

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

**[IN THE DISTRICT REGISTRY OF ARUSHA]**

**AT ARUSHA**

**LAND CASE NO. 16 OF 2022**

**ARUSHA INTERNATIONAL**

**CONFERENCE CENTRE.....1<sup>ST</sup> APPLICANT**

**ATTORNEY GENERAL.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ALMEEN. A. HASHIMAN.....DEFENDANT**

**JUDGMENT**

07<sup>th</sup> & 15<sup>th</sup> June, 2022

**TIGANGA, J**

In this case, the 1<sup>st</sup> plaintiff, a public corporation established under, the Public Corporation Act [Cap 257 RE 2002], leased its house No. 37 located at Serengeti Road corridor area within Arusha City to the defendant. The plaintiff did so in the year 2002 via a written agreement in which the defendant was required to pay a monthly rent of the amount which has been increasing as the time went on and upon the agreement by the parties which was being renewed. The rent as to per agreement was supposed to be paid in lump sum of one year, at the start of every renewal of the lease agreement.

This suit was filed under summary procedure, pursuant to Order XXXV Rule 1 (e) of the Civil Procedure Code [Cap 33 RE 2019] herein after referred to as CPC

After the suit has been filed, the defendant was served with the summons which was received by an adult person living in his house who was identified to be his father on 20/04/2022.

When this case was called for orders on 07/06/2022, Ms. Sabrina Kisarika Learned State Attorney from the Office of Solicitor General moved the court to issue necessary orders pursuant to Order XXXV Rule 2 of the CPC so that 1<sup>st</sup> plaintiff can recover the outstanding or unpaid rent from the defendant. the learned State Attorney asked the court to grant the prayers because the case was filed under summary procedure and although the defendant was served with the summons which was received by his father (an adult person living in the same house) with the defendant, the defendant did not take necessary step.

On glance of the record to satisfy myself as to whether the defendant was dully served, I found that the summons which was served to the defendant was a summons to file a written statement of defence, not to file an application for leave to appear and defend. However, the same was served with the plaint which was titled

- (a) Where the suit is for recovery or possession of any immovable property, building or Premises or for payment of rent, mesne profit or damages for unlawful occupation of such immovable properties building or Premises to a ***decree for possession and for payment of rent mesne profit or damages as claimed.*** [Emphasis added]

In this case, the claim is for recovery of un paid rent, general damage, costs of the suit and any other reliefs as the court may deem fit and just to grant. Now following the default in appearance and filing application for leave to defend by the defendant a summary Judgment is here by entered in favour of the 1<sup>st</sup> defendant in the following terms;

- (i) The defendant is declared to have breached the contract between him and the 1<sup>st</sup> Plaintiff as pleaded in the plaint
- (ii) The defendant is ordered to pay rent of USD 13, 346. 43 being unpaid or outstanding rent of House NO. 37 located at Serengeti Road corridor area within Arusha City.

Regarding the claim of general damages, it is a principle that the same is awarded at the discretion of the court, the court must be availed with the materials upon which to base its findings. That material must be first pleaded in the plaint and where the case has been heard, there must be

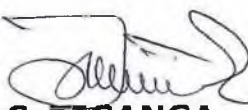
wrong doing. That being the state of affair, I find the prayers for damages is unmaintainable and un awardable. Regarding the prayer for the interest of 12% from the date of judgment to full payment, this is justified therefore awarded so to the prayer of cost of the suit. In sum, as I have endeavored to demonstrate and held herein above, this suit is allowed to the extent explained hereunder;

- i. The Defendant is declared to have breached the tenancy agreement between him and the 1<sup>st</sup> Plaintiff,
- ii. The Plaintiff is condemned to pay a principal sum of USD 13, 346.43 being of an outstanding/unpaid rent of house No. 37 located at Serengeti Road corridor area within Arusha city in Arusha Region,
- iii. Payment 12% interest on the awarded amount from the date of judgment to the full payment, and
- iv. The costs of the suit.

It is accordingly ordered.

**DATED at ARUSHA, this 15<sup>th</sup> day of June, 2022.**



  
**J.C. TIGANGA**  
**JUDGE**