

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND APPEAL NO. 13 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal for Mwanza, in Land Application No. 32 of 2014 dated 14<sup>th</sup> day of February, 2020, Honourable Masao E. Tribunal Chairpeson)*

**KASELELE MAKWIM'HUMU COMPANY.....APPELLANT**

**VERSUS**

**DOMINIC A. MUNISI..... RESPONDENT**

**JUDGMENT**

**Date of last order: 15/3/2021**

**Date of judgement: 2/07/2021**

**F. K. MANYANDA, J.**

This is a land appeal in which the Appellant Kaselele Makwim'humu Company Ltd, hereafter referred to as the Appellant, is appealing against a decision of the District Land and Housing Tribunal for Mwanza, hereafter referred to as the "DLHT" dated 14/02/2020 by Honourable Masao. E. Chairperson.

The brief background of this matter is that the Appellant entered into tenancy agreement with the Respondent on 13/02/2013 in respect of Room

No. 09 at Plot No. 77 Block "KK" Nyakato Area in Mwanza. It was agreed that the Appellant would pay Tsh 720,000/= every six (6) months. Upon signing of the Agreement, the Appellant entered into the leased premises after paying Tsh 360,000/= expecting to pay the other 360,000/= at the end of the six (6) months.

It happened that at the end of the 6<sup>th</sup> month, the Appellant paid only Tsh 288,000/= after unilaterally deducting Tsh 72,000/= which he paid as withholding income tax to TRA on behalf of the Landlord (the Respondent). This act did not amuse the Respondent, hence he refused to accept the Tsh 288,000/= and disconnected electricity supply to the rented Room by the Appellant. The Respondent did that with a purpose of forcing the Appellant implement the tenancy agreement terms or quit the premises. The Appellant refused to vacate, instead, he locked the Room and filed a land case in the District Land and Housing Tribunal which was decided in favour of the Respondent. Dissatisfied, the Appellant preferred this appeal. He raised five grounds of appeal namely: -



1. That, the Chairman erred in law and in fact in deciding that, the applicant failed to pay rent for the rest of the period.
2. That, the Chairman erred in law and in fact in deciding that, the Applicant's action to deduct 10% of the GROSS AMOUNT OF TSHS 720,000/=, that is, TSHS 72,000/= and pay to the Commissioner TRA as a RENTAL TAX was a breach of the Lease agreement and not otherwise.
3. That, the Chairman erred in law and in fact for failing to consider both evidence (sic) given by Appellant before the Tribunal.
4. That, the Chairman erred in law and in fact in ignoring and neglecting to put into consideration the request by the applicant to visit the suit premises prior to the determination of the suit.
5. That, the trial Tribunal erred in law and in fact to decide that the Appellant was in breach of contract whilst in fact was not.

The appeal was argued by way of written submissions, the submissions for the Appellant were drawn by Mathias Mashauri, learned Advocate, but

were filed by the Appellant personally. Those of the Respondent were drawn and filed by Venatus Makori, learned Advocate. The Appellant chose to argue, on ground 5 only and abandoned the rest. The complaint in ground five (5) is whether the District Land and Housing Tribunal was right to decide that the Appellant breached the lease agreement.

It is the contention of the Appellant that he acted within the contract which he entered with the Respondent on 13/02/2013 by paying Tsh 360,000/= out of Tshs 720,000/=: being rent for 6 months. The Appellant discovered later on that he didn't deduct withholding tax of 10% of the rent of Tshs 720,000/=.

Therefore, when he came to pay the remainder of TshS 360,000/= he had to deduct the withholding tax amounting to Tshs 72,000/=. The Appellant is of the views that his act was lawful. It has been argued that what the Appellant did was in compliance of tax law as provided under section 84(5) of the Income Tax Act, [Cap. 332 R. E. 2019].

Further, the Appellant contends that it was the Respondent who was in breach of the lease agreement after curtailing the respondent from doing his business. He should be condemned to pay compensation to the Appellant.

On the other hand, the argument by the Counsel for the Respondent is that the District Land and Housing Chairperson was right to hold the Appellant that he was in breach of the lease agreement per Exhibit DE1. It was agreed that the Appellant would pay the Respondent rents in six (6) months instalments of Tsh 720,000/= for each 6 months.

It was the views of the Counsel that, the Appellant was obliged to pay the agreed rent per lease agreement. He cited the cases of **General Tyre EA Ltd vs HSBC Bank PLC** [2006] TLR 60, Abdallah **Yusuph Omar vs People's Bank of Zanzibar and Another** [2004] TLR 339 and **Simon Kichele Chacha vs Aveline M. Kilawe**, Civil Appeal No. 160 of 2018 available on Tanzlii as [2021] TLC A 43 (unreported). In these cases, the general the law was stated that parties to a contract are bound by their terms.



As regard to withholding tax, the same, according to the Respondent Counsel was payable by the Land Lord himself.

In rejoinder, the Appellant basically reiterated his submissions in chief.

It is now my turn to determine the controversy and I will be guided by addressing the issue of whether by unilaterally paying withholding tax the Appellant breached the tenancy agreement.

In this matter it is not disputed that both parties entered into a tenancy agreement in which it was agreed that the Appellant would lease the premises and pay the Respondent rent of Tsh 720,000/= every six (6) months. It is not also disputed that the Appellant paid a total of Tsh 360,000/= and failed to pay the whole of Tsh 720,000/= to the Respondent as agreed because he deducted Tsh 72,000/= and paid to TRA as a result the Respondent refused to accept Tsh 288,000/=. The Counsel lockhorn on whether the Appellant was entitled to unilaterally deduct the said Tsh 72,000/= and pay TRA as withholding tax without breaching the terms of the tenancy agreement.

I have visited the proceedings of the District Land and Housing Tribunal and found that it was the testimony of the Appellant that, being a Company, was obliged to pay tax per the law. On the other hand, it was the testimony of the Respondent that there was no any term concerning payment of tax in their tenancy agreement because he was liable to pay all the taxes himself.

I have visited Exhibit DE1, the Tenancy Agreement, between Dominic A. Munisi, the Landlord on one hand and Kasesele Makwim'humu Company Ltd of the other hand dated 13/02/2013. The said tenancy agreement has no provisions on any tax payable under our laws. This means the parties did not stipulate payment of tax in the said agreement. The Appellant according to the terms of tenancy agreement was required to pay the rental fee of Tsh 720,000/= every six months net of tax.

On the other hand, our tax regime require payment of withholding tax of 10% of any amount paid by a Registered Tax Payer to any person as income.



Section 82(1)(a) and (b) is relevant on this point. For ease of reference, the said provisions reads:-

**"82(1) where a resident person**

*(a) pays a dividend, interest, nature resources payment, **rent** or royalty; and*

*(b) the payment has a source in the United Republic and is not subject to withholding under section 81 the **person shall withhold income tax** from the payment at the rate provided for in paragraph 4(d) of the First Schedule now paragraph 4(b)((ii). The rate of the withheld **tax is 10% of the income.**"*

From the quoted provisions, it is apparent that rent is among of the income payments subjected to withholding tax. However, a question is whether the terms of the tenancy agreement contained an agreement for payment of withholding tax. As seen above, the answer is in negative.

The Appellant after finding that he needed to deduct withholding tax, he did not take on board the Respondent to review the tenancy agreement.

I say so because the tenancy agreement contain a clause for review of the terms. It is trite law that parties to a contract are bound by their terms.

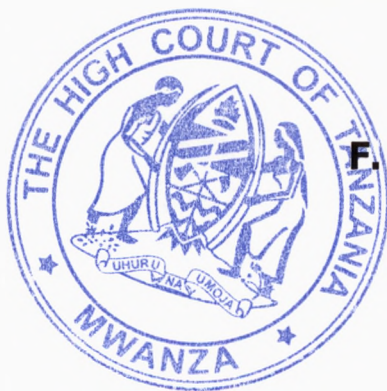
The authorities in the cases of **General Tyre EA Ltd (supra), Abdallah**



**Yusuph Omar (supra)** are good laws in our land where it was held that parties to a contract are bound by their contract terms.

Moreover, the Appellant did not produce or tender exhibit to establish that he made any payment of withholding tax to TRA. In this appeal he purported to file a notice to produce additional evidence. However, he did not submit on it, the Respondent also did not submit any argument. I too will not deal with it. Even if he would have made such submission, in law such evidence is not one of the kind of additional evidence acceptable on appeal stage as additional, because it is not for clarification but rather establishing a new fact. The same is inadmissible at this stage.

In the upshot, for reasons stated above, I find that the appeal is none meritorious. Consequently, I do hereby dismiss the appeal in its entirety with costs. Order accordingly.



  
**F. K. MANYANDA**  
**JUDGE**  
**2/7/2021**