IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC CIVIL CASE N0. 59 OF 2021

CRSG(T) TRADING CO LIMITED ..... PLAINTIFF

VERSUS

PRASHANT MOTIBHAI PATEL..... DEFENDANT

JUDGMENT

MKWIZU, J:

The Plaintiff, a limited company incorporated under the laws of Tanzania is suing the defendant, a natural person living for gain in Dar es Salaam for a breach of a lease agreement entered by the parties on 17th October 2019 in respect of the landed property located at the Kipawa Industrial area under Plot No 107 and 108 with a certificate Title No 29427 Land office No 75767, Ilala Dar es Salaam. The prayers presented in the plaint are as follows:

a) A declaration that the defendant has breached the lease agreement.
b) Payment of specific damage amounting to the tune of United States Dollar nine thousand seven Hundred Twenty (USD 9,720.)
c) Payment of specific damages amounting to Tanzanian shilling 196,885,028 for costs incurred during the installation of air conditioners, decorations, construction of showroom, purchase, billboard adverts, and fixing of tiles.
d) Payment of specific damage amounting to the tune of United State Dollars Six Hundred (USD 600,000.00) being the loss of business

opportunity under the Dealers Agreement with SANY Development International Limited, the Manufacturers of heavy Machines and equipment used in the construction industry.

e) Interest on items (b), (c), and (d) above at the commercial rate of 15% per month from when the balance was due till the date of the judgment/decree.
f) Interest on items (c) and (d) above at the commercial rate of 12% per month from the date of judgment till the final payment
g) General damages to be assessed by the Honourable Court.
h) Costs of the suit
i) Any other relief this Honourable Court deems fit and just to grant.

Defendant denies the said breach labeling it the frustration of the agreement by factors beyond his control, blaming the plaintiff for breaching the terms contained in clauses 2(a), 3(a), and 5 (a) of the lease agreement. He implored the court to dismiss the plaintiff's claim with costs.

Several issues were identified and agreed upon by the parties at a pre-trial conference namely.

1. *Whether there was a lease agreement between the plaintiff and the defendant*
2. *Whether the defendant breached the said agreement*
3. *Whether the plaintiff suffered damages from the breach of lease Agreement*
4. *What reliefs are the parties entitled to.*

The plaintiff's case had two witnesses. Albert Sylvester, the plaintiff's lawyer featured as PW1. His testimony was that sometime in 2019, the

plaintiff leased party of the defendant landed property located at the Kipawa Industrial area under Plot No. 107 and 108 with a certificate of Title No. 29427, Land office No. 75767, Ilala Dar es Salaam for purposes of selling machines and heavy equipment. The lease was for a term of three years, commencing from 1st November 2019 for a monthly rent of 3000 USD, VAT exclusive payable quarterly in advance. This was after the lessor's guarantee of peaceful enjoyment of the lease area and a promise for no disturbance thereof. The lease agreement between the plaintiff and defendant was admitted as exhibit P1.

According to the PW1, the plaintiff did execute her party by paying the three months' rent as agreed and performed substantial repairs on the suit premises to make it suitable for the intended business by air-conditioning the premise, fixing tiles, and other decorations aiming at starting business in February 2020. Unfortunately, the business could not start as the plaintiff's officials were blocked from accessing the demised property.

Being the plaintiff's lawyer, PW1 said, he was personally involved in making follow-ups to remedy the situation but in vain. He realized later that the demised property was mortgaged to Azania Bank Limited prior to leasing the same to the Plaintiff and that the Bank was selling the premises to realize the loaned amount after the defendant's failure to clear the loan.

They approached the defendant who confessed to having leased the demised property to Azania Bank Limited but failed to remedy the damages and consternation he caused to the plaintiff despite his assurance that he would settle the matter subjecting the plaintiff to

damages and losses on business opportunities, pressure from the third party with whom it entered into a Dealer Agreement to supply heavy machines and equipment's which were to be sold at the leased property.

They on 19/5/2020 issued a demand notice (exhibit P2) to the defendant on the plaintiff's signifying the plaintiff's intention to sue to demand among other things refund of the rent, damages, and interest because of the complained breach and denial of the plaintiff's right of peaceful enjoyment of the demised property which was never considered by the defendant.

He admitted during cross-examination that the plaintiff became aware of the existing mortgage after the denial of access to the demised property and that at this the plaintiff was yet to commence business. He said the option for substantial repair came because the building was not conducive for use and the plaintiff had a legitimate expectation that she would enjoy quiet possession of the building for 36 months agreed in the lease agreement.

PW2 is one ZHANG ZHEN, a general manager, responsible for supervising various businesses of the plaintiff including the selling of the machines. His witness statement adopted as his evidence in chief was mostly a reiteration of the averments made in the plaint. Speaking of his familiarity with the plaintiff, PW2 said, he knew the plaintiff since October 2019 when they signed a lease agreement in respect of the demised property that they intended to use as an exhibition room. Like PW1, this witness informed the court that the plaintiff had in 2019 entered into a lease agreement (exhibit P1) with the defendant in respect of the landed property located at the Kipawa Industrial area under Plot No 107 and 108

with a certificate Title No 29427 Land office No. 75767, Ilala Dar es Salaam with a three-year tenor commencing from 1st November 2019. That after that agreement, they on 26th October 2019 paid the agreed rent of USD 9,720.00 for the first quoter of the agreed lease period. He tendered a copy of cheque No 019-001 issued to the plaintiff on 26/10/2019 as exhibit P3.

Testifying why they had to execute the lease agreement, PW2 said, the plaintiff had before signing the lease agreement entered into a dealership Agreement (exhibit P4) with SANY Development International Limited, for the sale of heavy machinery with a time schedule for branding the SANY products in Tanzania which was, to begin with, the building of the showroom Hall in Tanzania that prompted the signing of the lease agreement with the Defendants in this case

The lease agreement was according to PW2, followed by renovation of the property by installing air conditions, tiles, and decorations in the leased property to meet the intended business standards. The decoration activities were carried out by a company known as ZHI XIN Construction Company Limited in two phases, the first decoration assignment was to be carried out in three months period from 1st November 2019. And upon inspection in February 2020, the plaintiff and ZHI XIN signed another contract for further decoration. The decoration contract dated 4/2/2020 was tendered and admitted as exhibit P5. Mentioning the costs of the repair done in the demised property PW2 said, Tsh. 6,600,000/= was incurred as branding costs as per a legal receipt admitted as exhibit P6, Tsh. 13,914843 was spent as air conditioning costs paid via a legal receipt (exhibit P7) and three receipts dated 16/1/2020 with a total amount of 20,005,974; 31/5/2020 with a total value of 21,121,288 and a receipt

dated 27/12/2019 with a total amount of 25,000,000 were admitted as exhibit P8 collectively were costs for the decoration done in the demised property.

PW2 during cross-examination was keen enough to admit that they mainly relied on the assurance given to them by the defendant that they did not opt for an official search to verify the status of the leased property. He as well admitted that the lease agreement had no provisions for the carried-out repairs. They intended to begin the dealership business on 3/9/2019 after the signing of the dealership agreement but their counterparty in the dealership agreement had authorized the beginning of the business after finding a conducive premise for the business.

PW2 said, just before starting the business, the plaintiff official including himself were blocked from accessing the demised property for what they later came to learn that the demised property was pledged as security and auctioned by Azania Bank Limited to realize the loaned amount after failure by the defendant to repay the loan. And further that the plaintiff could not access the property despite a firm promise by the defendant to fix the anomaly, causing damages and losses on business opportunities to the plaintiff.

DW1 is one Prashant Motobhai Patel, the defendant in this matter, and former plaintiffs' landlord. Through his adopted witness statement filed in court on 23/2/2023 DW1 admitted being a legal owner of the landed property described as Plot No. 107 and 108 with a certificate Title No. 29427 Land office No. 75767, Ilala Dar es Salaam he jointly owns with his wife Darshana Prashant Patel. He also admitted that through exhibit P1, he leased the front space, one front office with one backside Godown to

the plaintiff on which he received the first quoter's rent commencing from 1st November 2019 to 31st January 2020.

DW1's evidence was to the effect that, the suit premise was leased on "***as it is based***"and in good tenable condition with no further action to repair or refurbishing required to be done on it. To him, the installation of air conditioners, tiles, and other decorations was carried out by the plaintiff on her luxuries and convenience as they were not required to improve the tenability condition of the demised premise and without a plaintiff's approval/or consent required under clause 4(c) of the lease agreement. He said the plaintiff's expectation of quite an enjoyment and possession of the demised premises for a finite period of three years does not automatically oblige the plaintiff to incur any maintenance costs and expenses in expectation of a refund from the defendant without following the express contractual terms of the lease agreement.

He denied having mortgaged the demised property to Azania Bank Limited and that the sale effected was illegal which is why he filed a commercial case No .37 of 2020 against the Bank and the Auctioneers (exhibit D1) for the nullification of the sale and transfer of any landed property forming part of the suit property which is now pending for judgment before Nangela J on 24/4/2023 at the High Court Commercial division. He insisted to have no bank relationship with the bank that sold his property.

He, however, during cross-examination confirmed to the court that he had mortgaged the property a long time ago, that he leased the building while aware that it was mortgaged, and that he did not disclose this fact to the plaintiff. He refuted frustrating the plaintiff's business.

While admitting that defendant would have continued with the business had it not been for the frustration caused by the Bank, he was quick to add that the claimed amount of 9720 USD was legally utilized by the plaintiff on the first quoter of the lease period between 1st November 2019 to January 2020 and therefore specific damages claimed by the plaintiff and interest are all baseless as there was no breach of contract by the defendant. He insisted on having informed the plaintiff's directors via their mobile phone that the property was wrongly auctioned by the Bank.

Following the closure of evidence, parties were ordered to file their closing submissions in support of their case. Submitting on the raised issues, the plaintiff's counsel said, the law on suits and litigation lingers on all times maxim ***"qui alleged probare debit*** that he who alleges must prove provided for under Section 110 of the Evidence Act [Cap 6 R.E. 2019] maintaining that Plaintiff has through exhibit P1 managed to prove the existence of a lease agreement between Plaintiff and Defendant.

Criticizing the defendant's claim of frustration of the agreement, Mr. Mrutu was of the suggestion that the doctrine of frustration of contract does not apply to leases and that the evidence given does not at all fit the frustration doctrine. Citing to the court the book titled "**General Principles of Contract Law in East Africa** by Nditi N.N.N General Principles of Contract Law in East Africa, Dar es Salaam University Press, Second Reprint 2017, Dar es Salaam at pages 239- 249, he maintained that the claim of the unforeseeable event as stated by Defendant is a mere sham and sweeping statement to avoid the consequences of breach of the Lease Agreement.

Regarding the claimed maintenance and repair, he said, the evidence adduced has proved the payment of rent and maintenance costs, installation of air conditioners, and dealership agreement with a third party as early preparations for Plaintiff to begin its business in the leased premises. He referred the court to section 88(1) (a) of the Land Act [CAP 113 R.E 2019] providing for the duty of the lessor to ensure the peaceful enjoyment of the leased property stressing that even actions by third parties against the lessor cannot amputate such legal obligation. He lastly relied on the provisions of section 73(1) of the Law of Contract Cap. 345 imploring the court that Plaintiff has suffered damages as a result of a breach of lease agreement by Defendant and grant reliefs sought in the plaint.

At his party, the defendant's counsel was of the view that the blockage of the entry to the leased property by the plaintiff remained unproved. He blamed PW1 for not properly advising the plaintiff to conduct a formal Search from the Land Registry to satisfy themselves on the existence of encumbrances if any over the demised property before the signing of the Lease Agreement. He maintained that the auctioning of the demised premises by Azania Bank Limited was not only illegal but was out of the defendant's control since he had no banking transactions between him and Azania Bank Limited authorizing the Bank to auction the landed property. He prayed for the dismissal of the suit with costs.

I have evaluated the evidence on the record and the parties' pleadings. I will go by the issues agreed upon during the pre-trial conference. The parties' position is nothing but a confirmation of the first issue. They all agree that they had a valid lease agreement entered on 17th October 2019 in respect of the landed property located at the Kipawa Industrial area

under Plot No. 107 and 108 with a certificate Title No 29427 Land office No 75767, Ilala Dar es Salaam the source of the current dispute. In his evidence, the defendant (Dw1) admits to being a legal owner of the demised property jointly owned with his wife Darshana Prashant Patel. And that he leased the front space, one front office with one backside Godown to the plaintiff on which he received the first quoter's rent commencing from 1st November 2019 to 31st January 2020 supporting the plaintiff's version of evidence on the existence of the lease agreement between the parties.

Their disparities come on whether there was a breach by the defendant or not. While the plaintiff is of the view that the defendant was in breach of the lease contract, the defendant holds a different view forming the basis of the second issue framed on whether the defendant breached the said agreement.

It is the law that a party has the obligation of proving the facts that he or she needs to establish to succeed in a case. And the standard of proof is always on the balance of probabilities: See sections 3 (2) (b), 110, and 111 of the Evidence Act. This position has been stated by the Court of Appeal in several decisions including that of **Godfrey Sayi v. Anna Siame as Legal 12 Personal Representative of the late Marry Mndolwa**, Civil Appeal No. 114 of 2012, and **Mathias Erasto Manga vs Ms. Simon Group (T) Limited**, Civil Appeal No. 43 of 2013 (All unreported). Explaining on what amounts to proof of a fact The High Court of Uganda in Vincent Karuhanga T/A Friends Polyclinic –Vs- National Insurance Corporation and Uganda Revenue Authority, [2008] HCB 151, held: -

In law, a fact is said to be proved when Court is satisfied with its truth. The evidence by which that result is produced is called the proof. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he or she asserts is true he or she is said to shift the burden of proof that his or her allegation is presumed to be true unless the opponent adduces evidence to rebut the presumption. The standard of proof is on a balance of probabilities."

That burden never shifts to the adverse party until the party on whom the onus lies discharges his burden and the burden of proof is not diluted on account of the weakness of the opposite party's case. This expression is found in **Paulina Samson Ndawavya v. Theresia Thomasi Madaha**, Civil Appeal No. 45 of 2017 (unreported) where citing an extract from Sarkar's Laws of Evidence, 18th Edition M.C. Sarkar, S.C. Sarkar, and P.C. Sarkar, published by Lexis Nexis the Court said:

"...the burden of proving a fact rest on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for negative is usually incapable of proof. It is an ancient rule founded on the consideration of good sense and should not be departed from without strong reason...Until such burden is discharged the other party is not required to be called upon to prove his case. The Court has to examine whether the person upon whom the burden lies have been able to discharge his burden. Until he arrives at such a

conclusion, he cannot proceed on the basis of the weakness of the other party..."

It is also an elementary law that in an action based on a breach of contract, the onus is on the plaintiff to adduce sufficient evidence to prove on a balance of probabilities that the defendant committed the breach of the terms and conditions of the agreement at the same time linking it with the claimed damages.

Plaintiff is complaining of disturbance of her quiet enjoyment of the demised property, and breach of the agreement resulted in the claimed damages both specific and general. Fortunately, both parties agree on the duration of the lease agreement and the mode of payment. According to clauses 1 and 2 of exhibit P1, the contract was for a specific period of thirty-six (36) months renewable commencing from 1st November 2019 at a rental rate of 3000 USD payable quarterly in advance. And the plaintiff paid for the first quoter ending 31st January 2020. It is also not in dispute that the plaintiff could not access further the demised property after the auction by the Bank on which the defendant had secured the said property which facts were not disclosed to the plaintiff during the execution of the agreement. It is on these facts that the plaintiff's claims of breach of contract are flattened. While admitting the auctioning of the demised property by the Bank, the defendant is asserting two issues, one, that at the time of the complained event, the plaintiff's rent had expired and therefore no valid contract between the two. His contention was that the first quoter payment of 9720 USD was lawfully utilized by the plaintiff to January 2020 and therefore the claimed breach could not arise after that specific period.

I have analyzed the evidence and I am convinced that the issue of rental arrears in February 2020 did not at all affect the party's agreement. Clause 5(a) of the lease agreement (exhibit P1) under scrutiny gave the plaintiff an allowance of 30 days to pay rent areas with interest at the prevailing commercial Bank rate. Clause 5 (a) of exhibit P1 reads:

> *"5. (a): If rent hereby reserved or any part thereof shall in be* ***in arrears for thirty days after any of the anniversaries or dates whereon the same ought to be paid as aforesaid****, whether the same shall have been formally demanded, or not, or if there shall be any breach or non-observance by the* ***LESSEE*** *of any of the covenants, conditions, and stipulations herein contained and on its party to be performed and observed, then the* ***LESSEE*** *shall pay the* ***LESSOR*** *arrears plus interest at the prevailing commercial bank rate, from the due date"(emphasis)*

Naturally, by signing the lease agreement, the defendant consented to late payment of rent within 30 days from 31st January 2020. With this accord, in my view, non-payment of February's rent was remediable and within the agreed terms. Thus, the plaintiff's denial of access to the demised property committed in February 2020 amounts to none other than a breach of clause 5(a) above.

On his second point, the defendant is pledging frustration of the contract by factors beyond his control. He denies having mortgaged the demised property to Azania Bank Limited and that the sale effected was illegal. I think this evidence was brought in court as an afterthought. While denying any relationship with the bank, during cross-examination DW1, confirmed

having mortgaged the demised property long time ago, that he leased the building while aware that it was mortgaged, and did not disclose this fact to the plaintiff. My findings on this point are also supported by clause 4 of exhibit P1, a warrant to peaceful enjoyment of the leased property given to the plaintiff by the defendant while knowing that the suit premise is mortgaged. Clause 4 (a) reads.

> *4(a): That, the lessee paying the rent and utility charges hereby reserves and performing all covenant and stipulations herein on its part* ***shall hold and enjoy quiet and peaceful possession*** *of the DEMISED PREMISES* ***during the said leased term without any unlawful interruption by the LESSOR or any rightful claiming under him***. (Emphasis added)

The non-disclosure of the mortgage agreement with the bank to the plaintiff known to the defendant even before the execution of the lease agreement and failure to keep the above conditions of the contract echoes nothing but a breach of contract. This finding is supported by the sanctity of contract that parties are bound by the agreements as expressed in **Simon Kichele Chacha vs. Aveline M.Kilawe**, Civil Appeal No. 160 of 2018 (unreported) where it was observed:

> *" Parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. That is there should be the sanctity of the contract as lucidly stated in* ***Abually Allibhai Azizi v. Bhatia Brothers Ltd*** *[2000] T.L.R 288 on page 289 thus: - 'The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance*

where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of a public policy prohibiting enforcement."

The second issue is affirmed with a declaration that the defendant breached the terms of the lease agreement.

The third issue is whether the plaintiff suffered damages from the breach of the lease Agreement. The court will, on this issue guided by the provisions of section 73 of the Law of Contract Act, Cap 345 cited to me by the plaintiff's counsel. The section reads:

"73.-(1) Where a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which they knew, when they made the from the breach of it"

In this case, Plaintiff has prayed for both specific and general damages. For specific damages, the law is settled that it must be pleaded and proved. See **Zuberi Augustino Mugabe v Anicet Mugabe** [1992] T.L.R. 137. In **Njombe Community Bank & another vs. Jane Mganwa**, DC. Civil Appeal No. 3 of 2015 specific damages were defined as

" That sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he has not sustained the wrong for which he is now getting compensation or reparation.

A similar interpretation was given by the Court of Appeal in **Peter Joseph Kilibika and Another Vs. Partic Aloyce Mlingi**, Civil Appeal No. 39 of 2009 (unreported) when cited with approval the holding of Lord **Macnaughten in Bolog Vs. Hutchison** (1950) A.C 515 at page 525, that:

> *"… such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore,* ***they must be claimed specifically and proved strictly****."* (Emphasis supplied)

It is clear from the above-cited case that for a claim of specific or special damages to succeed, the plaintiff needs to do more than plead the same in the plaint, he must expose to the court specific particulars of the claim with contemporaneous documents and other proof.

In this case, the first item of specific damages is USD 9,720, costs of rent paid for the first quoter of the lease period. The plaintiff's evidence was straight to the point on this item with receipts evidencing payments of rent. This amount is also not disputed nor controvert by the defendant amounting to admission hence established.

The second item relates to Tsh. 196,885,028 costs incurred for repair works including installation of the air-conditioners, decorations, construction of showroom, purchase of billboard adverts, and fixing the tiles. PW2 evidence was to the point that to ensemble the envisioned business standards, they, through a contractor, ZHIXIN Construction Co Limited renovated the suit property by installing air conditioners, tiles, and decorations. The decorations activities were performed in two phases from 1st November 2019. The first phase was performed in three months

from 1st November 2019 and upon inspection in February 2020, the plaintiff was unpleased with the decorations, she thus signed another contract (exhibit P5) with ZHIXIN Construction Co Limited for further decoration. Various documents namely exhibit P5, P6, P7, and P8 were tended in support of this claim.

I have examined, the decoration contract dated 4/2/2020 (exhibit P5) and all receipt tendered in court as exhibits P6, P7, and P8 in support of the decoration and repair claims. Exhibit P5 is a contract between the plaintiff and ZHIXIN Construction Co Limited for additional decoration works that placed the duty of supplying all the materials on the decoration company. This is clearly expressed on page 2 of exhibit P5, but contrary to that agreement and without any explanation PW2 tendered in court exhibit P7, a receipt issued by CHANG CHUN International Co Limited to the plaintiff on 13/2/2020 for the purchase of air conditioners. I would have expected this amount to have been billed through the contracted construction company and not any other company or individual who is not part of the assignment. I am so convinced because according to PW2, all the repairs were done by the contracted company. And my readings of exhibit P5, particularly clause 3 of page 1 and clause 1 on page 2 show that the decoration contract is for both, labor and material. One would wonder why the plaintiff should engage in purchasing materials for the work already contracted to another company. The only viable conclusion here is that the plaintiff has failed to connect P7 with the repair/decoration costs under scrutiny.

Exhibit P8 contains three legal receipts for alleged repair costs incurred by the plaintiff one dated 27/12/2019 with a total amount of 25,000,000, the second receipt dated 16/4/2020 with a total amount of 20,005,974,

and the third receipt dated 31/5/2020 with a total value of 21,121,288. The connection of these receipts with the decoration project between the plaintiff and the ZHIXIN Construction Co Limited is also doubtful.

Firstly, as stated earlier, the decorations were performed on contractual terms. PW2 told the court that they had two contracts for the decoration activity executed in two phases starting from 1 November 2019, unfortunately, it is only the contract that began on 30th January 2020 that was tendered in court. The plaintiff's failure to tender the decoration contract covering the period from 1st November 2019 to 30th January 2020 disconnects the receipt dated 27/12/2019 with the claimed activity. And, even if I was to assume that there was any reason for the issuing of the said receipt, still, the document supporting this receipt is written in the Chinese language without translation leaving the court without information on what it is all about.

Further examination of exhibit P5 reveals that the contract term for the decoration activities was 20 days period from 30th January 2020. Clause 4 on page 1 of exhibit P5 reads:

> *"Construction period: from January 30, 2020, to February 20, 2020. The construction period is 20 days. Completion of overdue construction will be compensated at an average rental price of $118 per day".*

However, the two other receipts tendered in court were given on 16/4/2020 and 31/5/2020 respectively after the completion of the decoration contract (exhibit P5) between the plaintiff and the ZHIXIN Construction Co LTD and the blockage of the plaintiff from entering the demised property. There is no plausible explanation given why the plaintiff

had to incur the said costs in that period and more so after the termination of the contract and the auctioning of the demised property.

Likewise, exhibit P6 is a legal receipt issued by ZHIHE Company Limited to CRSG Tanzania Trading co limited on 8/6/2020 with a total amount of 6,600,000 for the purchase of the billboards. PW2 imputes the figure in exhibit P6 with the branding costs incurred by ZHIHE company limited in advertising the dealership business. The visible problem here lies in the timing of the purchase. How could the billboards be purchased in June 2020 after the termination of the contract by the defendant in February 2020, after efforts to resolve the matter have failed and 19 days after serving the defendant with the demand notice (exhibit P2) dated 19th May 2020? I do not think that this amount spent for the billboard almost three months after the termination of the contract was reasonably incurred. As such, I find the costs not connected to the defendant's actions.

In totality, I hold that the plaintiff has failed to establish his repair costs in item two of specific damages.

The next item in this category of damages is the loss of business opportunities pegged at USD 6000,000.00. Being a specific claim, the law requires that, the claim should not only be pleaded but also specifically proved. See **Active Packaging (T) Limited Vs. TIB Development Bank**, Commercial Case No. 08 of 2019 (HC-); **Mwananchi Communications Limited and 2 Others Vs. Joshua K. Kajula and 2 Others**, Civil Appeal No. 126/01 of 2016 (CAT-) and **MS Fish Corp Limited Vs. Ilala Municipal Council**; Commercial Case No. 16 of 2012 (HC-) (All unreported). And to award this kind of damages, the court must

be convinced that without the conduct of the defaulting party, the profit or opportunity would have been achieved.

Both in her plaint and evidence adduced in court, the plaintiff alleged to have lost an opportunity in a dealership agreement with Sany Development International Limited that was to be carried out in the leased premises. PW2 was of the view that USD 600,000.00 is a loss of profit which the plaintiff would have gained if not for the breach of the lease agreement by the defendant. This claim was supported by the dealership agreement (exhibit P4).

I have as well examined exhibits P1 and P4. The dealership agreement was a contract between the plaintiff and Sany Development International Company Limited that was to commence on 3/9/2019 well before the lease agreement. Given such a situation, the plaintiff was, in my view, required not only to provide evidence showing the opportunities allegedly lost as a result of the breach but also to prove that she would have likely generated the claimed amount from the said project.

Apart from exhibit P4, there is nothing brought before the court justifying the grant of the claimed amount. The plaintiff's evidence is to the effect that the intended business was yet to begin and no evidence or even figures were given to show how the plaintiff would have generated the said amount in that period of the lease agreement. There is no doubt therefore that the figure of 600,000.00 USD claimed in this category is mainly speculative based on an untested undertaking and therefore unrecoverable. This claim is therefore dismissed.

I will now move to consider the general damages claim. Normally, general damages are awarded at the discretion of the court. These are damages

that the law presumes to follow from the type of wrong complained of, they do not need to be specifically claimed or proved to have been sustained. In **Dr**. **Ally Shabyay v. Tanga Bohora Jamat**, Civil Appeal No.40 of 1997, the Court of Appeal of Tanzania had this to say regarding general damages-

> *"These are damages arising naturally, that is, in the normal course of things. They are such damages as the law will presume to be the direct or probable consequence of the action complained of".*

A similar position was expressed in **Tanzania Saruji Cooperation vs. African Marble Company Ltd**., 5(2004) T.L.155, that:

> *"General damages are such as the law will presume to be direct natural or probable consequences of the act complained of, of the plaintiff wrongdoing, therefore have been a cause if not the sole or a particular significant cause of damages."*

Gathered from the cited authorities above is that general damages are compensatory in nature and aimed at remedying the plaintiff from the consequences of the wrong committed by the defendant.

The evidence has proved that the lease agreement was necessitated by the business activities that the plaintiff was to engage in, and which could not timely take off due to the defendant's breach. Such a breach, in my view, has inconvenienced the plaintiff directly and indirectly. It has dragged the plaintiff to unproductive costs, loss of income, mental anguish, and unnecessary delay in starting her intended business all of which need to be set right. All that considered, I am convinced that payment of TZS 10,000,000 as damages would bring justice to Plaintiff.

To sum up, judgment is entered in favour of the Plaintiff as follows:

1. It is hereby declared that the defendant is in breach of the lease agreement.
2. The Defendant is hereby ordered to pay USD 9720.00 or its equivalent in TZS, the amount of rent paid to her in advance.
3. The plaintiff is awarded interest to be imposed on the amount stated in item 2 above at a commercial rate of 15%, from the date of filing this suit to the date of judgment.
4. The plaintiff is also awarded interest at the rate of 7% on the decretal amount from the date of judgment to the date of full satisfaction.
5. And General damages at the rate of TZS 10,000,000 plus costs of the suit.

It is so ordered.

DATED at **DAR ES SALAAM** this **12th** day of **May** 2023.

E. Y Mkwizu

Judge

12/5/2023

COURT: Right of appeal explained

E. Y Mkwizu
Judge
12/5/2023