

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT IJC MOROGORO

LAND APPEAL NO. 70 OF 2023

BETWEEN

NDESHUKURWA ABEL SUMARI.....APPELLANT

VERSUS

CYREKA EAST AFRICA DEVELOPMENT CO. LIMITED.....RESPONDENT

EX-PARTE JUDGEMENT

31st July, & 30th Nov, 2023

CHABA, J.

Briefly, the dispute is for rent arrears amounting to TZS. 10,500,000/= being the rent arrears from October, 2018 to December, 2022 (14 months' rent). The Appellant, claims to be the owner of the Shop / Frame located at Block B1 at Nanenane Area within Morogoro Municipality, (herein shall be referred to as the Premises). The appellant claims that, she entered into a lease agreement with the respondent's company on 2nd July, 2018, and that the agreement was for three months and it expired on 3rd October, 2018. The monthly rent agreed was TZS. 300,000/=. The respondent paid TZS. 900,000/= being the three months' rents of July, August and September, 2018.

The appellant claims that, the lease period was extended to 14 months but the respondent had refused or neglected to pay the rents for the period of 14 months starting from October, 2018 to December, 2022. The appellant filed a case at the District Land and Housing Tribunal for Morogoro, at Morogoro (the trial Tribunal) claiming for rent arrears amounting to TZS. 4,200,000/= being rent arrears from October, 2018 to November, 2019, and payment of TZS. 300,000/= for every month of delay counting from December, 2019 till the date of delivery of judgment, she also claimed for payment of TZS. 5,000,000/= being damages, transport costs and inconveniences suffered by her when she was making follow up for payments of the rentals.

The case before the trial Tribunal was determined ex-parte since the respondent defaulted filing its defense, and failed to enter appearances despite services. At the culmination of trial, the trial Tribunal ruled that, there was no proof that the rental term was extended from October, 2018, as the Lease Agreement furnished to the trial Tribunal had a specific period of Three Months, which period expired on 3rd October, 2018. The application was therefore dismissed.

Aggrieved by the decision of the trial Tribunal, the appellant, through the services of Ms. Kabula Barbanas, learned advocate, filed an appeal raising three grounds of appeal as follows:

1. That, the Trial District Tribunal erred both in law and fact when ignored the evidence of the appellant which established that there was a valid lease agreement between the appellant and the respondent, and the respondent failed to pay rent;
2. The Tribunal erred in law and in fact when it failed to note that there was an out of Court settlement, as a result of the settlement the respondent had paid the appellant TZS. 4,800,000 in 2020, indicating that the agreement existed, and that the respondent was in occupation of the premises as the tenant. That, the rent due had reached to TZS. 11,700,000/= which is the rent for 39 months from February, 2020 to April, 2023.
3. That, the District Land and Housing Tribunal erred in law and in fact when it failed to consider that the only remedy available to the appellant was eviction order, and the Tribunal ought to have ordered the respondent to give vacant possession of the premises.

An appeal was also determined ex-parte since the respondent failed to enter appearance despite services. The appeal was determined by written submissions. On the first ground of appeal, the Counsel who represented the appellant, Ms. Kabula Barnabas argued that, the respondent is still in occupancy of the suit premises, this means that the lease agreement was extended, and that the respondent is duty bound to pay rent. The appellant also argues that, as the respondent appeared before the trial Tribunal and asked to settle the matter out of Court, this proves that the lease agreement was still in existence. The appellant's

Counsel averred that, the appellant was able to prove her case on the required standard, and on this he cited the case of **Hemedi Saidi Vs. Mohamed Mbilu TLR (1984) page 114**, when the Court had held that:

"According to law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win."

On the 2nd and 3rd grounds of appeal, the appellant's Counsel submitted that, the appellant followed due procedure and she did not want to take the law into her own hands, she filed the Land Application before the trial Tribunal expecting to get an eviction order. The Counsel contends that, the respondent is still in occupation of the premises, and he does not pay rent. The Counsel also argues that, the appellant is a retired civil servant and only depends on the suit premises for her daily bread, and that she is suffering financially and psychologically. The Counsel argues further that, since the respondent failed to pay rent, he should be declared the trespasser. To support her argument, she cited the case of **Nacky Esther Nyange Vs. Mihayo Marijani Wilmore and Mrs. Mariam Wilmore, Civil Appeal No. 207 of 2019, CA.** (unreported).

I read and understood the proceedings, the Judgement of the trial Tribunal as well as the submissions made by the Counsel for the appellant.

The first ground of appeal is whether there was proof of the existence of the Lease Agreement. Exhibit A1, is the Lease Agreement exhibited in the trial Tribunal by the appellant. In this Agreement, the appellant is the Lessor, and the respondent is the Lessee. The respondent is the Limited Liability Company incorporated under the Companies Act, and having registration No. 136228274, and its registered office is Tanga, Tanga CBD, Mzingani, 21102, Sahare, Karume, 357, Z 352. The Managing Director of Cyreka East Africa Development Co. Limited is Cyril Ekanem. The Lease Agreement was signed by one Kamjee, it is not clear whether the signatory was authorized by the Cyreka to enter into the said Agreement. In fact, there is no names of the person who entered into the Agreement but only the signature. Limited Liability Companies and Corporations are separate entities from their founders or members or stakeholders, as the owners are not liable for the Company, and the Company stands on its own as an independent legal entity. Usually, the articles of association would state who is able to sign the agreements on behalf of the Company, if an officer of the Company is having signing authority, the authority must be expressed through the Company's Board Resolution or the Articles of Association.

The Company must specifically grant the signing authority either by its articles of association or board resolution or other official Company documents. If someone signs on behalf of the Company without express authority, then the



Company is not bound by that contract because the signature was created by someone who didn't have the authority to sign the agreements. Usually, the agreements on behalf of the Company would be signed by the Company's Director and the Secretary, and would always be stamped either by the Company's Seal or Companies Stamp. The Agreement did not have the signature of either the Director or Secretary, and it did not have the Company's Official Seal or Stamp. There was no proof whatsoever if the person who signed exhibit A1, on behalf of the respondent's Company was authorized by the Company to sign the agreement on behalf of the Company. No wonder the Company neglected to defend the action or even enter into appearance in the Tribunal and to Court to defend the action, as the agreement did not bind the Company. Again, as held by the Chairperson of the Tribunal, even if the Court assumes that the Agreement is valid, and it was signed by an authorized person on behalf of the Company, the Agreement had a specific Term, and it had already expired. The trial Tribunal was correct in disregarding Exhibit A1, which was short of all the required ingredients of a valid Agreement.

Regarding grounds 2 and 3 of the appeal, whether the respondent is still in occupation of the premises, it is true that Ms. Dora Ngasa appeared before the Tribunal on 23rd December, 2019 and 25th February, 2020, she told the Tribunal that she was the General Manager of the respondent's Company, she also



acknowledged that, the Company had entered into Lease Agreement with the appellant, and they were still occupying the premises, and she asked the Tribunal for time to settle the dispute out of the trial Tribunal (Court). Ms. Dora Ngasa promised to settle the matter out of court, but she never went back to give the outcome of the settlement. She even ignored or neglected to file the defense or to defend the claim. The case was determined ex-parte since there was no response from the respondent who was aware of the existence of the claim, they entered appearance, they promised to settle the claim out of Court, but neglected completely to give the outcome of the settlement to Court/Tribunal.

The relevant fact is whether the appellant was the landlady under whom the respondent was the tenant in respect of the suit premises. When Ms. Dora Ngasa appeared before the trial Tribunal, she admitted that the appellant inducted the respondent's Company as a tenant in the suit premises in the year 2018, and that they are still in occupation of the suit premises as the tenants. She also acknowledged to have paid TZS. 900,000/= as three months' rent for the period of July, August and September, 2018, and in February 2020, the Company was still in occupation of the suit premises as the tenants. Hence, it can be held that the respondent admitted the appellant as his landlady, and therefore, there existed relationship of landlord and tenant between the appellant and the respondent despite the absence of the valid written agreement.

It is on record that, the respondent admitted that the last rent paid to the appellant / applicant was TZS. 900,000/=, and that the rent of the suit premises was agreed at TZS. 300,000/= per month. The case of the appellant is that, the tenancy was on month-to-month basis, the respondent refused to pay rents and also failed to vacate. Hence, the respondent has become unauthorized occupant in the suit premises and is liable to be evicted.

Admittedly, no written agreement of tenancy existed between the parties before October, 2018 or thereafter. As such, from October, 2018 till the institution of the suit in January, 2020, the respondent remained in possession of the suit premises as a tenant but without any written agreement between the parties. By mere appearance in the trial Tribunal, and although there was no written agreement between the parties, proves that the tenancy was in existence. In law, it is recognized that, in absence of the written tenancy agreement, the tenancy between the parties is considered on month-to-month basis, and since the tenant remained in occupation of the premises without paying rent, the respondent has become an unauthorized occupant in the suit premises.

As said hereinabove, the respondent entered appearance in the trial Tribunal through its Manager, Ms. Dora Ngasa. As such, according to the respondent, there was an oral agreement or rather an implied agreement which was proved by the existence of the respondent in the suit premises. I understand that, it is

fundamental, to prove the existence of a valid and enforceable contract, and this was proved, as Ms. Dora Ngasa who appeared before the trial Tribunal had admitted the existence of an agreement, and the Company was and is still in occupation of the suit premises as tenants.

In view of the foregoing discussions, it can be held that, there existed the relationship of landlord and tenant between the parties. The surrounding circumstances suggests that, the respondent was in breach of the terms of the tenancy, as she failed to pay monthly rent as agreed, and failed to vacate the suit premises, and since she is not paying rents, the respondent's Company has no right to remain in possession of the suit premises.

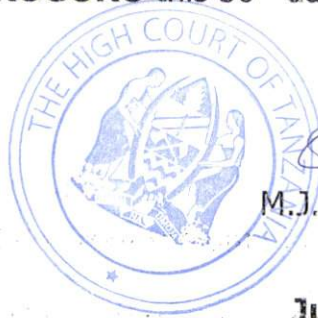
Therefore, the appellant is held entitled to the decree of possession. Consequently, the respondent is directed to handover the possession of the suit premises located at Nanenane area within Morogoro Municipality to the appellant within 30 days from the date of this Judgement. The Court also order the respondent's Company to pay arrears of TZS. 300,000/= per month from October, 2018 till the date of vacant possession. The respondent's Company shall also pay for the costs of the appeal.

In the final event, the 2nd and 3rd grounds of appeal succeeds, and the appeal is allowed with costs. The respondent's Company is ordered to vacate the suit



premises within 30 days from the date of Judgement, and to pay the rent arrears from October, 2018 till the date of vacant possession. I so order.

DATED at MOROGORO this 30th day of November, 2023.



M.J. Chaba
M.J. Chaba

Judge

30/11/2023

DS

Court:

Ex-parte Judgment delivered this 30th day of November, 2023 in the presence of Ms. Kabula Barnabas, Learned Advocate for the Appellant, and in absence of the Respondent.




A.W. Mmbando

DEPUTY REGISTRAR

30/11/2023

Court:

Rights of the parties to appeal to the CAT fully explained.




A.W. Mmbando

DEPUTY REGISTRAR

30/11/2023

