IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

LAND CASE NO. 53 OF 2017

AL-QASSIMY TRADING CO LTD..... PLAINTIFF

VERSUS

TANZANIA PORTS CORPORATION..... DEFENDANT

JUDGMENT

Date of last order: 29/06/2022

Date of Judgment: 19/08/2022

E.E. KAKOLAKI, J.

The Plaintiff herein a limited liability company duly registered under Companies Act, [Cap. 212 R.E 2002] is suing the defendant a public corporation established under the Ports Act, 2004, for a declaratory judgment for its failure to negotiate renewal of a tenancy agreement as per the agreement and that, the abrupt increase of rent of the leased premises by 485% without prior negotiation with the tenant (plaintiff) is unjustified. She is further claiming against the defendant for payment of Tanzania Shillings Two Hundred and Thirty Eight Million One Hundred and Fifty Five Thousand One Hundred and Eight cents (Tshs. 238,155,100.08), being value of a constructed office space as well as general damages.

The plaintiff is thus claiming for following reliefs; (a) A declaratory order that the Plaintiff be given the justifiable opportunity to negotiate with the defendant renewal of a tenancy agreement of 2016; (b) A declaratory order that the abrupt increase of rent by 485% without negotiations with the tenant is unjustified and (c)That, it is unlawful for the defendant which is a Tanzania entity to lease office space to the Plaintiff which is also a Tanzanian entity in foreign currency of United States Dollars instead of Tanzanian Shilling. The other reliefs are (d) That, the defendant either pays back or deduct as rent after negotiations with the plaintiff Tanzania shillings two hundred and thirty eight million one hundred and fifty five thousand one hundred and eight cents (Tshs.238,155,100.08), being value of the constructed office space;(e) An order directing the defendant to pay general damages as the honourable court may determine for each lapsing day from the day the defendant refused to negotiate a new lease agreement with the plaintiff ;(f) Costs and any other relief that the honourable court may deem it fit to grant.

The background story revolving around parties dispute as garnered from the plaint can be simply stated thus, on 9th February, 2009 the defendant executed a lease agreement with plaintiff for lease of a piece of land or an

open space to be referred as suit/demised premises located next to the baggage room at Dar es salaam harbour to be used as plaintiff's ticketing office for a monthly rent of United Dollars 72.50. Upon payment of annual rent and preparation of architectural drawings the plaintiff engaged M/S A & P Engineering and Construction Co. Ltd for Tanzania Shillings Sixty Nine Million One Hundred Fourteen Thousands Nine Hundred and Fifty (Tshs. 69,114,950/=) to construct on the demised premises a ticketing office. According to the Plaintiff up to the time of filing this suit the complete ticketing office had attained the value of Tshs. 238,155,100.08 which is being claimed as specific damages. The plaintiff continued enjoying a peaceful tenancy from 2009 to 2016 renewed yearly before the last agreement expired on 31st January, 2017 when she requested for renewal of the Tenancy agreement in writing without response from the defendant. On 16th March 2017, she received a letter from the defendant with lease agreement for the year 2017 indicating an increased rent from USD $ 600.00 per month charged in the last agreement to USD $2,910.00 per month which had hiked nearly to 485%. In response to the said defendant's letter the plaintiff requested for joint discussions over the rent of 2017 lease agreement but the defendant vide her letter dated 4th of July 2017, availed her no choice

than to either to sign the new lease agreement and pay the rent with seven (7) days or else vacate the premises otherwise will be evicted and have her properties impounded. Despite of several demands for negotiations by the plaintiff for reduction of rent rate or compensation for the costs incurred for office construction, the defendant turned her ears deaf hence the present suit.

When served with the plaint, defendant filed her defence by way of written statement of defence calling the plaintiff to strict proof of her claims save for the facts the existence of lease agreement for an open space renewable annually, the fact that the plaintiff requested for renewal of tenancy agreement vide her letter of 20th September, 2016, and joint discussions of increased rent in which the defendant responded back in writing informing her the matter was not for negotiations but rather execution.

During the final pre-trial conference the following issues were proposed by the parties and framed for determination of parties' dispute by this court:

1. Whether the defendant's increase of rent by 485% in the new contract to the plaintiff was justified in law.

2. Whether the plaintiff is entitled to compensation to the tune of Tshs. 238,155,100.08 for the structures constructed on the leased land under the tenancy agreement.
3. Whether the Plaintiff is entitled to general damages.
4. To what reliefs are the parties entitled to.

During the hearing the plaintiff was represented by Capt. Ibrahim Bendera and Godfrey Ukwonga, learned advocates while the defendant enjoyed the legal service of Mr. Shija Charles , Ramadhan Ngogo and Kulwa Mumbuli, all learned State Attorneys. Plaintiff's case was built by two witnesses Omary Ally Said (PW1), marketing manager of the plaintiff and Mohamed Omary Mangochi (PW2), contractor from M/S A & P Engineering and Construction Co. Ltd as well as three (3) documentary exhibits. The documentary exhibits are Bill of quantities for construction of ticketing office (Exhibit PE1), a letter dated 16/03/2017 from the defendant to the plaintiff communicating an increase of rent to USD 2910 per month (Exhibit PE2) and the letter dated 23/04/2017 from the defendant rejecting to reduce the rent (Exhibit PE3). On the defendant's side one witness Zainabu Pierson Mauya (DW1), the Principal estate officer of the defendant was summoned to disprove the plaintiff's claims and tendered one exhibit, a tenancy agreement dated

16/6/2012 (Exhibit DE1). At the end of the trial both parties filed their final submission which in the course of this judgment I will be making reference to.

Briefly it was plaintiff's case through PW1 that, in 2009 the plaintiff leased an open space at the demised premises for consideration of monthly rent of USD 72 before the same was increased to USD 145 from the year 2010 to 2013 and later on to USD 600 from 2014-2016. He said, after execution of the agreement in 2009, architectural drawings of the office were prepared and the contractor engaged to erect the marketing and ticketing office on the suit premises which was completed in 2010. Bill of quantities for the proposed construction of commercial building at Posta Ilala Municipality, Dar es salaam was tendered and admitted a exhibit PE1. This witness went on stating that, the plaintiff enjoyed her peaceful tenancy until 2017 when she received a letter from the defendant dated 16/03/2017 (Exhibit PE2) accompanied with a contract, notifying her of the increased rent rate to USD 2910 per month, with an annual rent invoice of USD 41,2005.60 for the year 2017. He said as the rent had hiked for almost 500% the plaintiff asked the defendant to consider reducing it but the later rejected through her letter dated 25/04/2017 (Exhibit PE3) with an option of either to sign the contract

or vacate the suit premises, the options which she failed to pick any as a result defendant closed their office. PW1 concluded by telling this court that, the plaintiff's prayer before this court was for an order of this Court to TPA to enter into negotiation with them on new contract over the leased open space for reducing rent which had increased almost for 500%. In the alternative he prayed, if TPA has a new tenant be ordered to compensate the plaintiff of her construction costs to the tune of Tshs.238,000,000/= and pay her general damages for inconvenience caused as well as costs of the case.

During cross-examination when asked as to whether there was increase of rent before and the same is normal or not PW1 responded that, indeed there was such increase of rent by the defendant and that in any lease agreement such increase is normal. When referred to Exhibit PE1 and asked what was the BoQ for, he said it was referring to the construction of commercial building at Posta Ilala Municipality and not the ticketing office. When further referred to Exhibit PE3 and asked whether the letter and BOQ were referring to the same place, PW1 responded that, according to that letter the leased space was for baggage room which is at Sokoine Drive but the proposed construction as per the BOQ was meant to be done at Posta. When referred

to paragraph 7 of the plaint and questioned as to whether at the time of institution of this suit there was a valid contract between parties, PW1 response was that, there was none. And finally when referred to Exhibit PE1, PE2 and PE3 as to whether there was evidence that permission for construction of office was sought from TPA, PW1 said it is stated nowhere in those documents that, plaintiff got permission for construction of claimed office on the leased open space.

The next witness for prosecution was Mohamed Omary Manguchi (PW2),a contractor testified to the effect that, the Plaintiff was their client as in 2009 she engaged their construction company to construct the office at baggage room area for Tshs.69,114,950/=. This witness said, in that work they submitted the bill of quantities basing on the above figure. When cross examined as to whether engagement document were supposed to be in writing and if there was such proof, this witness confessed that, it is true the issued BOQ, letter of acceptance of their proposed work were supposed to be in writing and that he produced none to support his testimony in court. In his re-examination he stated that, the he was not asked to tender the said documents which proves that their company was engaged to construct plaintiff's office and that his knowledge of the site can prove to the court

that what he testified was nothing but truth. That marked the end of plaintiff's case.

On the defence side, Zainabu Pierson Mauya (DW1) being an employee since 2007 as principal Estate Officer testified at length in the attempt to disprove the plaintiff's claims. She said, having been charged with duties to manage land use and buildings as well as responsible for leasing land and building under Tanzania Porty Authority, was acquainted with defendant's contractual relationship with plaintiff. She narrated the procedure for leasing defendant's land /premises and buildings which starts with the request letter from the tenant followed by letter of acceptance of the request from the defendant before the tenant is issued with letter of offer carrying conditions to be met her/him including the annual rent rate. Then tenant is required to respond in writing before she/he is issued with a lease agreement. She went on to testify that, she knows the Plaintiff as their tenant whom they had entered into lease agreements for different periods, the last on being of the year 2015/2016 as the first lease agreement was in 2009/10 renewable every year until 2016. The tenancy agreement between the plaintiff and defendant of 2012 (Exhibit DE1) was tendered during her testimony. DW1 also identified exhibit PE1 as a tenancy agreement for open space at the baggage

room, area belonging to the defendant. This witness said, it is one of the condition in their agreements that, any tenant leasing that premises or part of it has to erect a structure for his/her use on her own costs and demolish it after tenancy. Making reference to exhibit DE1, she stated erection/building costs are borne by the tenant and those terms are stipulated in the tenancy agreement as it appears in clause 2(4) and 4(a) of the tenancy agreement. She voiced that, under clause 2(h) exhibit DE1 after expiry or termination of the contract the tenant has to demolish any structure on the demised premises at his/her own costs and hand over the clean land without any claim of costs. In response to the claim of hiked rent rate to USD 2910 DW1 stated that, in 2017 rent was raised up to USD 15 per square meter due to increased value of the premises, size of the leased premises and demand in the market She said, a tenant was charged in USD because as an authority TPA charges are made in United States Dollars. However the tenant could pay in Tanzania shillings basing on the prevailing rate of the date of payment, this witness confirmed. As regard to the relationship with Plaintiff, she testified the same ended up in the annual year 2015/2016 as when they offered her the new agreement for 2016/2017, she refused to sign on assertion that rent had increased. According to her testimony, the

rent of USD 15 per square meter was applied to all tenants and they all signed the agreement except the plaintiff.

When cross examined DW1 stated that, the plaintiff never met her to negotiate the terms of agreement. Questioned on the process of obtaining the rent rate before issuing the same to the tenant, she mentioned the same is issued by the defendant after consultation with Chief Government Valuer over the leased premises and then the same is communicated to the tenant on her/his first lease or during renewal of the tenure.

When asked as to why the defendant denied the plaintiff renewal of tenancy and why increased rent rate, DW1 said in 2017 they issued the plaintiff with one sided signed agreement for her signature but she refused to sign and return the copies complaining on the raised rent. DW1 responded further that, it is the location that increases the land rent as always land appreciates instead of depreciating. DW1 admitted that they evicted the plaintiff as she was occupying the premises without valid lease agreement while awaiting for determination of this case so that she removes her belongs and demolishes the building on her own costs. As to why removal or demolition of structures at tenant's costs, Dw1 said, before erecting the structure on the premises the tenant has to submit the drawings and BOQ to the TPA for

them to evaluate by their engineers as their insistence is on erection of temporary structures which can be easily demolished or removed. She said that is because when the premise is required for other uses they would not compromise with the tenant on reduction of rent as that is the government authority in which rents are fixed. After several demands to sign the agreement and pay the due rents without positive response they locked the plaintiff out as the method of terminating the contract.

When referred to paragraph 5 of exhibit DE1, and asked as to why they did not issue the defendant with notice of termination of contract, DW1 said the notice could not be issued as the plaintiff was no longer their tenant for not renewing the tenancy agreement for more than 7 months.

As alluded to above in the end of defence side evidence both counsel for the parties requested for court leave to file final written submission, the prayer which was cordially granted. I appreciate the brief submission from both parties although I find no need to reproduce them here as I will be referring them in the course of determining the framed issues. Nevertheless, before indulging into the duty of determination of the framed issues, I find it apposite to restate the principles under which this Court will be guided with. It is well settled principle of law under sections 110 and 111 of the Evidence

Act, [Cap. 6 R.E 2019] that, any party who alleges existence of any fact or claim of right must prove that the same exists and the onus of so proving lies on the party who would fail if no evidence is adduced at all on claimed facts or right. It is further trite principle of law under section 2(3) of the Evidence Act that, the standard of proof in civil matters is on the balance of probabilities. This settled principle of the law is housed in cases without numbers of both this Court and Court of Appeal such as decisions in **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004, **Anthony M. Masanga Vs. Penina (Mama mgesi) & Lucia (Mama Anna),** Civil Appeal No.118 of 2014, **Paulina Samson Ndawavya Vs. Theresia Thomasi Madaha**, Civil Appeal No. 53 of 2017 and **Berelia Karangirangi Vs. Asteria Nyalwambwa,** Civil Appeal No. 237 of 2017 (All CAT- Unreported). The above principles were well put by Court of Appeal in the case of **Paulina Samson Ndawavya** (supra) when the Court observed that:

> *"It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence act, Cap. 6 [R.E 2002]. It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of*

probabilities which simply means that the Court will sustain such evidence which is more credible than the other…"

Similarly in **Berelia Karangirangi** (supra) Court of Appeal also had this to say;

We think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that, he who alleges must prove….it is similar that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities."

Having settled on the above principle I now turn to consider and answer the issues. To start with is the first issue as to **whether the defendant's increase of rent by 485% in the new contract to the plaintiff was justified in law**. For just determination of this issue I wish to revisit first the law related to leasing of land or landed properties in our country as found in Part IX of the Land Act, [Cap 113 R.E 2019] (the Land Act). The law under section 78 of the Act, gives power to the holder of a granted right of occupancy to lease that right or part of it to any other person for a definite period or for the life of the lessor subject to the conditions which may be required under the Act. For easy reference, I quote the provision as hereunder:

> ***78.-(1) Subject to the provisions of this Act, the holder of a granted right of occupancy may lease that right of occupancy or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee, and subject to any conditions which may be required by this Act or any other law applicable to leases or which he may think fit.***

It is common knowledge that such lease will be subjected to a certain consideration termed rent dully paid to the lessor by the lessee, though the definition of term ”rent” is not provided under the Act. **Mitra’s Legal & Commercial Dictionary**, (2014) 6th Ed by Tapash Gan Choudhury at page 745 defines rent to mean:

> *”Consideration paid usually periodically for use or occupancy of property; a compensation or return made periodically by a tenant or occupant for the possession and use of lands and corporeal hereditaments; money, chattels, or services issuing usually out of lands and tenements as payment for use.”*

Similar definition of the term ”rent” is given by **Blacks Law Dictionary**, 8th Ed (2004) by Bryan A. Garner at page 4049 to mean:

"Consideration paid, usually periodically, for the use or occupancy of property"

Garnered from the above definitions rent is a consideration to the lessor by the lessee for the use and occupation of the formers property. The same is paid for the authorised period of occupation and includes charges in connection with the occupation of the premises such as tax payable to the Central Government or the corporate authority. See explanations in **Mitra's Legal & Commercial Dictionary** (supra) at page 746. It follows therefore that any determination or assessment of chargeable rent rate is based on a number of factors or conditions. In our jurisdiction section 78(3) of the Land Act provides for the conditions under which rent payable under lease agreement can be considered or assessed. For the purpose of clarity, the provision of sec is reproduced hereunder:

78(3) In determining the amount of rent payable under a lease, regard shall be had to –

(a) size of the land;

(b) use of the land

(c) value of the land as evidenced by leases in the market in the area where the land is located;

(d) location of the land; and

(e) condition of the land or building.

Now back to the issue at discussion having considered the oral evidence and exhibits tendered by both parties it is uncontroverted fact that there existed lease agreement between the parties from 2009 for a definite period of 12 months subject to renewal each year which lasted 2016. And that under such tenancy period rent chargeable increased from USD 72 in 2009 to USD 600 2016. It is further undisputed fact that, upon request for renewal of tenancy agreement for 2017, the plaintiff was informed about an increase of the rent from USD 600 to USD 2910 per month, the amount she found to be on higher side hence refused to sign the agreement in return sought for negotiation on its reduction, the request which was rejected by the defendant. As to why such huge increase, DW1 stated, the change of rent rate was effected to all tenants based on the increase of the value of the demised area, increase of the size of the leased area by the plaintiff as well as the demand which was also on increase. The plaintiff who was duty bound to prove to the Court on the balance of probabilities that, the said rent rate was illegally charged did not counter the defendant's evidence with regard to the reasons for increase of the said rent which, I find to be tandem with conditions set under section

78(3) of the Land Act, for determination of the amount payable under a lease. These include the size of land, market value of the land, location and condition of the land, which Dw1 said all were considered. Further to that there was unchallenged evidence by DW1 that, the said rent rate of USD 2910 was reached after consultation with the Chief Government valuer, who valued the land at that time.

The above notwithstanding, I find the lessor being the owner of the demised premises had all the rights to change the rent. The reasons for such findings are not far-fetched. **One**, as it was stated by the defendant's witness the value of the land always appreciate and also the market value of the premises attracts the change of rates to be charged by the lessor. **Second**, there is no any clause in the former agreement (exh. DE1) which could inferred and interpreted against the defendant that, any changes in relation to the rent before renewal of contract ought be discussed by both parties, thus limiting the defendant from increasing the rent to be charged. All the above considered and given the fact that the plaintiff has failed to supply the court with evidence that, it was mandatory for the defendant to negotiate with her before raising the rent rate, I find the increase of the said rent to

USD 2910 by the defendant was justifiable. Therefore the first issue is answered in affirmative.

Turning to the second issue which is whether the Plaintiff is entitled to compensation to the tune of Tshs.238,155,100.08 for the structures constructed on the leased land under tenancy agreement. It is the principle of law under section 110(1) and 111 of the Evidence Act, as alluded to above, that he who alleges must prove the existence of that fact and the onus of so proving lies on the party who alleges. It is also the trite law that the standard of proof in all civil cases is on the balance of probabilities. See the cases of **Godfrey Sayi Vs. Anna Siame Mary Mndolwa,** Civil Appeal No. 114 of 2012 (CAT-unreported) and **Berelia Karangirangi (supra)**. It was the plaintiff's evidence during the trial through PW1 and PW2 that, she had incurred Tshs. 69,114,950/-as costs for construction of the office on the demised premises. Mr. Ukwonga for the Plaintiff submits that since the plaintiff incurred such costs and has been paying rents without default then she is entitled to compensation as well an unconditional continuation of tenancy. In their counter submissions the learned State Attorneys are resisting that assertion for want of evidence as to how such costs was reached. I am at one with the learned State Attorneys' proposition that the

plaintiff's claim on the incurred costs for construction of the said office is wanting in merit. Apart from alleging that in construction of the said office contractor was engaged neither PW1 nor PW2 tendered any documentary evidence to justify the asserted costs of Tshs. 69,114,950/- leave alone the claimed value of the office at Tshs. 238,155,100.08 after construction as averred in paragraph 6 of the plaint. As that is not enough there is material contradiction between PW1 and PW2 on the claimed costs incurred during construction of the ticketing office at the demised premises. While PW1 relying on the BOQ exhibit PE1 says it was Tshs. 238,155,100.08, PW2 on the other side states it was Tshs. 69,114,950/-. This being material contradiction goes down to affect the credibility of both witnesses on the specific amount attained as costs for the construction of the said office. Hence the claim is not proved.

Even if the costs incurred by the plaintiff in construction of the offices were established still I could hold she was not entitled to any compensation. I so hold as there is no any evidence tendered by her to prove that, she is entitled to be compensated for anything in relation to the complained of lease agreement. As alluded to above, the last agreement which was subject to renewal every year expired in 2016 and there was no any claim of breach of

such expired agreement during lease period. It follows therefore that, the relationship between the parties also expired when the lease period expired and it was upon signing of the new agreement for 2017 when the lessee would be entitled to claim any right against the defendant. It however not in dispute that, it is the Plaintiff who is/was not ready to sign the new contract on assertion that its term on rent is against her favour. Since there is no any agreement in existence at the time of institution of this case, I find no any breach of contract which entitles the plaintiff to be compensated the claimed amount. The Court of Appeal in the case of **Zuberi Augustino Vs. Anicet Mugabe**, (1992) TLR 137 at page 139 had this to say on proof of special damages:

> *"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."*

In the matter at hand claimed amount of Tshs.238,155,100.08 alleged to be the cost incurred in construction of the office space by the plaintiff, is not only wanting but also unfounded as the same is contradicted by the BOQ (Exhibit PE1) and the testimony of PW2 who testified the construction was Tshs. 69,114,950/= and goes against the agreement that existed before between the parties. second issue is resolved in negative.

The third issue which is on whether the plaintiff is entitled to general damages. The law is settled that general damages are awardable at the discretion of the Court after consideration and deliberation on the evidence on record able to justify the award. Although the same are awarded at the discretion of the Court but the reasons for so awarding must be assigned. See the case of **Alfred Fundi Vs. Geled Mango & others**, Civil Appeal No.49 of 2017.

In this case the Plaintiff also requested for general damages of which the amount is to be assessed by the Court basing on the adduced evidence. The purpose of general damages being compensatory in nature is to remedy the plaintiff from the loss suffered as well as acting as a room for compensation for the mental pains and sufferings underwent by him/her out of the defendant's act or wrong. This was the position of the Court in the case of **P.M. Jonathan Vs. Athuman Khalfan** [1980] TLR175 at page 190 Lugakingira J (as he then was) the decision which was cited with approval by the Court of Appeal in the case of **Peter Joseph Kilibika and Another Vs. Partic Aloyce Mlingi**, Civil Appeal No. 37 of 2009 (CAT-unreported), where the court held that:

"the position as it therefore emerges to me is that general damages are compensatory in character. They are intended to take care of the plaintiff's loss of reputation, as well as to act as a solarium for mental pain and suffering".

In this case the Plaintiff's claim rooted from the increase of rent by the defendant. As discussed and found above it is the law which empowers the holder of right of occupancy to lease it and determine the rent basing on the criteria dictated in section 78(3) of Land Act, the conditions which undoubtedly were followed by the defendant as already held above. Further to that the Plaintiff who is obliged to prove the injury she suffered for the defendant's act if any failed to discharge that duty as it was held in the case of **Barelia** (supra). It is from that failure I find the third issue is answered in negative, in that the plaintiff is not entitled to general damages.

In addressing the last issue as to what relief the parties are entitled to, the law is clear under section 110 of the Law of Contract Act, [Cap. 345 R.E 2019] that any agreement is a contract if it is made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object. That being the position this court finds that, since the Plaintiff opted not to sign a new lease agreement with the defendant for the year 2017, this court can neither force her to sign nor force the lessor to negotiate rent

is tantamount to doing contrary to section 110 of the law of contact which requires the contract to be voluntarily entered. In view of the above the plaintiff deserves nothing than dismissal of his claims for want of merit.

That said and done, this suit is hereby dismissed with costs.

It is so ordered.

DATED at Dar es Salaam this 19th day of August, 2022.

E. E. KAKOLAKI

JUDGE

19/08/2022.

The Judgment has been delivered at Dar es Salaam today 19th day of August, 2022 in the presence of Ms. Nuru Jamal, advocate for the Plaintiff, and Mr. Asha Livanga, Court clerk and in the absence of for the Defendant.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

19/08/2022.