IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LAND CASE NO. 02 OF 2020

OTARU MANUFACTURING AND TRADING CO. LTD..... PLAINTIFF

VERSUS

MANGWEMBE AUCTION MART (MAM) @ MANGWEMBE 2011 CO. LTD..... DEFENDANT

KILIMANJARO NATIVE CO-OPERATIVE UNION 1984..3RD PARTY

JUDGMENT

01/03/2023 & 24/O3/2023

SIMFUKWE, J.

The plaintiff company herein claims against the defendant specific damages at the tune of Tshs 1,408,887,000/ being the value of the destroyed assets, Tshs 838,128,000/ being the value of the stock of arable crops destroyed/stolen; making a total of Tshs. 2,247,015,000/ (Two billion, two hundred forty-seven million and fifteen thousand only). Also, the plaintiff prays for general damages of Tshs 600,000,000/= (six hundred million only) to be assessed by the court, costs of the suit and any other relief that is reasonable, fit and just.

A brief history of the dispute as depicted from the 2nd amended plaint is that the plaintiff entered into lease agreement with the 3rd Party herein Kilimanjaro Natives Co-operative Union (KNCU) [1984] LTD to develop the land known as Lerongo Farm measured 541 acres, situated at Sanya Juu area at Mlangoni Village, Gararagua Ward within Siha district in Kilimanjaro Region. The said farm was a coffee plantation the property of the 3rd Party herein which was to be developed subject to terms and conditions laid down in the Lease Agreement.

It has been alleged by the Plaintiff that on 31/12/2019 the Defendant deployed her workers to trespass into the said Lerongo Farm without any notice whatsoever to the Plaintiff. That, the Defendant expelled out all the workers of the Plaintiff, denied access of any body into the said farm and started to list the properties they found in the farm owned by the Plaintiff without express or implied permission of the Plaintiff.

In his Written Statement of Defence, the defendant admitted to had been instructed by the third party herein to evict and collect debt from the plaintiff. The third party admitted in their Written Statement of Defence inter alia that they entered into a Lease Agreement with the plaintiff herein, plus the Addendum dated 09/01/2004 and 01/01/2011 respectively.

The plaintiff prayed for the following reliefs against the defendant:

a) *Declaration that the Defendant unlawfully and without justification trespassed into the plaintiff's possession and enjoyment of the farm (Lerongo farm).*
b) *Declaration that the plaintiff suffered damages and loss occasioned by the wrongful act of the defendant.*

c) *That, the honourable court to order the defendant to stop any activity into the disputed farm, vacate the place and hand over the farm to the plaintiff without condition.*

d) *That, the honourable court to order all the properties removed from the farm be restored with immediate effect and the repair of the infrastructure destroyed by the defendant to be suitable for the plaintiff to conduct her farming business onto the farm. In the alternative, the court to order compensation of the value of the removed properties from the farm and those destroyed and the value of making repair of the destruction of the infrastructure.*

e) *That, the honourable court to order the defendant to pay to the plaintiff the above-mentioned specific damages of Tshs 2,247,015,000/= and general damages of Tshs. 600,000,000/= (to be assessed by the court).*

f) *Costs of this suit be provided for.*

g) *Any other relief (s) this Honourable Court may deem reasonable, fit and just to grant.*

The plaintiff was represented by Mr. Jacob V. Malick and Elidaima Mbise, learned counsels, Mr. Edmund Rweyemamu Ngemela learned counsel appeared for the defendant while Mr. Ralph Njau and Professor Ikamba R. Msanga learned counsels represented the third party. Prior to the hearing, the following issues were framed:

1. *Whether the Plaintiff breached the Lease Agreement entered between the Plaintiff and the Third Party dated 9/01/2004 and the Addendum which followed dated 01/01/2011.*
2. *Whether the Defendant had any legal justification to interfere with the suit land.*

3. *Whether the Defendant issued the legal notice of eviction.*
4. *To what reliefs are the parties entitled to.*

The third issue was dropped after deliberation with the learned counsels of all the parties.

The plaintiffs called six witnesses to prove their case, the defendant had one witness only and the third party called three witnesses.

PW1 Mrs Mary Peter Otaru testified among other things that she was a Managing Director of the Plaintiff. She said that she had sued the Defendant because he invaded Lerongo Farm owned by Otaru Manufacturing and Trading Company Limited. That, on 31/12/2019, the Defendant ordered the employees of the Plaintiff to get out of the farm, they obeyed and left. Then, the Defendant deployed their security guards in the said farm. That, on 21/3/2020 the Defendant broke the gate and entered the factory, broke the offices and go-down. They auctioned her properties: the agricultural equipment, livestock and other things.

PW1 went on to testify that she had a contract with KNCU of 30 years which was signed on 9/1/2004. She stated that KNCU is in court because she was joined by the Defendant who alleged that he was hired by KNCU. Mrs. Otaru averred that the source of all the losses was KNCU and that they are not indebted by KNCU. That, their contract had a clause which states that in case of any dispute the same should be referred to the arbitrator and that KNCU did not comply to that procedure. The Defendant had no right to enter into the suit land as the Plaintiff had never received any notice to vacate from the suit land. That, the said farm has 541 acres which they used to cultivate coffee, wheat, maize, barley and beans.

PW1 prayed to tender copy of a Lease Agreement of Lerongo Farm. It was opposed by the learned defence counsels for failure to register it and non-compliance with **section 68 of the Evidence Act, Cap 6 R.E 2019**. The objections were upheld on the reason that the Plaintiff had not served notice to produce secondary evidence and additional documents to the Defendants.

PW1 testified further that their agreement with the third party never ended. That, to date, they are not working and could not even pay terminal benefits to her employees. That, the destruction which was done by Mangwembe affected the tractors (one Ford, Vatra, Katic, Kubota together with the ploughs), 21 cows, 26 goats, 8 sheep, combine machine, crops (wheat, coffee, maize and beans), 4.2 tons of harvested coffee, 5 tons of dried coffee and 39.2 tons of completely dried coffee. The documents in the office, the furniture, curtains, one Fiat, one Landcruiser, one Suzuki, one Samurai and Peugeot were stolen. All the offices and residential houses were destroyed, two fridges, solar panel, laptops, camera, one printer and other properties which PW1 did not remember were destroyed. After they had discovered the said destruction, they listed the destroyed properties and took the list to Sanya Juu Police Station with RB 07/2020.

PW1 prayed this court to adopt her prayers in the plaint to form part of her evidence. She concluded that in Miscellaneous Application No. 7/2020, the court allowed her to access the suit farm but the Defendants disobeyed that order as they found notices and security guards prohibiting them to access the farm.

PW2 Shaibu Juma Monko stated that he was employed by Otaru Company since 01/8/2008 and worked for them for twelve years. He said that he no longer works with Otaru Company after being invaded and evicted from the farm by Mangwembe Auction Mart on 31/12/2019. That, on the material date, PW2 managed to identify the brokers because they wore t-shirts written: "Mangwembe Auction Mart."

PW2 narrated how the brokers arrived at Lerongo Farm in the company of police officers and KNCU officials. They inquired about Focus and he appeared. They told Focus that they wanted to list the properties of Otaru, he replied that he could not list the properties of Otaru as he did not know the same. They ordered him to give them the keys of the office and all the stores, Focus told them that he had no keys. Then, they proceeded to list the properties which were outside the workshop. Thereafter, they ordered the workers of Otaru to leave from that place. The workers asked them for how long will it last as they were harvesting coffee and processing it, they replied that from that day onward. They were about seven employees, all of them left.

PW2 continued to narrate that they had residential houses at the said farm. Thus, after being evicted from the farm, they went to their residential houses which were a distance of about 200 meters from the offices. Mangwembe Auction Mart deployed their security guards who had uniforms written "Pama Security" who continued to stay at the Farm all the time. Later, Mangwembe Auction Mart went to conduct an auction on 21/3/2020. They auctioned agricultural equipment and livestock. PW2 alleged that he was informed by his friend that there was an auction at Lerongo Farm. He went to the said auction in the company of the said

friend. PW2 mentioned the properties which were auctioned and some of the people who purchased some of the properties.

It was averred by PW2 that Lerongo Farm was the property of KNCU. That, Otaru Company was cultivating coffee and cereals in the said farm which is within Siha district. Seven people were employed while there were other casual workers who were harvesting coffee who ranged from 150 upward depending on the season.

PW2 testified further that after all the incidences, nothing proceeded. As workers of Otaru Company, they had not been paid their terminal benefits. They agreed with the management of the company that they would pay them. PW2 recalled that after being evicted by Mangwembe, on 02/01/2020 they went to the offices at Lerongo Farm so that they could know about payment of their entitlements. They found great destruction done, coffee trees had fallen and that they did not find the harvested coffee.

PW3 Focus John Kimaro testified that he was before the court to testify about the invasion of Lerongo Farm within Siha district and that he was testifying for Otaru Manufacturing and Trading Company Ltd as a former employee of the company from 2009 to 2019. He said that he was first employed as a farm assistant and later he went for mechanics training and employed as a mechanics technician. His employment ended after being evicted by Mangwembe Company.

PW3 elaborated that, on 31/12/2019 in the afternoon, Mangwembe Company invaded them and evicted them from the farm. That, they arrived with two vehicles, one being a police vehicle. Then, they introduced themselves as Mangwembe Auction Mart and that they went

to attach the properties of Otaru Company. They ordered the workers of Otaru Company to leave the stores open and leave. They asked them about the coffee harvesting which was going on, the livestock and milking, they replied that that was none of their business. PW3 and his fellows consulted the director of the farm, they could not find the Managing Director Mrs. Otaru, they found the other Director Mr. Casmir and informed him that they were evicted from the farm. Mr. Casmir advised them to calm down and wait. The auctioneers continued to list the properties at the workshop, coffee store which was open and counting livestock. Thereafter, the auctioneers left with one vehicle and headed to the house of the director within Lerongo Farm after being directed by someone from KNCU.

PW3 stated further that, after invasion, the auctioneers deployed their security guards. They waited until when they went to auction the said properties on 21/3/2020. PW3 was present when the properties were auctioned as they were still living in the company houses at the farm. He said that many properties were auctioned including various agricultural equipment, machines, motor vehicles, office equipment, livestock and house utensils. It was alleged further that before the invasion at Lerongo farm there was livestock keeping and cultivation of coffee, maize, wheat, beans and other crops like vegetables. When PW3 went back to the farm after eviction, he found the infrastructures of the farm destroyed. He asserted that he did not know where the crops were taken. He continued to get his rights from the company while the rest of the employees left.

PW4 Mr. John Nyabamba a registered valuer, after being sworn stated inter alia that he was before the court for the sake of testifying as an expert in a case between Otaru Company, Mangwembe and KNCU. He

stated his academic qualifications and working experience and alleged that he had worked with Otaru Company for almost three years. That, he worked for them for the last time in 2019.

PW4 prayed to tender a valuation report of fixed assets on Lerongo Farm for Financial Reporting Purposes, June 2019, as exhibit. It was admitted as exhibit P1.

PW4 went on to state that the report concerns valuation of fixed assets of Otaru Manufacturing and Trading Company Ltd as they were on 27th June 2019. That, the assets were on six classes which were valued separately. The grant total was Tshs 1,408,887,000/= (One billion four hundred and eight million, eight hundred eighty-seven thousand only). PW4 gave the breakdown of the value of each category of the assets as indicated in exhibit P1.

It was testified further that; they went to the site at West Kilimanjaro and inspected one asset after another. After they had recorded the details of each asset, they went back to the office to prepare a report. They used a methodology called "Replacement cost approach." By using the said approach, first they find the current price of the asset as a new asset. Then, they minus/reduce the depreciation which the asset has suffered. The answer is the market value of the asset. PW4 explained that in exhibit P1 there are schedules of valuation of each asset, from page 8 to the end. That, the report shows where the asset was (location), number of assets, year of manufacturing/production, its age, replacement costs of each asset, technical duration in years (expected life span of the asset). Then, they established the depreciation suffered by the asset, the last column being the market value of each asset.

PW4 was of the view that, his report was correct a hundred percent as he went to the site personally, inspected the assets and valued them. He said that he prepared the report personally.

PW5 Glad Washington Mariki stated among other things that he audited the financial reports of Otaru Manufacturing and Trading Company of 2019. He averred that he had been working with Otaru Company from 2017 to 2019 when he worked for them for the last time. He identified the audit report which he had prepared for Otaru Company and prayed to tender it as exhibit. It was admitted as exhibit P2.

PW5 continued that, exhibit P2 is about the financial status of Otaru Manufacturing and Trading Company Limited for the financial year ending 31st December 2019. That, the said report shows income and expenditure of the company, the status of the assets and liability of the company as shown at page 11 of the report (exhibit P2). He added that, the details are on the balance sheet, whereas at page 21 the report indicates the crops which were in the store by 31/12/2019. The crops were coffee, beans, maize and barley. The said report was prepared by a qualified accountant and PW4 went to audit them. PW5 also referred at page 10 of the report where there is a report of income and expenditure, while at page 13, it's a case flow statement.

PW6 Mr. Casmir Peter Otaru testified that he is one of the directors of the Plaintiff. That, the case which is before this court concerns invasion and theft of some properties at the farm. That, the invasion was done on 31/12/2019 and they suffered a lot of damages as a result of being invaded. Agricultural equipment, livestock and personal properties were lost. There were tractors, ploughs, planters, workshop equipment, store

equipment and livestock were lost. PW6 mentioned four types of tractors which were at the farm: Catic, Kubota, Ford and Valtra. The planters were lexida and bia (chapa Samaki), beans planter, two boom sprayers, three ploughs, two galamos for weeding in coffee plantation, one Honda motorcycle, one king fan tricycle.

PW6 stated further that the Plaintiff never breached her contract with the 3rd Party, together with its Addendum. That, the Defendant had no right to invade the Plaintiff. He said that their claim is Tshs 2.2 billion, Tshs 500,000,000/ being the value of the farm. PW6 contended that they had stores for cereals, coffee, chemicals and equipment. In a coffee store there were 39.2 tons which PW6 alleged that he knew through the verification which they used to do with the workers.

It was alleged that in the cereal store there were beans, barley and maize, PW6 could not remember the amount but he said that they had attached it to the plaint. He asserted further that according to the Lease Agreement, rent was USD 23,520/. From 2011, they were paying USD 29,755/= which was in excess of the agreed amount for the sake of taking precaution in case of anything. In that regard, PW6 informed the court that they had a case before the Court of Appeal between Otaru Manufacturing and Trading Company Ltd and KNCU which is about the Lease Agreement and its Addendum.

Moreover, PW6 alleged that they had seven workers at Lerongo farm. They decided to institute this case after being invaded on 31/12/2019. After the said invasion nothing went on as they were evicted.

PW6 prayed to tender copy of the Lease Agreement dated 09/01/2004. Unfortunately, the same had already been rejected when PW1 was

testifying. Thus, the learned counsel for the Defendant reminded the court that the said document had already been rejected.

PW6 continued to narrate that on 21/3/2020 he received a phone call from his workers that there was an auction which was about to be conducted at the farm. It was an auction of properties of Otaru Company, which was conducted by KNCU and Mangwembe Auction mart. On 17/2/2021 they were required to go to the farm to observe what happened. They went to Sanya Juu Police Station and asked for police escort for their safety. They headed to the farm and found a security company. They found the farm destroyed, houses were unroofed and some of the properties were missing. There was a poster restricting people to go to that farm. Thereafter, they reported at Sanya Juu police station.

PW6 prayed this court to find that the invasion by Mangwembe Auction Mart was illegal and prayed to be paid damages for the loss they incurred and costs of this case. He concluded that, in Misc. Land Application No. 7 of 2020, there is an ex parte ruling which ordered temporary injunction against the defendant. However, the defendant continued to disobey that court order.

That was the end of the Plaintiff's case. The Defendant called one witness, while the 3rd Party had three witnesses.

DW1 Mr. John Grayson Mshana after being sworn stated that his company is called Mangwembe 2011 Company Ltd which was registered in 2011 to conduct brokers activities which includes collecting debts and conducting auctions. He stated the procedures of collecting debts to be first, appointment through a letter indicating among other things the names of

the debtor, his address, the amount which he is owed and if the debt has a collateral, the location of the said collateral. Then, the Plaintiff takes them to the Defendant. Thereafter, a notice is issued to the debtor informing him that their company has been appointed to collect the debt from him. Then, local government leaders are informed about the said debt collection. The District Commissioner is informed as the chairperson of security issues in the district and the village leadership is informed in order to avoid chaos during the exercise.

DW1 made it clear that their company does not deal with execution of court orders because they have no authority to do so. He went on to state that he knew Otaru Manufacturing and Trading Company Ltd because they were assigned by KNCU to collect rent arrears of long time. They were assigned to collect USD 109,000/ which were rent arrears of about four years. He recalled that after notifying the Plaintiff to leave from the farms, they reported to the Village Executive Officer, Ward Executive Officer and the District Commissioner of Siha where the farm is located. They informed the District Commissioner so that he could summon Otaru Company in order to discuss about payment of her debt. On 23/12/2019, they were called (Mangwembe Company, Otaru Manufacturing and Trading Company and KNCU). After discussion, Otaru Company admitted to pay the debt and vacate the premises. On 26/12/2019 Otaru Company paid to KNCU through a cheque USD 4000/=. The Defendants continued to make follow up through phone calls as the debt was still big. That, the Plaintiff company used to reply that they were not able to pay by that time as nothing was going on at the farm.

DW1 went on to testify that on 30/12/2019, they reported to the V.E.O and Village chairman of that village, the District Commissioner and KNCU,

that they wanted to visit that farm on 31/12/2019, the farm which KNCU had leased to Otaru Company. The V.E.O and Village Chairperson promised to cooperate with them. The District Commissioner directed them to go to the OCD so that they could be given police escort. On 31/12/2019, they headed to the farm in the company of KNCU, V.E.O, W.E.O and police officers. They found two elders at the farm together with other people who were grazing livestock. That, there was no production which was going on at that farm. There were bushes, they even found elephants there. They introduced themselves. Those who were grazing said that they were not concerned at that place and that they should consult the two elders. They discussed with KNCU people and agreed to ask those elders to allow them to visit the farm and store, the two elders agreed. That, when they went to the store one of the elders was left taking porridge. Later, the said elder went to notify his fellow that he should not accompany them. They could not move to the whole farm because of the shrubs.

DW1 said that at the store they found coffee approximately 2000 kgs. They listed the items which they found at the store and other properties outside the store which included motor vehicles which were not working. KNCU suggested that they should deploy their security guards. While the farm was being guarded by KNCU security guards, the Defendant continued to make follow up to Otaru Company so that they could settle their debt. That, the Defendant issued 90 days' notice but it took more than 100 days. They informed KNCU and agreed that the old motor vehicles which were there and other properties be sold in order to reduce the debt. They advertised the auction which was conducted on 22/3/2020.

The task of the Defendant was to conduct an auction and KNCU was receiving the payment from the bidders.

DW1 averred further that, the scrappers and most of the vehicles could not be purchased for lack of customers/bidders. He said that one Fiat bus, scrappers combine harvester and other properties are still at the farm. In that auction they earned almost 23,000,000/=. After conducting that auction, Otaru Company instituted a criminal case at the police station against the Defendant. The police ordered the Defendant to submit all things connected to the said auction.

DW1 was of the opinion that the claim against them in this case was unfounded as at the scene there were the Village chairperson, police officers and KNCU. He wondered why the Plaintiff alleged that they were invaded by the Defendant only. He acknowledged that he knew that is a grave offence to disobey court orders but he never knew that there was any court order in respect of this matter.

DW1 prayed this court to dismiss the claims against them with costs.

DW2 Godfrey Thomas Massawe a business officer, on the outset told the court that, he knew Otaru Manufacturing and Trading Company Ltd and Mangwembe Auction Mart 2011 Company Ltd. That, his employer is Kilimanjaro Native Cooperative Union [1984] Ltd. That, the relationship between KNCU [1984] Ltd and Otaru Manufacturing and Trading Company Ltd was the Lease Agreement which was entered on 09th January 2004. Whereas, Otaru Company agreed to lease the farm from KNCU on consideration of payment of rent of each year. The agreed rent was USD 23,520/= per annum. Other terms were that the Lessee should have prepared a development plan within six months after signing the

agreement. The said development plan was to be approved by the owner of the farm and it concerned the whole strategy of investment which would be implemented by the Lessee in the farm. That included the crops to be cultivated, the size of investment and equipment to be used in the said investment.

DW2 continued to state that, in executing the said agreement, on 01/01/2011, they signed an addendum changing some of the terms of the Lease Agreement. In the said addendum, they changed the rent for leasing the farm to USD 29,755/= per annum. Also, they reminded the Lessee to submit the development plan but the same was never submitted. That, payment of rent was being done as agreed until 2015 when the same was not being paid as agreed. DW2 asserted that to date, the Lessee is owed almost USD 102,119/= as rent arrears from 2015 to 2019. That, in 2016 they reminded the Lessee of her debt through the debt collector, she paid partly. In 2017 they reminded the Lessee again, instead of paying the debt, the Lessee instituted a case against the 3rd Party objecting payment of rent. They obeyed the fact that there was a pending case, thus they stopped claiming rent until 2019 when the said case was finalized. Then, they appointed Mangwembe 2011 Company Ltd to collect rent arrears from the Lessee (Plaintiff herein). That, the said debt collector succeeded partly by collecting 27,000,000/= and USD 4000. The debt remained USD 102,119.

Thereafter, the 3rd Party asked their lawyer to guide them how to claim the remaining amount from the Lessee. Their letter from their lawyer was dated 10th July 2020. DW2 identified the said letter written by advocate Ralph Njau and prayed to tender it as exhibit.

A Demand Letter dated 10th July 2020 from Law Chambers of M. Ralph Njau, addressed to the Managing Director of Otaru Manufacturing and Trading Company Ltd, was admitted as exhibit D1. Exhibit D1 was read over in court by DW2.

DW2 continued that after the said demand letter, to date they had not received any amount from the Lessee. Thus, the debt is the same. That, prior to the letter exhibit D1, they used to communicate with the Lessee in vain, that's why they decided to write a demand letter dated 10th July 2020.

DW2 testified further that when this dispute arose, he was employed as Business Manager of KNCU [1984] Ltd and he was acting as General Manager. DW2 was of the view that the claims in this case are not actual claims and the same are acknowledged by their office.

DW2 prayed this case to be dismissed and order the Lessee to fulfil her obligation by paying the debt she is owed.

DW3 Mr. Wilbard Elimo Lyimo gave a testimony to the effect that he was an employee of KNCU as an accountant. That, his responsibility included accounts of the institution. He knew Otaru Manufacturing and Trading Co. Ltd and Mangwembe 2011 Co. Ltd. He said that, in their accounts as accountants they prepare the same for stake holders, the institution, the government, investors, employees and creditors. For the government accounts are for the sake of tax estimation. That, there are 30% taxes which are supposed to be deducted. The accounts of six months are prepared in order to know profit and loss accounting. The same is submitted to TRA after inspection by external auditors. The accounts are prepared by an accountant who is inspected by an external auditor. That,

International Accounting Standards are to be complied with. DW3 gave an example of matching concept, comparative figure and year, supporting documents signed by those who prepared the accounts before auditing.

Upon leave of the court, being examined in chief by using Exhibit P1 and P2, DW3 explained that Exhibit P2 is a Financial Statement for 2019 which shows that the company is new as there is no comparative figure as one of the International Accounting Standards. That, it is as if there was nothing to compare. Also, there must be notes which were used to prepare the statement, which means the listed assets are supposed to be new. Concerning the stock worth Tshs 838,128,000/= which is a mixture of coffee, maize and barley, the costs of the stock is not indicated in the statement for consumers of the report who were mentioned earlier. DW3 elaborated further that at page 11 of exhibit P2 there is a share capital of the company which is not indicated its source. Thus, it's a fictious figure. That, even the stock if not supported by stock certificate becomes fictious. Explaining more, DW3 stated that stock certificate is prepared during stock taking by the store keeper, one of the directors and an independent auditor. That, in absence of stock certificate, it's hard to rely on the indicated figure. He added that there is no certificate of cash in hand and bank statement and certificate for cash in bank, which is for the sake of assurance of the indicated amount.

DW3 went on to state that, it seems the company is loss making as seen at page 10 of the statement (exhibit P2); direct expenses do not match with the stock. He described two types of assets of the company: fixed assets and current assets. That, there should be Fixed Assets Register which indicates the history of the assets including the assets valuation. Asset Valuation is done after every five years. DW3 informed the court

that at KNCU they use a Municipal Valuer or private company to do their valuation.

DW3 asserted that what is required in valuation is site visiting for inspecting the assets. The receipts, sale agreements will assure the valuer about ownership, title deeds for houses, registration cards for motor vehicles. He mentioned two parts of the valuation: market value and replacement value. That, the market value is the current value of the asset. The rates are issued by the government and the government is one of the users of the Financial Reports. When the value exceeds one billion, it must be approved by the Chief Government Valuer. Below one billion, the report is approved by Regional Government Valuer.

Referring to exhibit P1 at page 5, DW3 alleged that there is no stamp of the Chief Government Valuer as the value exceeds one billion. That, even if the value was below one billion, it was supposed to be signed by the Regional Valuer. Also, it was contended that the number of the Valuer is not indicated and there is no letter from Otaru Company requesting the valuation to be done. There is no receipt of payment of the valuer and government receipt as there were supposed to pay part of the value of the assets. Moreover, it was stated that the receipts and invoices of purchase of the assets are missing, there are no registration cards of the motor vehicles and documents of farming equipment.

Furthermore, DW3 was of the opinion that the amount claimed in the plaint exceeds the resources which generate the income of the company. That, the plaintiff claims her assets and stocks which contradicts with the value of the assets of the company which is 2.211 billion. The claim before the court is 2.247 billion. DW3 raised another issue that the assets of the

plaintiff include money in the bank. Thus, if the money in the bank is deducted the value of the assets of the plaintiff continue to decrease. He said that the figures in the plaint are not actual and have no reality as the figures have no supporting documents. That, some of the properties are still at the farm while they are claimed in this case.

DW4 Mr. Zephania George Rashid testified among other things that he is a valuer grade I with registration number 203/2022 from the Regional Commissioner of Lands. That, their department is under the Chief Government Valuer. He made reference to **section 6 (h) of the Valuation and Valuers Registration Act, 2016** which provides the function of the Chief Government Valuer of approving and authorizing valuations of other valuers. That, after valuation the valuation report must be approved by the office of the Chief Government Valuer for approval. That, the valuation report must be prepared by a registered valuer and it is inspected by the Chief Government Valuer. The inspection involves the qualification of the valuer, ownership of the inspected properties and the standard of the calculations on the report. Ownership is proved through title deeds which are attached to the valuation report.

DW4 continued to explain that pursuant to the law the valuation reports are valid for two years. Thereafter, the report is supposed to be renewed. Referring to the report in this case, DW4 asserted that the same has not been approved by the Chief Government Valuer. Second, there is no certification of the registration of the Valuer as there is no registration number. Title deeds of the properties have not been attached. That, the documents which substantiate the standard of calculations have not been attached. He concluded that on the basis of the criteria he had mentioned, the valuation report in this case is incomplete.

That was the end of evidence of both parties. The learned counsels of both parties filed their final written submissions.

In their final submission, the learned counsels for the Plaintiff submitted inter alia that the following facts were undisputed:

i. That, the disputed land is the property and owned by the third party herein.
ii. That, there was a lease agreement between the plaintiff and the third party herein concerning the disputed land as neither the plaintiff nor the third party denied that there was a lease agreement between the two dated 09th January 2004 as reflected in their pleadings.

The learned counsels of the plaintiff were of the opinion that the following facts have been proved:

i. That, the defendant herein was an agent of the third party and they were together on 31/12/2019 when they went into the disputed land.
ii. That, the defendant herein went into the disputed land and listed down the properties which were there without being witnessed by any independent witness and without the knowledge of the plaintiff herein.
iii. That, the defendant herein went into the disputed land accompanied by the third party without the prior notice to the plaintiff and without any court order which amounts to trespass.

It was also submitted for the plaintiff that there was no proof of service of exhibit D2 (demand letter) and that the said exhibit was not proved

because there was no lease agreement nor addendum which was produced and admitted by the court.

Concerning the first issue whether the plaintiff breached the legal agreement with the third party dated 09th January 2004 accompanied by the addendum thereof dated 01st January 2011, it was asserted for the plaintiff that the said issue is answered in the negative as there was no lease agreement, addendum nor any evidence which was produced and admitted by the court to prove that the plaintiff breached the lease agreement with the third party. That, the purported lease agreement was not even attached or annexed neither by the defendant nor by the third party's written statement of defence.

On the second issue whether the defendant herein had any legal justification to interfere with the lease agreement concerning the suit land; it was averred for the plaintiff that the defendant had no legal justification on the following reasons:

i. That, the defendant had no court order to interfere with the said lease agreement by trespassing into the suit land.
ii. That, the defendant was not a party to the lease agreement.
iii. That, the defendant had no permission from the plaintiff to enter into the suit land.
iv. That, the defendant had not given any prior notice to the plaintiff to that effect.

On the last issue in respect of reliefs entitled to the parties, the learned counsels for the plaintiff submitted that the plaintiff had prayed this court to grant her specific damages amounting to Tshs 2, 247,015,000/= (Two billion two hundred and forty-seven million and fifteen thousand only);

and general damages amounting to Tshs 600,000,000/ to be assessed by this court. They were of the opinion that specific damages had been proved by exhibit P1 and P2 (Financial Statement ending 31st December 2019 and Valuation Report of Fixed Assets on Lerongo Farm for Financial Reporting Purposes June 2019). They contended that the two exhibits cannot be denied by the defendant nor third party because they failed completely to prove the properties which were at the disputed land when they trespassed thereon. That, PW1 mentioned in her testimony the properties which were at the disputed land before invasion by the defendant. The learned counsels cemented their argument with the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaya, Civil Appeal No. 45 of 2017,** at page 13 and 14, Court of Appeal of Tanzania at Mwanza (unreported). At the same time the learned counsels alleged that contents of the pleadings do not constitute evidence as held in the case of **Ibrahim Abdallah vs Selemani Hamis, Civil Appeal No. 314 of 2020** at page 11 second paragraph of the judgment, Court of Appeal of Tanzania. It was contended further that there was no cross examination by the defendant and third party to challenge the quantity of properties listed on exhibit P1 and P2.

Concerning general damages, reference was made to the case of **Hamis Abdallah vs Charles Nicolaus, Civil Appeal No. 211 of 2017,** HC which was cited with approval in the case of **Mary Peter Otaru vs Onesmo Buswelu and 2 Others, Civil Case No. 4/2020,** HC at Moshi, in which the Court had the view *that general damages are gauged based upon pain and suffering of the plaintiff and the way he was affected by conduct or act of the defendant*. It was elaborated that the plaintiff herein suffered a lot economically because it could not run its activities

since 31/12/2019 when the company was invaded by the defendant herein. That, the brain of the company (directors) suffered a psychological torture on how to run the company and up to now nothing is going on in the company. The employees are redundant.

The learned counsels for the plaintiff prayed that the damages be paid by the third party because the defendant was an agent of the third party.

In their final submission, the learned counsels for the third party on the outset stated that the plaintiff had failed to prove her case on the following reasons:

i. That, the plaintiff had asserted in her plaint that for purposes of jurisdiction and court fees the subject matter of the suit is Tshs 500,000,000/= which is less than the specific damages claimed Tshs 2,247,015,000/=. That, the fee for Tshs 500,000,000 is Tshs 200,000/= and for Tshs 2,247,015,000/= is 1,000,000/= in accordance with GN No. 247 of 01/01/2018. Since the court fees paid is based on Tshs 500,000,000/= then the claim of Tshs 2,247,015,000/ is improperly before the court. Reference was made to the Court of Appeal decision of **Edward Msago vs Dragon Security, Civil Application No. 233/01 of 2020** at page 8 (unreported), in which it was held that:
"As a starting point, I wish to state that generally, in civil cases a party instituting a matter in Court is bound to pay Court fees prescribed by law."

ii. That, Lerongo farm was not invaded as the plaintiff told the court that she attended a meeting in the office of the DC- Siha on 23/12/2019 together with the defendant and representatives of

the 3rd party. That, the defendant and the 3rd party told the court that the said meeting was discussing the farm and rent not payable and that later the defendant paid US $ 4,000. Furthermore, PW2 and PW3 told the court that on 31/12/2019 the defendant and the 3rd party went to the disputed farm together with police officers. That, the court was further informed by PW6 Casmir that the plaintiff was served with Eviction Notice sometimes in 2017.

iii. That, the plaintiff through PW1 told the court that she prepared a list of the alleged lost properties and handed it to the police and opened RB sometimes in 2021. That, the said list was not produced in court.

iv. That, PW1 told the court that her claim is contained in Valuation Report of June 2019 and Statement of Accounts of 31/12/2019 but she did not account for the properties as she did not produce documents to show ownership of the said properties and the state of affairs of the properties between June 2019 and 31/12/2019.

v. That, the valuation report was invalid as it had no comparative year and supporting documents making the report cooked one which does not show the real financial state of the plaintiff.

vi. That, there were contradictions between the plaint and exhibit P1 and P2.

vii. That, exhibit P1 should not be given any evidential value as it did not comply with the law as there was no endorsement of the valuation report as required by the law.

The learned counsels for the 3rd party quoted **section 63 and 25 of Act No. 7 of 2016** which provides prerequisites of a valuation report and penalty for contravention of the law. Also, it was alleged that there is no certificate of approval of the Chief Valuer as prescribed under **Regulation 65 (4) of the Valuation and Valuers (General) Regulations, 2018.** Moreover, it was averred that since the time limit of valuation report is two years, as the report is dated 2019 and evidence was adduced in 2023, it is obvious that its evidential validity period had expired pursuant to **section 52 of Act No. 7 of 2016**.

The learned counsels had the same views in respect of exhibit P2 that it should not be given any evidential value due to discrepancies in respect of the value of listed assets and supporting documents for proving ownership of the same.

Concluding their submission, the learned counsels for the 3rd party stated among other things that the plaintiff had failed to prove its claim on balance of probabilities against the defendant and hence exonerating the 3rd party. They supported their argument by giving reasons that the plaintiff did not prepare and submit a development plan. That, the plaintiff failed to pay the agreed rent and did not dispute the figure of US $ 102,119/ indicated in paragraph 3 (d) of the 3rd party's written statement of defence and evidence adduced thereto. That, the plaintiff was well informed about the breach and intention of the 3rd party to evict her.

That, it is well settled principle in law that where there are allegations of criminal offence(s) in a civil case, the standard of proof is higher than on a balance of probabilities. The case of **Lawrence Magesa t/a Joseph Pharmacy vs Fatuma Omari and Rimina Auction mart & Company**

Ltd, Civil Appeal No. 333 of 2019 at page 13-14 (unreported) was cited to support the point. In this case, it was alleged that there were allegations of theft and invasion into the farm which were reported to the police but the plaintiff did not call the investigating officer as a witness.

Responding briefly to the raised issues; the learned senior counsels for the 3rd party were of the opinion that:

i. The plaintiff breached the Lease Agreement and Addendum.
ii. The defendant had legal justification to interfere with the suit land.
iii. The plaintiff was legally notified of the eviction.
iv. The suit be dismissed with costs.

After going through evidence of both parties and the final submissions of both parties, I wish to start with undisputed issues as gathered from evidence of both parties. Although neither of the parties produced documentary proof, it is evident from the testimonies of both parties that the plaintiff and the 3rd party entered into a Lease Agreement of Lerongo Farm dated 09th January 2004. The Addendum dated 1st January 2011 was also noted by both parties. The fact that the defendant entered into Lerongo farm on 31/12/2019 and conducted an auction in March 2020 at the same farm was noted/ admitted by the defendant and the 3rd party. Moreover, the fact that the defendant herein was an agent of the third party and that they were together on 31/12/2019 when they went into the disputed land was not disputed by both parties. Furthermore, the fact that the defendant herein listed down the properties which were in the disputed land without being witnessed by any independent witness and without the knowledge of the plaintiff herein was not denied by the

defendant. What is disputed is the legality of the impugned actions of the defendant.

In response to the 1st issue, the testimony of PW1 Mrs Mary Otaru substantiated among other things that they are not indebted by the 3rd party. The testimony of PW1 was corroborated by the testimony of PW6 who stated that the Plaintiff never breached her contract with the 3rd Party, together with its Addendum. That, the Defendant had no right to invade the Plaintiff. On his part, the 3rd party contended through the testimony of DW2 Godfrey Thomas Massawe that the plaintiff breached the Lease Agreement from 2015. In 2016 they reminded the Lessee of her debt through the debt collector, she paid partly. In 2017 they reminded her again, instead of paying the debt, the Lessee instituted a case against the 3rd party the Lessor, objecting payment of rent. That, they obeyed the fact that there was a pending case, thus they stopped claiming rent until 2019 when the said case was finalized, they appointed the defendant company to collect rent arrears from the plaintiff herein, the Lessee.

Up to that juncture, from the series of events which occurred between the plaintiff and the 3rd party, on balance of probabilities as rightly submitted by the learned counsels for the 3rd Party in their final submission, evidence of the 3rd party is more credible in respect of the first issue. Thus, it is evident that the plaintiff breached the Lease Agreement.

On the second issue *whether the defendant had any legal justification to interfere with the suit land;* the 3rd party and the defendant were of the view that the defendant was justified to enter into the suit land as he was

hired by the 3rd party and that eviction notice had been issued sometimes in 2017. At the same time, DW2 for the 3rd party told the court that after the plaintiff had instituted a case against them in 2017, they stopped claiming rent arrears until 2019 when the said case was finalized. The plaintiff denied in her evidence to have been served with any eviction notice by the defendant. It may be noted that, if the 3rd party proceeded to claim rent arrears in 2019 after the case instituted against them had been finalized, then, the eviction notice issued in 2017 if any, was in respect of another debt collector and not the defendant herein. Meaning that, the defendant and the 3rd party herein were obliged under the law to issue notice to the plaintiff prior to any action against the plaintiff.

Section 102 of the Land Act, Cap 113, R.E 2019 provides that:

> *"102. -(1) Subject to the provision of subsection (3),* ***a lessor may only exercise his right to levy distress for rent after service of a notice in accordance with the provision of section 104.***
>
> *(2) Where it is not possible to peacefully exercise a right to levy distress,* ***the lessor shall only do so under the order of the Court.***
>
> ***(3) The exercise of the right to levy distress shall only be exercised using a Court broker or a broker of a tribunal.*** **"**(Emphasis mine)

Section 104 of the Land Act (supra) provides that:

> "*104. -(1)* ***Where a lessee is in arrears with the rent and has been in arrears for not less than thirty days, the lessor may***

serve on that lessee a notice of intention to terminate the lease.

(2) A notice served on a lessee under this section shall adequately inform the recipient of all of the following matters:

(a) the nature and extent of the breach complained of;

(b) the amount which must be paid to remedy the breach;

(c) ***the period, being not less than thirty days from the date of the service of the notice, within which the breach must be remedied;***

(d) ***in the event that the breach is not remedied the lease shall terminate at the expiry of thirty days from the date of service of notice.*** **"** Emphasis mine

As stipulated under **section 102 (2)** and **(3) of the Land Act** (supra), where the Lessor cannot collect rent arrears from the Lessee peacefully, he is not allowed to exercise such right without order of the court and by using a court broker. In the instant matter, there was no court order for collecting rent arrears from the plaintiff herein. Also, there was no notice issued to the plaintiff pursuant to **section 104 (1)** and **(2) (a)** to **(d) of the Land Act** (supra). Worse enough, the defendant who is alleged to have been hired by the 3rd party is not a court or tribunal broker.

In the case of **Judith Athuman Shani vs NMB Bank PLC and 2 Others. Land Appeal No. 5/2021** at page 8 and 9 it was stated that:

"It is a set principle of law that, complying with the provisions of the Land Act and Auction Act regarding statutory notice is mandatory and failure to do that, is fatal

defect."

It is crystal clear that in this case the defendant's acts against the plaintiff herein were in total violation of the law and therefore not justifiable.

Having answered the second issue in the affirmative, the next issue is in respect of remedies which the parties are entitle to. In her plaint, the plaintiff prayed for the following reliefs:

i. Specific damages amounting to Tshs 2, 247,015,000/= (Two billion two hundred and forty-seven million and fifteen thousand only); and
ii. General damages amounting to Tshs 600,000,000/ to be assessed by this court.

I wish to commence with specific damages; in plethora of authorities, specific damages have been defined by courts to mean damages which must be specifically pleaded and strictly proved. See the cases of **Zuberi Augustino vs Anicet Mugabe [1992] TLR 137 CAT** and **Stanbic Bank Tanzania Ltd vs Abercombie & Kente (T) Ltd, Civil Appeal No. 21 of 2001,** CAT.

In this case the plaintiff was of the opinion that specific damages had been proved by exhibit P1 and P2 (Financial Statement ending 31st December 2019 and Valuation Report of Fixed Assets on Lerongo Farm for Financial Reporting Purposes June 2019). She contended that the two exhibits cannot be denied by the defendant nor third party because they failed completely to prove the properties which were at the disputed land when they trespassed thereon. That, PW1 mentioned in her testimony the properties which were at the disputed land before invasion by the

defendant. It was contended further that there was no cross examination by the defendant and third party to challenge the quantity of properties listed on exhibit P1 and P2. On the other hand, the 3rd party was of the opinion that specific damages had not been proved simply on the reason that exhibit P1 and P2 had no evidential value.

Although the plaintiff has pleaded specific damages under paragraph 13 of the plaint, with due respect, I concur with the learned counsels of the defendant and the 3rd party that exhibit P1 and P2 lacks evidential value. I say so because of the discrepancies pointed out of the said exhibits and none compliance to the law of the same as testified by DW2 and DW3. Moreover, as rightly observed by defence witnesses, the plaintiff did not produce documents to prove ownership of the properties and quantity of the crops and livestock alleged to have been confiscated by the 3rd party. In the event, I am strongly convinced that specific damages have not been proved by the plaintiff. However, since the defendant and 3rd party admitted in their testimonies that there were properties of the plaintiff which were confiscated and auctioned by them, I find it reasonable to award general damages as compensation for items which were confiscated. I am persuaded by the decision of my learned brother Hon. Kahyoza J in the case of **Mrs Fakharia Shamji vs The Registered Trustees of Khoja Shia Ithasheri (MZA) Jamaat, Civil Case No. 22 of 2016,** HC at Mwanza in which the plaintiff was evicted illegally without giving her notice of intention to evict her forcefully. Since the value of the confiscated items was not proved, the court granted her general damages as compensation for the confiscated items. In the circumstances of this case, I am of considered opinion that Tzs 50,000,000/ suffices to be granted to the plaintiff as compensation for the confiscated properties.

Concerning general damages; **Black's Law Dictionary 8th Edition** defines general damages as damages that the law presumes follow from the type of wrong complained of and that the same do not need to be specifically claimed. The case of **Dr. Ally vs Tanga Bohora Jamat, Civil Appeal No. 40 of 1997,** CAT (unreported) is relevant.

The learned counsels for the plaintiff in their final submission made reference to the case of **Hamis Abdallah vs Charles Nicolaus,** (supra) in which the Court had the view that *general damages are gauged based upon pain and suffering of the plaintiff and the way he was affected by conduct or act of the defendant*. They elaborated that the plaintiff herein suffered a lot economically because it could not run its activities since 31/12/2019 when the company was invaded by the defendant herein. That, the brain of the company (directors) suffered psychological torture on how to run the company and up to now nothing is going on in the company and the employees are redundant.

Basing on the fact that the second issue (*whether the defendant had any legal justification to interfere with the suit land*) has been answered in favour of the plaintiff; it goes without saying that the plaintiff deserves to be paid general damages as prayed. The amount of the general damages is the issue to be considered by this court upon invoking its discretionary powers bestowed on it. In her plaint, the plaintiff has prayed for general damages at the tune of Tzs 600,000,000/= to be assessed by the court.

Having considered the loss and disturbance occasioned by the defendant and the 3rd party to the plaintiff; the fact that the plaintiff had employees who might be owing her their terminal benefits and all the surrounding circumstances of the case as derived from the evidence of the plaintiff, I

hereby grant general damages to the plaintiff at the tune of Tzs 300,000,000/= for illegal and unjustified eviction and confiscation of the properties of the plaintiff.

In their final submission, the learned counsels for the plaintiff prayed that the damages be paid by the third party because the defendant was an agent of the third party. I am aware that the defendant being an agent of the 3rd party in this case deserves to be indemnified by the 3rd party. However, this court is of considered view that the defendant was obliged to execute his assigned task pursuant to the law as the defendant company is a registered limited liability company. I find it inevitable to subject the defendant to feel the consequence of her violation of the law. I therefore order the defendant to pay part of compensation damages awarded to the plaintiff at the tune of Tzs 35,000,000/=. The rest should be paid by the 3rd party as the one who hired the defendant to evict and confiscate the properties of the plaintiff. Therefore, the plaintiff has been awarded a total of Tzs 350,000,000/= as general damages.

On the basis of the above findings, this matter is decided in favour of the plaintiff to the extent explained herein above and it is hereby declared and ordered as follows:

i. It is declared that the defendant unlawfully and without justification trespassed into the plaintiff's possession and enjoyment of the fruits of the leased farm (Lerongo Farm).
ii. It is declared that the plaintiff suffered general damages and loss due to the wrongful acts of the defendant.

iii. That, the 3rd party being the person who hired the defendant and beneficiary of the trespass, should pay the plaintiff compensation and general damages at the tune of Tzs 315,000,000/=.

iv. That, the defendant should pay the plaintiff compensation at the tune of Tzs 35,000,000/=.

v. That, the defendant's agents if any should vacate from the suit premises immediately.

vi. The plaintiff should be paid costs of this suit by the 3rd party as an indemnity to the defendant.

It is so ordered.

Dated and delivered at Moshi this 24th March 2023.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY

X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE

24/03/2023