

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**LAND CASE NO. 17 OF 2019**

**MAASAI PASTORALISTS FOUNDATION (MPF)..... PLAINTIFF  
VERSUS  
VIVIAN APOLINARY SOKA (Administratrix  
of the Estate of the Late APOLINARY SOKA ..... DEFENDANT  
JUDGMENT**

02/12/2021 & 21/02/2022

**KAMUZORA J,**

The Plaintiff, Maasai Pastoralists Foundation (MPF) is a Non-Governmental Organisation registered under the Non-Governmental Organisation Act No. 24 of 2002 as amended by Act No. 11 of 2005. The Plaintiff is claiming against the Defendant for compensation of the sum of Tanzania shillings five hundred seventy three million seven hundred thirty four thousands (Tshs. 573,734,000/=) being specific and general damage for breach of lease agreement and trespass.

Briefly, the Plaintiff and the Defendant entered into a lease agreement on 12<sup>th</sup> April, 2013 in respect of a house situated at Plot No. 356, Block Y House No. 26 Ngarenaro. Under the lease agreement the

Plaintiff was required to pay rent at the tune of Tshs. 320,000/= to be paid annually in advance. It was alleged that the Defendant trespassed into the leased premise, illegally evicted the Plaintiff, forfeited the Plaintiff's office properties and took possession of the leased premise without claim of right. The Plaintiff claim is therefore based on the breach of the lease agreement and unlawful entry by the Defendant into the leased premise.

It is from that allegation the Plaintiff prays before this court for a declaration that the Defendant's malicious act of eviction and detaining the assets of the Plaintiff is illegal, null and void ab initio and in violation of the Plaintiff's right. A declaration that the Defendant's act of eviction, continuing detaining assets and shut down of the community programs operations managed by the Plaintiff is a breach of lease agreement, wrongful eviction and trespass to chattel of the Plaintiff. The Plaintiff is thus claiming against the Defendant for specific at the tune of Tshs. 468,734,000 for loss of Donor funds, loss of assets, loss of organization library and store room equipment. The Plaintiff also claims for Tshs, 105,000,000/= as general and punitive damages, interest and costs of the suit.

The Defendant admitted to the fact that she entered into a lease agreement with the Plaintiff dated 12<sup>th</sup> April, 2013. She however denied all the allegations against her.

As a matter of legal representation, Ms. Miriam Nitume represented the Plaintiff while Mr. Ally Abdallah Mhyellah and Ms. Thea represented the Defendant. The issues that were proposed and agreed upon by the parties are as follows: -

- 1. Whether the eviction of the Plaintiff from the rented property was unlawful.*
- 2. Whether the Defendant detained the assets belonging to the Plaintiff without colour of right.*
- 3. Whether the detention of the said properties resulted into complete shutdown of the operations of the Plaintiff.*
- 4. To what reliefs are parties entitled.*

When the matter was called for hearing, two witnesses testified for the Plaintiff's case while six witnesses testified for the defence case. Both parties after the close of hearing, filed their respective closing submissions which will be considered in determining this case.

Starting with the first issue on whether the eviction of the Plaintiff from the rented property was unlawful, I will be guided by evidence on record. Emmanuel Ole Kokan, testified as PW1 and his evidence reveal

that the Plaintiff was the tenant to Vivian Soka (the Defendant). They signed a lease agreement on 12/04/2013 (Exhibit PE1) for the period from 15<sup>th</sup> April 2013 to 14 April 2014. That, on 28<sup>th</sup> March 2014, they communicated with the owner to extend the lease agreement and the request was accepted through the response by Sweatbert Soka. That, the agreement was extended for the same terms and conditions as the prior agreement although the extension period was not mentioned. That, the response was via email sent by Sweetbert on 28/03/2014 who was acting for the Defendant to Balozzi Morwa who was the accountant and administrative officer of the Plaintiff. PW1 added that, the agreed rent was Tshs. 320,000 per month but after the lapse of the written agreement it was later increased to Tshs. 350,000 per month. He claimed that the last rent was paid on 21<sup>st</sup> May 2019 and on the same month they found the door closed.

PW2, Violeth Daniel supported the evidence of PW1 to the effect that, being employed by the Plaintiff as Operation Manager in Administration and Finance, she was responsible to pay the suppliers and to pay for services including rent. She submitted 11 receipts for the payments done including the last receipts with the amount of Tshs. 1,450,000/= to prove that the last payment was on 30/05/2019. The

receipts were admitted collectively as exhibit PE2. She testified also that on May 2019 when the Defendant closed the office the Plaintiff has already paid the rent for the next year of 2019 to 2020.

On the defence side, the Defendant Vivian Apolinary Soka testified as DW2. Her evidence is to the effect that, the house in plot number 365 Plot Y 26 is the property of Apolinary Philemon Soka who is her deceased father. She was appointed administratrix of the estate of her late father. She admitted that, she entered into a tenancy agreement with the Plaintiff, Maasai Pastoralist Foundation (MPF) for the deceased's house mentioned above. That, it was a one-year agreement from 14/04/2013 to 14/04/2014. She identified and acknowledged Exhibit P1 as the agreement that was signed between them. DW2 however claimed that, after lapse of the time for the agreement, they did not have another lease agreement with the Plaintiff.

DW2 testified further that, from 2014 to 2019 the Plaintiff refused to vacate the house and they changed the mode of payment of rent. That, instead of paying a full year rent in advance, they started paying in instalment after staying. She tried to communicate with the Plaintiff's officials through phone calls and text messages. DW2 claimed that she was unable to evict the Plaintiff as she resides at Mbeya thus it was hard

for her to travel to Arusha to make follow up. That, on April, 2019 DW2 decided to travel to Arusha to speak to the Plaintiff and she met the secretary by the name of Violet and the person who introduced himself as director by the name of Aman. She informed them that she wanted them to vacate the house as they were not paying the rent on time. Violet and Aman asked her to communicate with Emmanuel Kokan. She unsuccessful communicated to Emmanuel Kokan thus asked Violet and Aman to vacate house and handle the keys within 14 days.

In order to determine if there was lawful or unlawful eviction of the Plaintiff it is important to determine if there existed a valid lease agreement as between the parties. While the Plaintiff claims that there was a lease agreement between them, the Defendant claim that there was no any valid lease agreement as between them. The lease agreement (Exhibit PE1) is undisputed and its time expired on 14/04/2014. The Plaintiff claim that after the expiry of the time set in exhibit PE1, the parties extended the lease agreement through emails. The emails in question are not part of the evidence but the Defendant does not dispute the fact that after the expiry of the written agreement there was extension of lease agreement through email. She however claimed that such

extension was for the period of one year based on the email by Sweetberth Soka.

From the records, the Plaintiff claim that they were paying rent to the Defendant until the time they were evicted. But the Defendant claimed that they breached the terms of the agreement because after the lapse of the 2013/2014 agreement the Plaintiff was responsible to notify the Defendant of the intention to renew the lease agreement as per clause 5.2 of the lease agreement. That, after the lapse of the first agreement, from 2014 to 2019 the Plaintiff refused to vacate the house and payment was done by instalments, not paid before the occupation (delayed) and not paid for the whole year as agreed.

With evidence in records, it is clear that the parties acknowledge that after the lapse of the written lease agreement, the parties continued with tenancy agreement under the prior terms and conditions. I therefore agree with the submission by the counsel for the Plaintiff that after the lapse of the written lease agreement the Plaintiff continued occupying the premise on the same terms and condition of the written agreement.

As per the terms under Exhibit PE1, the Plaintiff was supposed to pay rent for the whole year in advance. Under paragraph seven of the plaint, the Plaintiff claimed to have paid the rent on 21<sup>st</sup> May 2019 and

was evicted on 27<sup>th</sup> May 2019. In his evidence PW1 claimed that, they made payment of the rent from 2014 to 2019 when the building was closed. But PW2 testified that, the last payment was on 30<sup>th</sup> May 2019 and when the Defendant closed the office, the Plaintiff has already paid the rent for the next year of 2019 to 2020. PW2 testified further that the Plaintiff was paying Tanzanian Shillings Fifteen million per year at the rate of Tshs 320,000/= per month. She tendered the payment receipts to support the payment and claimed that, the last payment done on 30/05/2019 of Tshs. 1,450,000/= was for the remained amount that was being claimed for year 2019/2020. The Defendant on the other hand claimed that such amount was the outstanding rent and the Plaintiff after paying that amount was still owed by the Defendant for two more months.

There is contradiction on the evidence of PW1 and PW2 as to which year the said paid rent covered. While PW1 claimed that it covered for the year 2019, PW2 claimed that it covered the year 2019/2020. I have perused the receipts in question (exhibit PE2 collectively) and my interest is on the last three receipts. The receipt dated 12/12/2018 indicates that the amount of Tshs. 700,000 was paid to the Defendant and at the back of that receipt it is indicated that, that amount covered for two months' rent for the month of September and October and that the Plaintiff was



still owed two months, November and December. The following receipt is dated 26/04/2019 with the amount of Tshs 500,000 and the last receipt is dated 24/05/2019 with the amount of Tshs. 1,450,000/=. For the price of rent having changed to Tshs. 350,000/= the two instalments for April and May 2019 (500,000 +1,450,000) could cover for five months, November 2018 to March 2019 with extra Tshs. 200,000/= to be included in the month of April 2019.

I also discovered contradiction on the Plaintiff evidence. While, the plaint and the evidence of PW1 reveal that the last payment of rent was on 24/05/2019, PW2 claimed that the last payment was on 30/05/2019. This contradiction is material considering the fact that it was claimed by the Plaintiff that the eviction was on 27/05/2019. There is no evidence showing that payment of rent was done after eviction. I have also viewed the receipts in question which is part of exhibit PE2 and discovered that receipt dated 24/05/2019 is also stamped with the seal dated 30/05/2019. There is also another electronic receipt stamped with the seal dated 30/05/2019. But that receipt does not indicate any readable amount and was never part of the receipts attached to the pleadings thus disregarded.

The claim by the Plaintiff that on May 2019 when the Defendant closed the office the Plaintiff has already paid the rent for the next year

of 2019 to 2020 is unproved. The amount paid was the outstanding rent and not the rent for purpose of renewing the contract for the year 2019 to 2020. I also do not agree with closing submission by the counsel for the Plaintiff that at the time the Plaintiff was evicted there was no outstanding rent. It is true as claimed by the Defendant that by the time the Plaintiff was evicted there was outstanding rent for two months, partly for April and full for May 2019.

In their lease agreement the terms indicates that, rent was to be paid full for the whole year in advance and the party intending to renew or terminate the tenancy agreement was to issue one month notice. My construction to the terms of lease agreement and parties' evidence is that, the renewal of the lease agreement required a notice of the party intending the renewal or, where rent is paid for the whole year in advance and accepted by the Defendant, it means the Defendant accepted the renewal of the lease agreement. With that construction, in the absence of any other terms, where there is failure to pay the rent in advance impliedly, no intention to renew the lease agreement. The fact that the Defendant received the outstanding rent does not make the Plaintiff rightful occupier of the rented premise. Had the Plaintiff paid the rent in advance, that could be regarded as entering into a new lease agreement

in the respective year. But paying after staying does not make the renewal of the contract. Thus, in my view, at the time of eviction, the Plaintiff was not legally occupying the house under the terms of the lease agreement.

The records show that, the Defendant made effort to inform the Plaintiff of her intention not to maintain them in her house, and asked them to vacate willingly but they did not comply. There is uncontested evidence of DW2 that by April 2019 she visited the Plaintiff's office and asked them to vacate the house but failed to comply thus, she involved government leaders to ensure vacant possession of the house. I therefore find that, the eviction of the Plaintiff from the rented property was lawfully done by the Defendant.

The second and third issue will be discussed together. From those two issues, the Plaintiff claim that the Defendant detained the assets belonging to the Plaintiff without colour of right and the detention of the said properties resulted into complete shutdown of the operations of the Plaintiff. PW1 testified that, the Defendant evicted them from the rented premise, retained the office equipment and closed the doors to prohibit the Plaintiff from entering the rented premise. That, the act of the Defendant resulted into complete shutdown of the operations as the office properties were retained including; check books for EXIM Bank, CRDB

Bank, fireproof safe, certificate of registration, computer HP, printers, desktop computer, laptops, office table and chairs, roller burner and others. PW1 testified further that, when the matter was referred to court, they obtained a court order allowing them to collect their properties from the Defendant.

DW1 Isaya Doita Harri, the councillor at Ngarenaro Ward testified that, on 26/06/2021 he was consulted by the Defendant asking for assistance to trespass the Plaintiff. He communicated with Imma (PW1) who had travelled and Imma gave permission for them to break the door and count the properties that were in the office. After that message, he called the owner of the house together with the WEO, the Mtaa executive officer and the chairman of TCA. He directed them to supervise the process and ensure proper storage of the properties inside the house.

DW2 testified that when they opened the house, they were together with her neighbours Beth Lyimo and Pamela Mgonja, the officer for the Mtaa executive office one Chrisanta Mwinyinvua and they were assisted Juma @ komando to open the door. They listed all the properties and kept them in one room and closed using two pad locks. She kept keys for one pad lock while the keys for another padlock were kept by Chrisanta as representative of the Mtaa executive officer.

That, on 19/08/2019 the court issued an order for the Plaintiff collect their properties and on 10/09/2019 at evening hours, the Plaintiff's advocate one Ms. Miriam went together with Violet and other 7 young men to collect the properties. The Defendant was present together with his advocate one Mr. Vicent Tishekwa and his secretary and other advocates. That, the handover was also done in the presence of Nadya, from the Mtaa executive office and Mzee Malisa, member of the Mtaa Executive office. The handover document for the Plaintiff's properties was admitted as exhibit DE2.

DW2 admitted that, they handled all the properties except for the printer, motorcycle and photocopy machine which she retained as security of unpaid rent. However, she denied retaining the fireproof safe and the check books. She claimed that, the Plaintiff's advocate requested for the fireproof safe to be opened by breaking it but the Defendant's Advocate refused on account that there was no court order to break the fireproof safe. That, on refusal to their request to break the fireproof safe, the Plaintiff's side decided to leave the fireproof safe and the check books.

The evidence of the Defendant (DW2) was supported by DW1 and other defence witnesses. DW3, Chrisanta Mwinyinvua is a the Mtaa Chairperson and by 2019 she was the member of the Mtaa Executive

office. She witnessed the breaking into the house and storage of the Plaintiff's properties at the Defendant's house. DW4, Betty Christian Lyimo is the Defendant's neighbour. She also witnessed to the breaking into the house to evict the Plaintiff. PW5, Godwin Emason Malisa is the Member of the Mtaa executive office at TCA. He witnessed the execution of the court order for handover of the properties that were in the house of the Defendant. DW6, Vicent Balemba Tishekwa is an advocate who was instructed by the Defendant to witness and supervise the handover of the properties of her tenant (the Plaintiff) that were in the Defendant's house in compliance with the court order. From his evidence, the handover took place on 10/09/2019 in the presence of the counsel for the Plaintiff Ms. Miriam Nitume. He also supported the fact that he did not agree with the proposition from the Plaintiff's representative to break the fireproof safe in the absence of the court order.

From the evidence in record, the Plaintiff claim that, they received the properties from the Defendant as per court order but some of the properties were missing. The missing properties were mentioned to be check books for EXIM and CRDB, fireproof safe, certificate of registration, computer HP, printers, desktop computer, laptops, office table and chairs, roller burner and others. The defence evidence as well as the closing

submission by the counsel for the Defendant reveal that, all properties were handled except for the printer, motorcycle and photocopy machine which were retained as security of unpaid rent. As regard to the check books for EXIM Bank and CRDB Bank, fireproof safe and one printer, the Defendant denied to have retained them and claimed that they were left by the Plaintiff on their own will. Her evidence differs from her pleadings specifically paragraph 16, 26 and 28 of the written statement of defence. At those paragraphs, the Defendant claimed that all the Plaintiff's properties were released save for fireproof safe, one motorcycle, one photocopy machine, one printer and check books for EXIM Bank and CRDB Bank. There was no court order which allowed the Defendant to retain those properties. Thus, in my view, the conduct of the Defendant to retain properties was illegal and unjustifiable.

Regarding the claim for the desktop computer, laptops, office table and chairs, the Plaintiff was unable to mention the number of those items that were in the office as compared to what were collected after the court order to justify that certain number of those items were missing. As regard to the certificate of registration there is no proof that the Defendant retained the same.

It was contended by the Plaintiff that the fireproof safe contained EURO 10,000 cash but the Defendant claimed that the same was not opened. The Plaintiff was unable to prove the source of income justifying that amount to be in the fireproof safe. The Plaintiff being the NGO receives funds from donors and other stakeholders as well pointed out in the Plaintiff evidence. But I believe that there must be records of the donation and the amount donated and records showing that such amount was kept in the fireproof safe and not otherwise. The Plaintiff admitted to have bank account thus, it is very strange that the huge amount of money, EURO 10,000 could be kept in the fireproof safe instead of bank account. In short, there is no justifiable evidence to prove that such amount was earned by the Plaintiff and kept in the fireproof safe. I therefore do not agree with this claim.

On the claim by the Defendant that she retained those properties to recover the outstanding rent, I find that the Defendant improperly assumed powers. The Defendant had not raised any counterclaim against the Plaintiff thus, could not assume any power to retain any of the Plaintiff's property without legal procedure. The claim by the Defendant that the amount was retained to pay for unpaid rent, repair of the damaged house, missing properties of the Defendant, unpaid water bills



and electricity are unjustifiable. Parties are bound by their pleadings thus anything not introduced in the pleadings cannot be dealt with by the court. In her written statement of defence, the Defendant did not raise counter claim nor did plead any loss.

In concluding, I agree partly with the Plaintiff's evidence and submission by the counsel for the Plaintiff on the second issue that the Defendant detained the fireproof safe, one motorcycle, one photocopy machine, one printer and check books for EXIM Bank and CRDB Bank, the properties of the Plaintiff without colour of right. But I do not agree with the third issue that the Defendant's conduct resulted into a complete shutdown of the operations of the Plaintiff. PW1 testified that the Plaintiff is an NGO dealing with community development and research and operates different projects under the sponsorship of European Union and other stakeholders. That, they were unable to conduct the projects evaluation on May 2019 due to the closure of the office. It is my view that, such claim would probably stand if the Plaintiff were legally occupying the Defendant's house. Much as this court is of the opinion that the Plaintiff was legally evicted, there cannot be any claim arising out of the eviction.

On the last issue as to what reliefs are parties entitled, the Plaintiff was unable to prove the claim for specific damage at the tune of Tshs 468,734,000 claimed under paragraph 22 of the amended plaint. As well pointed out in the Defendant's closing submission, specific damage must be specifically pleaded and strictly proved. This aspect is supported by different cases including the authorities cited by the counsel for the Defendant in their closing submission which are; the case of **Abdul Karim Haji Vs Raymond Nchimbi Alois and Joseph Sita Joseph (2006) TLR 419** and the case of **Masolele Genearl Agencies Vs African Inland Chrch Tanzania (1994) TLR 192.**

In addition to the above listed cases, the Court of Appeal of Tanzania in the case of **Anthony Ngoo and another v. Kitinda Maro**, Civil Appeal No. 25 of 2014 CAT at Arusha (Unreported) cited with approval the case of **Zuberi Augustino v Anicet Mugabe (1992) TLR 137** at page 139 and held that:

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

The listed properties under paragraph 22 such as loss of doner funds, long list of office assets, organization library and store room equipment were not proved except that, it was only proved that the Defendant illegally retained some of the Plaintiff's properties including

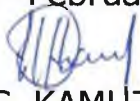
fireproof safe, one motorcycle, one photocopy machine, one printer and check books for EXIM Bank and CRDB Bank. Therefore, the Plaintiff was able to partly prove the second issue as the Defendant illegally retained the Plaintiff's properties including; fireproof safe, one motorcycle, one photocopy machine, one printer and check books for EXIM Bank and CRDB Bank.

Regarding the claim of Tshs, 105,000,000/= as general and punitive damages, it is the finding of this court that the claim for general and punitive damage is not awarded. The law requires general damage to be assessed by the court and not the party to claim specific amount. Apart from that, there is no proof for malicious or wrongful eviction of the Plaintiff and no proof that the Defendant was responsible for the Plaintiff's complete shutdown of the business if any. The evidence in record does not justify the award of general or punitive damage. Being guided by the decision in **Anthony Ngoo (supra)**, it is my considered view that, as the Plaintiff was in illegal occupation of the Defendant's house, the eviction cannot be construed affecting the Plaintiff to the extent of being entitled to punitive or general damage. The claim for general damage is therefore not granted.

In the final analysis I find that the Plaintiff was legally evicted from the rented premise. I however find that the Plaintiff was able to partly prove the second issue and the Defendant is hereby ordered to handover to the Plaintiff, the fireproof safe, one motorcycle, one photocopy machine, one printer and check books for EXIM Bank and CRDB Bank. The judgment is therefore entered in favour of the Plaintiff to the extent explained above. Considering the circumstance of this case, each party shall bear his/her own costs.



**DATED** at **ARUSHA** this 21<sup>st</sup> February 2022

  
D.C. KAMUZORA

JUDGE