

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
LAND CASE NO. 24 OF 2016**

MAHAMOUD AHMED KARIA PLAINTIFF

VERSUS

ERICA THOMAS T/A RAHISI PETROL STATION DEFENDANT

JUDGMENT

14/7/2021 & 15/10/2021

ROBERT, J:-

The Plaintiff, Mahamoud Ahmed Karia, filed an action against the Defendant, Erica Thomas T/A Rahisi Petrol Station claiming loss of use of the suit premises by way of mesne profits due to loss of monthly rental income at the rate of TZS 20,000,000/= per month from 10/4/2014 to 6/7/2015, payment of interest on the decretal sum at the applicable prevailing commercial rate of interest per annum, and general damages due to the Defendant's abject and contemptible failure to respect, observe and obey the terms of the lease agreement thus perpetuating damages to the Plaintiff.

The plaintiff also prays for payment of interest at the court rate of 12% per annum and costs of the suit.

The Plaintiff's case is to the effect that, the Defendant was a licensee on the Plaintiff's property described as Plot No. 2 Mererani, Simanjiro District held under Certificate of Title No. 23023 vide an executed agreement for renovation of the said premises, on rent fees basis, for one year from 10/4/2013 to 9/4/2014. The Defendant without any lawful or justifiable cause and without the consent of the Plaintiff contumeliously refused to vacate from the suit premises at the end of the agreement thereby unlawfully denying the Plaintiff his commercial use thereof as a petrol station and for other legitimate businesses. Consequently, the Plaintiff preferred an action against the Defendant.

At the hearing of this case, the Plaintiff was represented by Mr. Loomu Ojare and Ms. Neema Oscar and later by Mr. Issa Mavura, learned counsel whereas the Defendant was represented by Gwakisa Sambo, learned counsel.

The following issues where framed for determination of this case:-

- (1) Whether the Plaintiff entered into contract with the Defendant to renovate Petrol station and run it for one year;
- (2) If the answer in (1) is in affirmative what were the terms and conditions of the said agreement;
- (3) Which party has breached the terms and conditions of agreement or whether the Defendant refused to vacate the suit premises;
- (4) As a result of the breach which damages has been suffered by the Parties;
- (5) To what reliefs are the parties entitled

The first issue was not complex, it sought to establish if the Plaintiff had entered into contractual agreement with the Defendant to renovate the Petrol station and run it for one year as alleged. To prove the first issue, the Plaintiff testified as PW1 and stated that, he rented the Defendant his Petrol station at Mirerani for one year which commenced on 10/4/2013 up to 9/4/2014. To support his testimony, he tendered the said agreement in Court which the Court admitted in evidence as exhibit P1.

On her part, the defendant testifying as DW3 acknowledged exhibit P1 as an agreement entered between the Plaintiff as the owner of the petrol station and Rahisi Petrol Station as the operator of the said petrol station.

She stated that, the agreement was for rehabilitation and trial operations of the petrol station for a period of one year.

To make a determination on the first issue, this Court having perused exhibit P1, noted that the Plaintiff had indeed signed an agreement with Rahisi petrol station for renovation and trial operations of the petrol station for a period of one year for free. According to the agreement, the contract started on 10/4/2013 and was supposed to end on 9/4/2014. That said, the first issue is not disputed and, based on the evidence, it is hereby answered in affirmative.

Since the first issue is answered in affirmative, the second issue cannot detain this Court as it seeks to determine the terms and conditions of the agreement in question. According to exhibit P1, the purpose of the agreement was to renovate the petrol station and to conduct trial operations for sale of petrol, petrol products and related activities in a period of one year and lease it if the business is found to be profitable. The operator was not required to pay rent for the duration of trial operations.

The agreement created two sets of conditions to the parties; one for the operator and the other for the owner. The operator was required to

observe the following six conditions:- (i) to renovate the petrol station in order to be in a good business condition; (ii) to install two culverts and petrol pumps; (iii) to paint all buildings at the station; (iv) to pay for electricity and water bills during the period of contract; (v) to run the petrol station in accordance with the relevant laws and regulations; (vi) to bear the cost of conducting all the above requirements.

Similarly, the owner of the petrol station was required to observe the following five conditions: (i) to make sure that the operator operates the business at the petrol station without any interference during the period of agreement; (ii) the plaintiff agreed that the agreement was to bind his family and heirs; (iii) to pay all land taxes on the petrol station for the period of the contract; (iv) to compensate the operator for all renovation costs in case of breach of the terms and conditions of this agreement and interests arising therefrom; and (v) to lease the petrol station to the operator after the trial period if she needs to.

The third issue seek to determine which party breached the terms and conditions of the agreement or whether the Defendant refused to vacate the suit premises. The Plaintiff alleged in his plaint that the defendant refused to vacate the suit premises at the end of the trial agreement which ended in

9/4/2014. In his testimony, PW1 informed the Court that the Defendant did not leave the suit premises at the end of the contract period instead, on 8/5/2014 she served him with a summons to appear at the District Land and Housing Tribunal, Moshi. Two months later, she served him with another summons from the High Court, Arusha, and continued to stay in the suit premises up to May, 2016 during the pendency of the cases while she continued to do business at the premises.

On the defence side, the defendant testified as DW3 and contended that she had observed all the terms and conditions of the agreement but the plaintiff breached the terms and conditions which required him to maintain a peaceful working environment for the operator. She stated that as a result of the Plaintiff's disturbances, she left the suit premises and removed her items from the petrol station on 15/5/2014 in the presence of OCD of Mererani Mr. Thomas Njiko and leaders from local authorities. She did not leave any unpaid bills of water or electricity.

She gave a long narration of the events which ensued in the course of her operations. She recounted that, she completed renovation work on 30/7/2013 and started operations on 1/8/2013. However, one day in early February, 2014 the Plaintiff went to the petrol station accompanied with two

persons one of whom was her competitor in business, Mr. Patrick Ndiloi Ulomi whose company name is Panone and Company. They were seen measuring the buildings around the suit premises while having conversations which looked like a negotiation on a business transaction. Later one of the relatives of the Plaintiff asked the defendant if there was anything wrong at the petrol station because the Plaintiff was about to sell the petrol station. She tried to reach the plaintiff but he was not responding to her calls. She continued to operate the station until March, 2014. One day she found the entrance to the petrol station had been blocked by sand and blocks. The driver of the truck which brought sand told her that he was instructed by the Plaintiff to do so.

After one week the Plaintiff went with explosives and asked them to vacate the suit premises or else he would blow off the area. The matter was reported to police and the plaintiff was asked to remove the explosives since his license did not allow explosives at the station.

She stated further that, later on the Plaintiff closed the offices at the station which made it impossible for the defendant to continue with the business, denied access to the safe for custody of money and keys for

offloading of fuel. Thus, operations of the petrol station stopped in March, 2014.

On 30/3/2014 she wrote a letter to the Plaintiff and copied her advocate one Mr. Sandi. The letter was sent to the Plaintiff through post office but later the Plaintiff told them to vacate the suit premises and stop writing him letters. The letter was admitted in evidence as exhibit DE3.

On 2/4/2014 she wrote a letter to the local Government at Mirerani area requesting his assistance to bring peace to the area. The letter was admitted as exhibit DE4. She testified further that, the Chairman asked them to go to his office on 10/4/2014. On that date she went there, she was shown a copy of the letter summoning the Plaintiff but the Plaintiff did not attend on that day. A Letter from Mamlaka ya mji mdogo Mererani to Plaintiff was received and admitted as exhibit DE5. She also placed caveat for protection of the disputed petrol station. The Notice, caveat and statutory declaration in support of the caveat were received as exhibit DE6 (a) to (c) collectively.

She testified further that, while seeking assistance in respect of the petrol station, the situation was not good, the plaintiff had blocked entrance by heaps of sand and closed office doors by placing padlocks on the doors.

He was also making disturbances and harassment by insulting workers and management. She was given an interim injunction order by the High Court to stop the Plaintiff from disturbing the defendant's business. A copy of the interim injunction (ex-parte) issued by the District Land and Housing Tribunal of Moshi in Misc. Application No. 64 of 2014 and Order of High Court, Moshi in Land Case No. 7/2014 were admitted as exhibit D7 (a) and (b) collectively.

Her testimony is supported with that of **DW4, Justin Abraham Sarakikya**, harmlet chairman **who** testified that, in April, 2014 the petrol station was not operating. There was some kind of misunderstanding there. He saw heaps of sand and bricks placed on the entrance to the petrol station. Further to this, **DW5, Isack Munis**, operations manager at Rahisi petrol station stated that, they stopped operations in March, 2014 due to harassment. Mr Mahamoud Karia place heaps of sand and bricks at the entrance to the station from the beginning of April, 2014. He remembered to have called a cameraman by the name of Joram to take pictures of the suit premises showing the bricks and sand placed at the entrance of the petrol station and padlocks used to lock office doors. The pictures were received as exhibit DWE1(A) to (H) collectively. **DW6, Lilian Lyimo**, a Pump attendant at Rahisi petrol station stated that in March and April, 2014 she

was working at Mererani petrol station. At that time there were harassment, insults, they were shown a pistol by the plaintiff. He also placed sand and bricks at the entrance of the petrol station to block people from entering. After these incidences she asked to be transferred to another station and she was transferred to Moshi station.

From the evidence gathered it is obvious that as the time went by the relationship between parties to the agreement became sour and the working environment became hostile and less peaceful. Evidence of cases filed in the course of operations and heaps of sand and bricks placed at the suit premises within the contractual period are all signs of bad things happening within the contractual period. While the evidence gathered may not help in the determination of which party breached which terms and conditions, it is clear that the evidence presented by the plaintiff does not provide sufficient proof on the alleged refusal of defendant to vacate the suit premises. There is no tangible evidence to establish that the defendant stayed in the suit premises up to May, 2016 as alleged by the plaintiff. This issue is therefore answered not in affirmative.

In the absence of sufficient evidence to establish the defendant's refusal to vacate the suit premises this court finds that the plaintiff suffered


no damages arising from the breach of contract. The fifth issue is therefore not answered in affirmed.

To what reliefs are the parties entitled

Having made a finding that the plaintiff failed to establish any damages arising from breach of contract, the determination of the last issue is simple as it is predicated on the response to the previous issues. As a consequence to that, I find the Plaintiff's case to be lacking in merit and the same is hereby dismissed.

It is ordered accordingly.




K.N. ROBERT
JUDGE
15/10/2021