

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ARUSHA SUB REGISTRY  
AT ARUSHA**

**LAND CASE NO. 18 OF 2021**

**M/S FINE FOOD INTERNATIONAL LIMITED ..... PLAINTIFF**

**VERUS**

**M/S ADHERE TO THE IDEAL MAKING LIMITED ..... DEFENDANT**

**JUDGMENT**

27<sup>th</sup> April & 05<sup>th</sup> July, 2023

**KAMUZORA, J.**

The Plaintiff's claims against the Defendant are based on the breach of lease agreement for failure of the Defendant to pay rent. The Plaintiff claims arrears of rent the amount of Tshs. 169,600,000/= for Plot No's 71/5 and 71/7 and Tshs. 54,000,000/= for plot No 71/9 located at Themis Industrial Area Arusha city all in aggregate of Tshs. 223,600,000/=. The Plaintiff also claims for payment of contractual penalty of 25% per month at the aggregate sum of Tshs. 728,000,000/=, specific damages for loss of property at the tune of Tshs. 700,000,000/=, general damages, interest on the decretal sum at

the tune of 7% from the date of judgment till payment in full and costs of the suit. The Defendant gave a general denial of the Plaintiff's claim.

Briefly, Fine Food International Limited located at Njiro Industrial area here in Arusha (the Plaintiff herein) is a company dealing with leasing godown and retail selling of products and Adhere to Ideal Making Limited (the Defendant herein) is a company based herein in Arusha dealing with selling motorbikes products and manufacture motorbikes helmets. The Plaintiff and the Defendant entered into lease agreements whereas, the Plaintiff leased her properties located at plots No. 71/5, 71/7 and 71/9 located at Themis industrial area Arusha to the Defendant for a duration of five years. It was alleged that the Defendant carried her contractual obligation by paying rent only for one year. That, due to Defendant's failure to pay rent on time, the Plaintiff was considered a defaulter in servicing her loan with DTB and as a result, the Plaintiff's properties were auctioned. The Plaintiff wrote a demand notice to the Defendant claiming for outstanding rent but the same was disputed by the Defendant hence, the Plaintiff decided to institute the present suit. In its written statement of defence and evidence, the Defendant disputed being in breach of lease agreements. It was claimed that the rent was paid for one year from November 2017 to November

2018 but before the expiration of the lease agreements, the Defendant was ordered to vacate from the Plaintiff's premises by SUMA JKT Auction Mart. The Defendant believe that she was not bound to pay rent as the agreement ended after they were ordered to vacate the leased premises. Considering the facts of the case, the following issues were agreed and framed for determination.

- 1) Whether the Defendant breached the tenancy agreement dated 16<sup>th</sup> & 17<sup>th</sup> November, 2017 for failure to pay rent.*
- 2) To what reliefs are parties entitled to.*

During the hearing of the suit the Plaintiff enjoyed the service of Mr. Mosses Mahuna, learned advocate while the Defendant was represented by Mr. Alex Yunga, learned advocate. To prove the claims the Plaintiff presented one witness and the defence side also presented one witness to challenge the Plaintiff's claims.

Starting with the first issue on whether there was breach of lease agreement by the Defendant, I will be guided by evidence in record. PW1. Almeen Alnashir Hashmani is among the company directors of the Plaintiff. He testified that the Plaintiff entered into lease agreements with the Defendant in which they signed two lease agreements. That, the first lease agreement was signed in 16<sup>th</sup> November 2017 for the godown located in Plots No's. 71/5 and 71/7 to be operative by 1<sup>st</sup> October 2017

ending 30<sup>th</sup> September 2018 and was valid for five years. That, the second lease is for plot No. 71/9 was signed on 17<sup>th</sup> November 2017 to be operative from 1<sup>st</sup> December 2017 and was also valid for five years.

It was explained that, the rent for the first lease agreement for the godown in plots No's 71/5 and 71/7 was Tshs 4,000,000/= per month exclusive of VAT with increment in every year as per payment schedule at page 9 of the lease agreement. That, the rent for the 2<sup>nd</sup> lease agreement for open space in plot No. 71/9 was Tshs, 2,000,000/= per month exclusive of VAT with no increment within the five years. Two lease agreements were tendered and admitted as Exhibit PE1 collectively. PW1 explained further that rent was paid for the period one year after signing the agreement and nothing more was paid thereafter.

PW1 contended that the Plaintiff decided to lodge the present case after the Defendant's failure to pay rent on time. He pointed out that the outstanding rent for the first agreement is one hundred and sixty-nine million, six hundred thousand. (169,600,000) for the period of 26 months from 1<sup>st</sup> October 2018 to January 2021. That the outstanding for the second agreement was Tshs. 54million for the period of 27 months from 1<sup>st</sup> of December 2017 to January 2021. That, the outstanding rent is up to January 2021 as they received a notice on 15<sup>th</sup> January 2021

from Majembe Auction Mart that the properties in plots No's 71/5, 71/7, 71/9 and 71/3 were sold in public auction on the 12<sup>th</sup> of August 2020 to Arusha Art Limited for 700million hence, they were asked to vacate the premise. The said notice was admitted as exhibit PE2.

That, the Plaintiff is therefore claiming a total of Tshs 952,300,000/= in which Tshs. 169,600,000 and 54,000,000 are claims for unpaid rent and Tshs. 728,000,000/= are penalty of 25% per month for the period of delay in rent payment that was agreed in the lease agreement. The Plaintiff is also praying for this court to compel the Defendant to pay Tshs 700 million as loss of properties that were sold as a result of Defendant's failure to pay rent resulting to the selling of Plaintiff's properties, the costs of the case and 7% interest on the decretal sum from the date of judgment till payment in full as well as general damages.

On the defence side DW1 Zhang Yu Chun, the director of Ideal Company Limited (the Defendant herein) admitted to have entered into a lease agreement with MS Fine Food International limited, the Plaintiff herein. He testified that they signed five years contracts but they were to pay rent yearly. That, the rent for the first year of contract was paid on 27/11/2017 ending 30/12/2018. He admitted not to have paid rent

for the year 2019 on the reason that on 29/09/2018 Majembe Auction informed them that the Plaintiff was no longer the owner of the premise they were renting and the same was being sold in auction. That, they also saw an advertisement for sale of the properties in newspaper. That as they were being forced to vacate the premise, they complained to the Regional Administrative Secretary RAS to no avail. DW1 claimed that incurred costs to move the machines which they have fixed in that premise.

DW1 claimed that, the contracts were terminated on 27/10/2018 when Majembe advertised the sale of the said property as they were forced to move out even before the year was complete. DW1 prayed for this court to consider that there is no genuine case against the Defendant thus, the suit be dismissed with costs because it was the Defendant who suffered loss not the Plaintiff.

From the above evidence there is no dispute that parties signed two lease agreements as above captured commencing from 2017 to 2022. It is also not in dispute that parties agreed the payment mode of rent to be yearly and the Defendant paid rent for the first year commencing from October 2017 to 2018 for the first lease agreement and for the second lease agreement from December 2017 to 2018. While the

Defendant claim that he was made to vacate the premise before expiry of one year of the lease agreement, the Plaintiff claim that the Defendant continued to occupy the leased premise after the expiry of one year which he had paid rent and did not pay rent for the following year he continued occupying the premise. The evidence from the Defendant shows that the Plaintiff was issued with a notice to vacate the premise after the same was sold to Arusha Art. The record shows that the said properties were sold in public auction on 12<sup>th</sup> August 2020. This means that from that date the Plaintiff had no ownership right over the said properties hence could not claim anything on the same. I however do not agree with the Defendant contention that after they were issued with a notice for sale of the premise in public auction in September 2018, the agreement between them and the Plaintiff ended. PW1 himself admitted that the Defendant was not asked by the Plaintiff to vacate the leased premise even after the notice for auction was issued. The fact that there was notice that the Plaintiff's property was intended to be sold on auction did not in any way take the Plaintiff rights as owner of the premise until the same was declared sold and did not preclude the Defendant from performing his contractual obligation. There is ample evidence that the Defendant continued occupying the

premise even after the notice for auction was issued. It is my view that for the period the Defendant was in occupation of the said premise and before the sale was effected, the Plaintiff was still a rightful owner of the rented premise hence, entitled to the rent. Since it is not disputed that the parties entered into lease agreements freely, they are bound by the terms of agreements, Exhibit PE1. That is also the position law as it was also captured in number of cases. See the case of **Lulu Victor Kayombo Vs. Ocenic Bay Ltd & another**, Consolidated Civil Appeal No. 22 & 155 of 2020 CAT at Mtwara (Unreported). In **Simon Kichele Chacha Vs. Aveline M. Kilawe**, Civil Appeal No 160 of 2018 CAT at Mwanza (Unreported) where the Court of Appeal held that,

*It is settled law that 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 a sanctity of the contract as lucidly stated in **Abualy Alibhai Azizi v. Bhatia Brothers Ltd** [2000] T.L.R 288 at 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 public policy prohibiting enforcement'*



Since the Defendant was unable to pay rent for the period spent in the leased premise before the same was auctioned, I find the first issue to be in affirmative that the Defendant breached the lease agreement.

Turning to the relief claimed, I will first deliberate on the claim for outstanding rent Tshs. 169,600,000/= for the first lease agreement and Tshs. 54,000,000/= for second lease agreement all in aggregate of Tshs. 223,600,000/=. While the Plaintiff claims for 26 months arrears of rent for the first lease agreement and 27 months arrears of rent for the second lease agreement, the Defendant claims that the Defendant claims nothing as their relationship ended soon after a notice was issued that the Plaintiff's properties were to be auctioned. The Defendant further claimed that they moved out the machines and all other properties on March 2020 to give vacant possession of the leased premise. But the Plaintiff claimed that the Defendant vacated the premises by January 2021 when a notice was issued by Majembe Auction Mart that the properties were sold to Arusha Art and they were supposed to give vacant possession of the same. Since there is no evidence to the contrary and since the Defendant also agreed that they did not vacate the premise soon after the notice for auction was issued because they needed time to dismantle the machines and find another

place to move them, I am convinced with the Plaintiff's argument that they both moved out of the premises after they were issued with notice to vacate by Majembe Auction Mart. In this I refer Exhibit PE2, a demand notice dated 15/01/2021 that was also issued requiring the Plaintiff and its tenant to vacate the premises.

However, it is my view that the Plaintiff is only entitled to rent until 12<sup>th</sup> August 2020 when the properties were sold in auction because after the property was sold in August 2020, the Plaintiff had no right over the said property hence cannot claim rent out of it. I therefore conclude that the Plaintiff was entitled to 22 month's rent for the first lease agreement counted from October 2019 to August 2020. Since the payment schedule indicated rent payment of Tshs 5,600,000/= for the second year the same is computed for 12 months making a total of 67,000,000/= and since payment schedule indicated Tshs 6,400,000/= per month for the third year, the same is computed for 10 months making a total of 64,000,000/=. The total amount which the Plaintiff is entitled for the first contract is Tshs. 131,200,000/=. The Plaintiff is also entitled to 20 month's rent for the second lease agreement counted from December 2019 to August 2020 amounting to Tshs 40,000,000/=

Regarding the claim for specific damage at the tune of Tshs, 700,000,000/= this court finds that the same was not proved. Referring clause 5 (a) at page 4 of the agreement PW1 testified that the rent was to be paid through Plaintiff's bank account at DTB because the rent was intended to reservice the credit facility received by the Plaintiff from DTB. He contended that Plaintiff's properties were sold because the Defendant was not paying rent to service loan with DTB. He thus prayed this court to award Tshs. 700,000,000 as value of the sold properties which its sale resulted from the Defendant's failure to pay rent on time to service the loan. DW1 contended that while signing the lease agreement the Plaintiff did not tell them if they had loan with the bank and if the rent was intended to service the loan.

From the evidence in record, it is true that item 5 (a) states that the rent was to be paid through bank account to be identified by the landlord. However, nothing indicated that the lease agreement was entered with intention that the rent will service the Plaintiff's loan with the bank. Even PW1 agreed in his evidence that the Defendant was not part of the loan agreement between the Plaintiff and DTB and the lease contract did not indicate that the Defendant was to service the loan agreement between the Plaintiff and DTB. Thus, whether the properties

were sold for the Plaintiff's failure to service the loan, that cannot be blamed on the Defendant.

On the claim for penalty of 25%, the Plaintiff claimed the amount Tshs. 728,000,000/= as penalty for default in payment of rent on time. Reading the lease agreement specifically clause 2 (d) of all lease agreements which is exhibit PE1, it was agreed that in the first agreement the rent would increase every year and be paid on every month of October and in the event of default, there would be penalty of 25% monthly wise. For the year and for the second lease agreement there was no increment in rent but the same was to be paid every month of November of the year and 25% penalty was to be paid monthly wise in case of default. To my interpretation, the clause meant 25% penalty on the defaulting month within the year thus, 25% cannot be calculated on each month as suggested by the plaintiff. It even unreasonable to charge penalty which exceeds principal claims.

It was agreed based that the default was to be charged upon failure to pay rent by October of every year for the first lease agreement and November every year for the second lease agreement. In this matter, the default can only be counted for the year 2019 in which October and November passed without the Defendant paying the agreed

rent but for the year 2020, the lease agreement ended before October and November hence, the Defendant could not be punished for defaulting. Thus, in the first lease agreement 25% of the monthly rent which was 5,600,000/= is Tshs. 1,400,000/= and the same is awarded. For the second lease agreement the default was also for the year 2019 thus 25% of monthly rent which was Tshs 2,000,000/= is Tshs.500,000 which is awarded. Thus, the total amount awarded as penalty for default in paying rent on time is Tshs. 1,900,000/=.

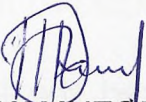
Regarding the claim for general damage this court has considered the fact that the Defendant defaulted in paying rent on time and the Plaintiff was in one way or another affected by that default. By leasing the premise, the Plaintiff expected to make earning out of it and default in payment could have affected the Plaintiff's business plan since the Plaintiff introduced itself as a company dealing with leasing premises. I therefore find it reasonable to award Tshs 5,000,000/= as general damages.

In the upshot, the suit is decided in favour of the Plaintiff. This court finds that Defendant was in breach of the lease agreements entered between her and the Plaintiff. The Plaintiff is therefore entitled to the following from the Defendant: -

1. Outstanding rent of Tshs. 131,200,000/= for the first lease agreement for plot No's 71/5 and 71/7, and Tshs. 40,000,000/ for the second lease agreement for plot No. 71/9 all in aggregate of Tshs. 171,200,000/=.
2. Tshs. 1,900,000/= as penalty for default in paying rent on time.
3. Tshs. 5,000,000 as general damages.
4. Interest of 7% on the decretal amount from the date of judgment till payment in full.
5. Costs of the suit to be borne by the Defendant

**DATED** at **ARUSHA** this 05<sup>th</sup> day of July, 2023



  
D.C. KAMUZORA

JUDGE