

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI SUB REGISTRY

AT MOSHI

CIVIL CASE NO. 869 OF 2024

MOSHI DISTRICT COUNCIL 1ST PLAINTIFF

THE ATTORNEY GENERAL 2ND PLAINTIFF

VERSUS

GENO VOCATIONAL TRAINING CENTRE DEFENDANT

SUMMARY JUDGMENT

13/05/2024 & 24/05/2024

SIMFUKWE, J.

The plaintiffs herein filed the instant Summary Suit claiming against the defendant for payment of TZS 12,000,000/= being unpaid rent arrears and general damages to be assessed by the court arising from the breach of contract on part of the defendant.

The plaintiffs alleged among other things that on 24th November 2015 the 1st plaintiff entered into a lease agreement with the defendant in which the defendant was to occupy the buildings and teaching facilities of the 1st plaintiff situated at Mshiri village. They had agreed a monthly rent at the tune of TZS 500,000/= which was to be paid through Mshiri Village account number 01J2079099700 CRDB. It was asserted that the

defendant paid rent in instalments whereas, the last payment was done on 05th November 2016. Thereafter, the defendant never paid rent to date. On 04th October 2021 the 1st plaintiff and the defendant entered into a handing over agreement in which the defendant handed over the buildings and teaching facilities to the 1st plaintiff.

In the said agreement it was mutually consented that the total rent arrears owed from the defendant was TZS 12,000,000/= . The handing over agreement was attached to the plaint to form part of it (annexure MDC – 3). On 04th December 2021, the 1st plaintiff issued to the defendant a demand letter for payment of TZS 29,000,000/= as agreed in the handing over agreement (sic). However, the defendant did not reply. Then, on 04th April 2022 the 1st plaintiff issued a reminder demand letter which was not replied by the defendant.

The plaintiffs prayed for the following reliefs:

- a) A declaration that the defendant owes the 1st plaintiff a total sum of TZS 12,000,000/= being unpaid rent as agreed in the handing over agreement between the 1st plaintiff and the defendant dated 4th October 2021.
- b) An order compelling the defendant to pay the 1st plaintiff the total sum of TZS 12,000,000/= being unpaid rent as agreed in the

handing over agreement between the 1st plaintiff and the defendant dated 4th October 2021.

- c) An order compelling the defendant to pay general damages at the tune of TZS 100,000,000/= arising from inability on part of the 1st plaintiff to implement social development activities owing to unpaid rent.
- d) An order for the interest on the decretal sum to the tune of 25% from the date of judgment to the date of satisfaction of the same.
- e) Costs for this suit be borne by the defendant.
- f) Any other relief that the court may deem fit and just to grant in favour of the plaintiffs.

The defendant did not apply for leave to defend the Summary suit as she was not reachable. She was served through substituted service in Mwananchi newspaper dated 26th April 2024 at page 13.

Pursuant to **Order XXXV rule 2(2) of the Civil Procedure Code**, Cap 33 R.E 2022 where a Summary Suit has been filed, a defendant ought to formally apply for leave to defend the suit. Where such leave has not been obtained, the claims in the plaint are presumed to have been admitted by the defendant. Hence, the plaintiff shall be entitled to the decrees

prescribed under **Order XXXV rule 2(2) (a), (b) and (c) of the Civil Procedure Code** (supra).

The issue for determination is whether pursuant to the law the plaintiffs are entitled to the reliefs claimed in the plaint?

Order XXXV rule 1 (e) of the CPC (supra) provides that:

"1. This Order shall, where the plaintiff desires to proceed in accordance with the Order, apply to –

(e) suits for recovery of rent, interest or other debts due to the Republic, the Government or any local government authority."

Order XXXV rule 2(2) (c) of the CPC provides that:

*"(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from the judge or magistrate as hereinafter provided so to appear and defend; and, **in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted**, and the plaintiff shall be entitled-*

*(c) where the suit is for the recovery of possession of any immovable property, building or premises or **for payment of rent**, mesne*

*profits or damages for unlawful occupation of such immovable property, building or premises, **to a decree for possession and for payment of rent**, mesne profits or damages as claimed.*”Emphasis added

As I have already stated herein above, the defendant was served through substituted service. Apart from that, the defendant is aware that she is owed by the 1st plaintiff due to the fact that on 04/10/2021 the 1st plaintiff and the defendant signed a deed of settlement which indicated inter alia that the defendant was owed TZS 12,000,000/= by the 1st plaintiff.

Moreover, the defendant was issued with two demand notices dated 04/12/2021 and 04/04/2022 respectively. Despite all that, the defendant has not filed any application for leave to appear and defend the summary suit.

In the upshot, I am of settled opinion that the plaintiffs are entitled to a summary judgment save for the relief of general damages. Since the owed amount was agreed in the handing over agreement, it is not in the interest of justice to award general damages. Therefore, I hereby enter summary judgment for the plaintiffs and decree as follows:

- a) That, the defendant owes the plaintiffs a total sum of TZS 12,000,000/= being unpaid rent as agreed in the handing over

agreement between the 1st plaintiff and the defendant dated 04th October, 2021.

- b) The defendant is ordered to pay the 1st plaintiff a total sum of TZS 12,000,000/= being unpaid rent as agreed in the handing over agreement between the 1st plaintiff and the defendant dated 04th October 2021.
- c) The defendant shall pay the 1st plaintiff an interest on the decretal sum to the tune of 12% from the date of judgment to the date of satisfaction of the same.
- d) Costs of this suit be borne by the defendant.

It is so ordered.

Dated and delivered at Moshi, this 24th day of May 2024.



X

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

24/05/2024