

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)
AT MWANZA

LAND APPEAL NO. 05 OF 2023

(Originating from Land Application No 189 of 2022 at the District Land and Housing Tribunal of Mwanza at Mwanza)

SULUS JOHN NYIKERA-----APPELLANT
VERSUS
GODFREY BENEDICT MASSAWE-----RESPONDENT

JUDGMENT

29th September & 6th October, 2023.

ITEMBA, J.

This is the appeal against the decision of the District Land and Housing Tribunal for Mwanza herein referred to as the Tribunal. The brief facts which ignited this appeal were that the appellant was a tenant in part of a commercial building owned by one Juma Amir Maftar (Deceased) where he operated his shop businesses. Sometime in September 2021, the owner through the administratrix of the estate leased the whole house to the respondent for a term of seven years. Among of the terms, the lessee was to renovate the house and sub-lease it on his own terms. It happened that the appellant was among the tenants at a time when the respondent took control of the commercial house as his lease agreement was to expire on 01.08.2022 with an additional of 21 days due to renovation. It is alleged that, after the appellant's lease agreement expired, he neither paid rent to the respondent nor vacated his rental



place within the commercial building. The respondent decided to issue a notice to the appellant to pay rent based on his terms or else to vacate the premises. The appellant did not honor the notice but in reply, he claimed that he was the one who was to be compensated by the respondent for inconvenience. In search for a means to tackle the situation the respondent filed a Land Application No. 189 of 2022 before the Tribunal which was decided in his favour. Dissatisfied, the appellant is now before this court with the following grounds of appeal: -

- 1. That the Trial Tribunal erred in Law and in facts for ruling that the Appellant is a trespasser while there was no cogent evidence as to whether the Respondent is the owner of the disputed premises.*
- 2. That the Trial Tribunal erred in Law and in Facts for failure to appreciate that there was no contract or any lease agreement between the Appellant and the Respondent to make the appellant responsible for paying rent to the Respondent.*
- 3. That the Trial Tribunal erred in Law and in Facts for failure to observe that the Respondent had no cause of Jaction against the Appellant despite the raised preliminary objection.*
- 4. That the Trial Tribunal erred in law by allowing the Respondent to depart from his own pleadings without giving the Appellant the right to make a proper reply to the departed pleadings.*



5. *That the Trial Tribunal erred in Law and in Facts for being persuaded and for relying only to an agreement that seemed to be entered between the Respondent and the third party who was never summoned to testify as to the truth of such agreement. The Court failed to draw an adverse inference against the respondent.*
6. *That the Chairman of the Tribunal was completely biased by drawing an adverse inference only to the appellant for failure to summon a witness who was his Landlord to the disputed premises and at the same time the Chairman was blind to see that the Appellant ought to have summoned a material witness whom he claimed to have entered into an agreement that allowed him to sublet the disputed premises.*
7. *That the Trial Tribunal erred in Law and Facts for failure to observe that the evidence adduced by the appellant was watertight compared to what was adduced by the Respondent and thus it reached the said decision.*

At the hearing of the appeal, the appellant was represented by Mr. William E. Chama and the respondent afforded the service of Mr. Erick Kahangwa both learned advocates.

On the first ground of appeal that the Tribunal did not show that the respondent was the owner, the appellant's counsel referred to pages 14 to 18 of the trial proceedings insisting that the appellant never had a lease contract with the respondent. He insisted that the respondent agreed that he did not have a lease contract with the appellant. Referring to exhibit



P1 he claims that it was between the respondent and Maimuna Amir and no evidence that he leased the whole house and paid TZS 370 million. He went on that, the lease agreement shows the agreed amount to be paid was TZS 360 million and the respondent was to pay TZS 150 million and later after 7 years he was to pay TZS 210 million whereas the respondent did not qualify as landlord in order to declare the appellant a trespasser.

On the 2nd ground, he claims that the Tribunal failed to appreciate the respondent's admission that there was no contract or any lease agreement between the Appellant and the Respondent to make the appellant responsible for paying rent to the Respondent. He therefore insisted that the Tribunal had no just cause to issue the order compelling the appellant to pay rent to the respondent for he was the family of the landlord.

On the 3rd and 4th grounds of appeal, he insisted that the respondent had no cause of action based on how the plaint was framed. He stated that on the plaint it was shown that the dispute was on plot **No. 42 Block U** while on the reliefs it was shown as plot **No. 201 Block U**. He claims that as the defendant he was not given room to amend his WSD and do a proper reply.

On the 5th ground of appeal, he claims that the respondent entered into a contract with a third party who was not called to the court to prove



that there was indeed a contract and the payment was effected. He added that the Tribunal would have drawn an adverse inference against the respondent. Supporting his argument, he cited the case of **Hemedi Saidi vs Mohamed Mbivu** [1984] TLR 113. He added that the agreement was signed only by Maimuna Amir and not all heirs as claimed by the respondent.

On the 6th ground of appeal, he claims that the Tribunal was biased for drawing inferences against the appellant instead of the respondent. He insisted that the adverse inference would have been drawn against both sides.

On the 7th ground of appeal, he also referred to his submissions in the 1st and 2nd grounds that there was no agreement between the parties but the respondent and Amina Maftar. He also referred to page 15 of the trial proceedings claiming that exhibit P1 was not read as the witness could not understand English. He therefore prays for exhibit P1 to be expunged from the records. Supporting his arguments, he cited the case of **Keiya Meshack Mahanya vs Republic** Criminal Appeal No. 37 of 2020. He therefore prays for the appeal to be allowed with costs.

Replying, Mr. Kahangwa opposed the appeal. On the 1st and 2nd grounds of appeal, he insisted that the appellant was a trespasser for the reasons that, the respondent produced exhibit P1 the lease agreement



between the respondent and the administrator of the estate one Maimuna Amir and it was registered as a long-term lease to the Registrar of Titles. Also, he stated that, the appellant's lease agreement was to expire on 22.08.2022 including 21 days added due to renovation. That, following the expiry of the lease agreement the appellant was issued with a notice for the payment of rent which he did not pay and therefore became a trespasser. Supporting his position, he cited the case of **Tamal Hotels & Conference Centre Ltd vs Dar Es Salaam Development Corporation** (Civil Appeal 33 of 2020) [2022] TZCA 725 (22 November 2022) and **Lawrence Magesa vs Fatuma Omary** Civil appeal No. 333 of 2019.

On the 3rd and 4th ground, that the respondent had no cause of action against the appellant, he enlightens that, the same issue was a raised as a point of Preliminary Objection before the Tribunal and it was decided that the issue of different plot numbers on a plaint was a typing error and parties were allowed to amend the same by hand. He went on that, the manner and extent of payment between the respondent and Maimuna Maftar, does not concern the appellant for he was not part of the agreement and he has no right to question the terms of the lease agreement. He insisted that the appellant is liable to pay rent for the



reasons that at the time the suit was instituted, he was already a trespasser.

On the 5th and 6th grounds of appeal, he stated that the documents tendered by the respondent were sufficient as per section 164 of the Evidence Act and there was no need to bring witnesses on that. He referred to the book of '*Sakar Law of Evidence*' page 1337 which provides when the document is an exhibit there is no need to go through it for the documents speak for themselves.

He went on that, the appellant stated that he had a contract with Amir Mafta but he could not bring him before the court to prove his assertions. On the allegation that the exhibit tendered was not read, he claims that the case cited is a criminal case in which the standard of proof is different from that of civil cases where in civil proceedings, under Order VI and VII of the CPC, parties prepare pleadings in advance to avoid surprises. He therefore prays for the appeal to be dismissed with costs.

In his rejoinder, Mr Chama reiterated his submissions in chief adding that the landlord did not issue notice to the appellant as stated on page 4 of exhibit P1. He insisted that the authorities cited are distinguishable and there was a need for a witness due to the confusion of plot numbers. He maintains his prayers that the appeal should be allowed with costs.



After the submissions by parties' learned counsels, the issue for determination before me is whether this appeal has merit.

On the first ground of appeal, the appellant claims that he was declared a trespasser while there was no cogent evidence as to whether the Respondent is the owner of the disputed premises. On the part of the respondent Mr. Kahangwa stated that the respondent had entered a lease agreement with the owner and after the appellant's rent was due, he never paid despite being issued with a notice by the respondent. As I go through the records, no doubts that the appellant was a tenant on a commercial house which is subject to the dispute before it was leased to the respondent. The records show that on 14.08.2021 the then landlord entered into a lease agreement with the respondent (exhibit P1) for a term of seven years. In items 3.1 (vi) and 3.4 of the lease agreement, the landlord was required to give notice to the tenants before the operation of the lease agreement. Mr. Chama claims that the appellant was never given a notice, therefore, he could not be held as a trespasser. Reading through the proceedings, on page 29, the appellant acknowledged to have been given notice "*namtambua Hindu ndiye alinipa notisi*". The appellant went further stating that he refused to vacate the premises to allow renovation until the landlord and the respondent met him and entered agreement. "*nakumbuka mwanzoni niligoma kupisha ukarabati mpaka*



Hindu na mdai katika kesi hii tulipokutana na kukubaliana". This is also seen on exhibit P2 which is agreement entered between the appellant and the respondent.

From the above piece of evidence, it is with no doubt that the appellant was served with a notice to vacate by the landlord and for the reasons known best to himself, he decided not to. He opted to enter into an agreement with the respondent who he acknowledges as an immediate lessor as shown by exhibit P2. As it stands, the appellant was, after the expiry of the time of the lease contract, direct liable to the terms and condition of the respondent. It is obvious that after the execution of the lease agreement Exhibit P1, the respondent become the new tenant with powers to sublease and one of the sublessees was the appellant. Under clause viii of the lease agreement exhibit P1, reads:-

"After construction, the tenant shall be allowed to sublet the new fresh modern frame shops to sub-tenants under his own new terms, conditions and new rent that shall help him to recover from the invested money and rent paid to the landlord."

As it stands therefore, the respondent has a right to lease the shop 'frames' shops and all the sublessee including the appellant are responsible for paying rent to him (respondent). I see no justification on the part of the appellant to be exempted from terms and conditions of leasing the



frame shops while still on the premises. I agree with the respondent learned counsels cited cases of **Tamal Hotels & Conference Centre Ltd vs Dar Es Salaam Development Corporation** (Civil Appeal 33 of 2020) [2022] TZCA 725 (22 November 2022) where it was held that: -

"a person whose entry is lawful become a trespasser if he continues to occupy another's premises beyond the period permitted."

(See also **Avit Thadeus Massawe vs Isdory Assenga**, Civil Appeal No. 06 of 2017 and **Geita Gold Mining Limited vs Twaib Ismail & Others**, Civil Appeal No. 103 of 2019).

In view of what is stated above, the appellant become a trespasser from 22.08.2022. This is after the lease agreement expiring on 1.8.2022 and 21 days being added due to renovation the date which the lease agreement expires that on 01.10.2022 plus the 21 days added as agreed as shown on exhibit P2. Having observed so, I find this ground lacks merit.

On the 2nd ground of appeal, the appellant claims that the trial tribunal failed to appreciate the respondent's admission that there was no contract or any lease agreement between the Appellant and the Respondent to make the appellant responsible for paying rent to the Respondent. As it appears from the trial court records, the appellant



denied to acknowledge the respondent as a sublessor and he severally referred to him as a stanger. On the prevailing circumstances, the appellant was not ready to enter into a contract and though he claimed to have paid his rent he intentionally not exhibited before the trial tribunal. Looking as to who faulted between the appellant and the respondent, it widely clear that it was the appellant for failure to recognise the respondent as a sublessor despite of the agreement they entered (exhibit P2) and also failure to honor the demand latter instructing him on the new terms of payment of rent. It was therefore, right held by the trial tribunal and as I stated above that the appellant became a tresspaser from 22.08.2022, and liable to pay rent based on the terms and conditions of the sublessor.

On the 3rd and 4th grounds of appeal whereas the appellant claims that the respondent had no cause of action based on how the plaint was framed, Mr. Kahangwa enlightens the court that it was raised as preliminary objection at the trial tribunal and it was dealt with. As I go through the records, it is reflected and I agree that the typing errors cannot charge the subject matter of a suit.

On the 5th ground of appeal, it was the appellant claim that the respondent entered into a contract with a third party who was not called to the court to prove that there was indeed a contract and the payment



was effected. The respondent learned counsel opposed insisting that the documents tendered by the respondent were sufficient as per section 164 of the Evidence Act and there was no need to bring witnesses on that. On the circumstances underpinning this appeal, what was disputed was a status of the appellant after the respondent becomes a sublessor. The instrument which made the respondent a sublessor (exhibit P1) was not in dispute therefore not subject to scrutiny. In that regard I see no reasons to go into details for this ground lacks merit.

On the 6th and 7th grounds of appeal, I find that they have been well covered while determining grounds No. on 1st and 2nd grounds that they lack merit.

Based on my analysis above, the appeal lacks merit and therefore dismissed with costs. I proceed to uphold the judgment and orders of the trial tribunal.

Dated at Mwanza this 9th Day of October 2023.




L. J. ITEMBA
JUDGE

Judgement delivered this 9th Day of October 2023, in the absence of parties in the presence of Ms. Gladness Mnjari. RMA.


L. J. ITEMBA
JUDGE