

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 56 OF 2020

CIELMAC LIMITED PLAINTIFF

VERSUS

WAIFRICA TANZANIA LIMITED DEFENDANT

*Date of last Order: 06/10/2021
Date of Judgment: 17/01/2022*

J U D G M E N T

MANGO, J

The Plaintiff and the Defendant are companies incorporated under the Companies Act, [Cap. 212 R. E. 2002] having their registered offices in Dar es Salaam. The two companies entered into five (5) lease agreements as follows. An agreement dated 1st December 2016 in respect of a Warehouse No. 1 (Front side) located at Plot No. 95, Mikocheni B, Light Industrial Area Dar es salaam and four lease agreements in respect of staff quarters dated 6th May 2016, 19th May 2016, 25th August 2016 respectively. The Plaintiff filed this Suit alleging breach of contractual obligations by the Defendants by failure to pay rent from July, 2019 to the time to filing this Suit. According

to the Plaintiff, the amount of outstanding rent is Tshs. 393,426,216.39 (VAT inclusive).

In her Written Statement of Defence, the Defendant did not dispute to have entered into the Lease Agreements with the Plaintiff. She only disputed the amount of outstanding rent and demand notices served to her.

The Defendant was represented by Mr. Victor Mwakimi, Learned Counsel while the Plaintiff was represented by Mr. Symphorian Revelian Kitare, Learned Counsel.

The Defendant stopped attending Court proceedings at the initial stages of the Case. On 16th June 2021 when this matter was called for the first Pre-Trial Settlement and Scheduling Conference, this Court ordered the matter to proceed ex-parte against the Defendant for non- appearance. The Ex-Parte order was issued under Order VIII Rule 20(1)(b) of the Civil Procedure Code, [Cap.33 R. E. 2019].

During Final Pre-Trial Settlement and Scheduling Conference, the following issues were drawn by the Court for proper determination of the suit at hand.

- i. Whether the Defendant defaulted in paying rent from July, 2019;
- ii. Whether the outstanding rent is Tshs. 393,426, 216.39;
- iii. What reliefs are parties entitled to.

During hearing the Plaintiff had only one witness, Mr. Dinesh Dave, a Financial controller of the Plaintiff company who testified as PW1. According to PW1, the Defendant owes the Plaintiff Tshs. 393,000,000/= as outstanding rent from July, 2019 to April 2020. The witness tendered as evidence the Lease Agreements and printouts of emails written to the defendants as reminder for outstanding rent. Lease agreements in respect of the warehouse and the staff quarters were admitted and marked collectively as exhibit P1. The email print outs were admitted and marked collectively as Exhibit P2. He also tendered demand notices issued to the Defendant Company via services of the Plaintiff's advocate's company, Kitare and Company Advocates. He then prayed to have the prayers contained in the Plaint granted.

The Defendant in paragraph 7 of her Written Statement of Defence did not dispute that she stopped paying rent from July, 2019. She only disputes the amount of outstanding rent. The agreements were also tendered as evidence in this suit. In such circumstances, the first issue is responded affirmatively that the two companies had executed lease agreements as pleaded by the Plaintiff.

On the second issue, the Plaintiff ought to have proved how the amount of outstanding rent arose. Such proof would have been made by explanations as to how the outstanding rent calculations were computed or unpaid rent invoices issued to the Defendant Company by the Plaintiff Company. Unfortunately, the Plaintiff company merely allege outstanding rent to be Tshs. 393,000,000/= without proving how the said figure arose. It should be noted that the basis of the Plaintiff's claims is the Lease Agreements, Exhibit P1 collectively. The contents of the lease agreements indicate that each agreement had its own agreed rent rate and the rent was charged in terms of US Dollar. It is not clear how much was the amount of outstanding rent for each agreement in terms of USD and how the said amount was converted to Tanzanian Shillings. Absence of explanations on how the outstanding rent was computed and how, under which rate the same was converted to Tanzania Shillings from USD makes this Court incapable to determine the correctness of the amount claimed by the Plaintiff. Thus, the court cannot enter any findings with regard to the second issue.

Ordinarily failure to prove the case renders to a dismissal. However, in the suit at hand the Defendant has not disputed the fact that there is outstanding rent which is yet to be paid to the Plaintiff. As highlighted in this judgement the Defendant has only disputed the amount claimed by the Plaintiff and

inclusion of taxes which is contrary to the terms contained in all lease agreements between the two circumstances. In such circumstances, I find it to be in the interest of justice to have the suit struck out to enable the Plaintiff to pursue his claims against the Defendant after collecting necessary evidence capable of proving his claims.

For that reason, the suit is hereby struck out. Given the fact that the matter proceeded ex parte, I do not award costs.

Dated at Dar es salaam this 17th January 2022.



Z. D. MANGO

JUDGE