at last, but late in the day from shs. 60.0m rent the plaintiff cut it down to shs. 45.0m per month that although they issued no receipts by way of cheque he paid them shs. 600.0m plus therefore the alleged outstanding rent it wasn't real (the 9 Photostat copies of receipts exhibit -"D3" and copy of the minutes of the Dar es salaam meeting – exhibit "D4") collectively leave alone some government institutions such as TAMISEMI and TANAPA who paid the plaintiffs directly. That in fact the plaintiff did not prove 900.0m claims he therefore were, but prematurely evicted leave alone the sums of money the defendants had injected for renovation. The suit lacks merits. We shall ask that the same be dismissed with costs Dw1 further contended and testified.

Dw2 William Mwasiboba (50) stated that since 2018 he worked with the defendant as general manager that now having faced some operational setbacks, about hot water they complained in writing on 26/2/2018, about swimming pool on 27/02/2018, once again about floor tiles on 13/3/2018, about hot water, and on 20/3/2019 a reminder on air conditioner's failure (copies of the letters – exhibit "D5") collectively. That they did not fix them until a year later and he thanked them in writing (copy of the letter – Exhibit "D6"). That is all.

Pursuant to the court scheduling order of 14/7/2021, without delay or failure, but very briefly there followed the learned attorney's final written submissions;

Mr. Frank Mgeta learned state attorney submitted that now that no doubts the parties were a land lord and tenant, and in his evidence, but in blacks and whites Dw1 stated that out of shs. 1,494,900,000/= (for the period between May, 2017 and 5/10/2019) inclusively he had paid shs. 600,000,000/= only, it followed therefore that the outstanding rent now stood at shs 900.0m plus by simple calculations leave alone the eviction costs of shs. 5,349,000/= much as it was not sufficiently disputed that upon expiry of 30 days' demand notice, despite several negotiations the

defendant promised to pay but he defaulted further then he was evicted.

That is it.

On their part, but similarly briefly, Messrs G. Mshemba and I. Mushongi learned counsel submitted that with all an undisputed material facts of the case, centrally the parties disagreed on the actual debt being shs. 996,834,000/= or shs. 664,900,628/= as alleged by Pw1 and Dw1 respectively much as the cardinal principle required that now that through books of accounts the plaintiff alleged he should have proved it on balance of probabilities but he failed. During eviction some relevant documents retained by defendant having had been sort of confiscated by the plaintiff that now that due to the longstanding defendant's complaints, from shs. 60,000,000/= end of the day the rent was down the road reduced to shs. 45,000,000/= a month and they did not evict the defendant for the previous 2 years of default, by necessary implication the plaintiff had waived part of the rent due for good reasons of the business down fall. That unless the parties had agreed on the actual balance, and the defendant was permitted back and he resumed the business, payment of whatever the amount due it was next to impossible. That is all.

Looking at the evidence between the lines all is as undeniable as follows:- **(a)** that according to Exhibit "P1" the plaintiff and defendant had been land lord and tenant for the term commencing in December, 2017 to 5<sup>th</sup> October, 2019 inclusively **(b)** that for some reasons, but contrary to terms and conditions of the tenancy agreement the defendant partly paid rent until on 5/10/2019 when, upon service of notices the latter was evicted despite several and repeated negotiations and the defendant's promises to pay but he defaulted **(c)** with respect to structural networking the defendant may or may have had not encountered operational setbacks according to contract fixable by them but even where the defendant reported it the plaintiff turned a deaf year yes, for that reason a good number of customers shun away and consequently the defendant sustained loss therefore he failed to pay rent granted, but with a view to setting it off not only the defendant did not, if at all establish the loss specifically, but also on that one, the former did not lodge a counter claim formally. Unless the defendant's claims were specifically pleaded, and by way of evidence tested, he should not even have been heard in the first place **(d)** without prejudice to what I have herein above endeavored to discuss, I therefore would increasingly hold that if, in all cases onus of proof was permanently



appended to plaintiffs, majority of them would have lost the wars and battles. This is a fit case where the burden shifts to the defendant at least the latter was better placed to prove whatever the total amount of rent that he had paid to the plaintiff it means therefore, with all intents and purposes and it defeated logic and commonsense that the plaintiff should have had proved what, if at all he was not in receipt of much as the defendant had it in his testimony that he paid them by cheque, and, at times customers like TAMISEMI and TANAPA they paid rent direct to the plaintiff however not only the amount paid was not specifically stated, but also no one of the alleged customers appeared in court. I entertain no doubts that from the outset the defendant fore saw all this happening. The plaintiff may have had not evicted the defendant earlier but in all fairness that one took no place of waiver nor should it be used as a sword but as a shield much as the plaintiff's claims were not time barred.

Last but not least, like said before, the issue of on top of rent from his pocket the defendant having had renovated the premises therefore a counter claim in disguise, with greatest respect it needs not to detain me because looking at all fours of the tenancy agreement there was no such



room it sounds like self-inflicted injuries therefore the defendant should not even have screamed the Latin maxim **Volenti Non Fit Injuria**.

The suit is meritorious and it succeeds in its entirety with costs. For avoidance of doubts it is accordingly ordered thus: -

- (a) That the defendant pays the plaintiff shs. 996,834,000/= being the outstanding rent for the period ending 5<sup>th</sup> October, 2019 eviction costs inclusive.
- (b) The defendant pays the plaintiff interest and decretal interest at court rate and costs of the case. It is so ordered.

Right of appeal explained.

  
**S.M. RUMANYIKA**

**JUDGE**

**20/07/2021**

The judgment delivered under my hand and seal of the court in chambers this 30/07/2021 in the absence of the parties.



  
**S.M. RUMANYIKA**

**JUDGE**

**30/07/2021**