

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

LAND CASE NO.5 OF 2021

BETWEEN

MOHAMED HASSANALI KANJI PLAINTIFF

VERSUS

RAMADHAN HAMISI NTUNZWE DEFENDANT

JUDGMENT

27th November, 2023 & 16th February, 2024

MWANGA, J.

There is no doubt that this case is a most difficult one, but I have concluded that, though the defendant constructed the forty (40-frames) shops in the plaintiff's suit premise in **Plot No. 3, Block 19** located at Kariakoo Area, Ilala Municipality within Dar es Salaam Region without having a written agreement, notwithstanding, he is not an invader or trespasser. The conduct of the plaintiff is a clear indication that there was an oral agreement with the defendant for the construction of the stated shops. Nevertheless, I am quite confident that the defendant has failed to demonstrate or persuade this court that there was a joint venture commercial agreement with the plaintiff to construct a five-floor building on the plaintiff's premises.

But first, the facts. It is a definite contention of the plaintiff that, he is the owner of the suit property identified as **Plot No. 3, Block 19** located at Kariakoo Area, Ilala Municipality within Dar es Salaam Region. The ownership passed to him after the death of his sister, **Najma Hassanal Kanji**.

As per the plaint, a Deed of Transfer of the ownership of the plaintiff's sister was lawfully executed on the 30th of November, 2018, effecting the transfer of the Right of Occupancy registered under Certificate of Title No. 44547 to him. The said certificate of title, delineating its provisions per section 6, paragraph 4, and conditions 2 (iii) and (iv), unequivocally mandated the construction of a 5-storey plus building on the subject premises.

Based on the plaintiff's plaint, he asserted that, regrettably, this envisioned construction met with obstruction, courtesy of the defendant's alleged invasion, resulting in the unauthorized erection of sub-standard shop structures. Presented further that, despite the persistent and amicable entreaties, the defendant obstinately resists both the demolition of these structures and the subsequent vacation of the premises.

To make it more eloquent, this saga goes back to the year 2011. It appears that the plaintiff and defendant knew each other and they were

family friends. At that moment and before the ownership of the property was transferred, the plaintiff was the holder of the General Power of Attorney in respect of the suit property from his sister.

This was the time the defendant asserts that in the early months of 2011, he lawfully entered the subject land with the explicit knowledge and consent of the plaintiff. This entry culminated in the construction of the present business structures, which is a total of forty (40) shops on which he collects and utilizes the rents alone. According to him, a mutual oral agreement facilitated by **Mohamed Hassanali Kanji**, the plaintiff, outlining the construction of a commercial building on the land, with the defendant contributing to the plaintiff TZS 204,000,000/= as a share of their partnership. The defendant contends that upon the completion of the aforementioned business structures, the plaintiff underwent a perceptible shift in stance, allegedly harboring an intention to defraud the defendant by denying the existing contract. This purported change of heart forms the crux of the ongoing legal dispute between the parties. Ultimately, the Plaintiff has instituted this action against the Defendant, seeking the following reliefs:

- i) A finding and declaration that the defendant is a trespasser.*
- ii) Perpetual injunction restraining the defendant, his agents, workmen, and anyone claiming to work under his*

instructions from encroaching upon and/or interfering with the affairs of the suit land in howsoever manner.

iii) An order for demolition of all illegal structures he had erected on the suit premises and removal of all debris thereon and vacate.

iv) Payment of mesne profits as pleaded under paragraph 6 hereinabove.

v) Loss of earnings of Tshs. 100,000,000/= per month as pleaded under paragraph 7 hereinabove.

vi) General damages encompassing punitive, exemplary, aggravated, incidental, and consequential as may be assessed by the honorable court.

vii) Interest on the decretal sum at the court rate of 7% per annum from the date of judgment till payment in full.

viii) Costs of the suit.

ix) Any other and/or further orders and/or reliefs as may be deemed just and expedient by the court.

Defendant, in response, submitted a written statement of defense, refuting Plaintiff's claim and asserting lawful entry onto the disputed suit land based on an oral agreement between Plaintiff and Defendant.

Throughout the course of the legal proceedings, the plaintiff was represented by **Samson Edward Mbamba**, the learned counsel. Simultaneously, the defendant availed legal representation through **Mr. Alphonse Katemi**, learned counsel.

Before the commencement of the hearing, the learned advocates representing the respective parties proposed a set of issues, which were subsequently mutually agreed upon and officially framed by the Court for consideration in the resolution of this legal dispute. These issues include:

- i. Whether there existed an agreement between the parties for the joint development of the disputed plot.***
- ii. Whether there has been a breach of the aforementioned agreement.***
- iii. Whether the defendant is a trespasser.***
- iv. Whether there is a documented loss of earnings on the plaintiff's plot and what appropriate reliefs are the parties entitled to.***

In the spirit of the cardinal principle pegged under **Section 110 of the Evidence Act, Cap 6 [R.E. 2022]**, he who alleges must prove, and the standard is one on a balance of probabilities. Section 110 (1) of the Act, requires that: -

"Whoever desires any court to give judgment as to legal liability dependent on the existence of facts which he asserts must prove that those facts exist."

A similar view was held in the case of **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (CAT-unreported) when the court applied provision of section 110 of the Evidence Act, had this to say:-

"...it is an elementary principle that he who alleges is the one responsible to prove his allegations."

As a matter of principle, the onus of proof lies to the party who alleges the existence of certain facts in which he invites the Court to pronounce judgment in his favor and, failure to do so means the alleged fact does not exist or did not happen at all.

In the present case, the Plaintiff presented a single witness, **Mr. Mohamed Hassanali Kanji**, identified as **(PW1)**, who provided testimony. In support of his case, the Plaintiff submitted a series of exhibits, all of which were duly admitted by the Court. Conversely, the Defense called upon the testimony of four witnesses: **Mr. Ramadhani Hamisi Ntunzwe**, who was featured as **(DW1)**; **Mr. Justamarry Dowson Manga**, who was featured as **(DW2)**; **Ms. Zainab Shaban**

Issa, designated as **(DW3)**; and **Mr. Dowson Manga**, who was featured as **(DW4)**. In alignment with their case, the Defense introduced several exhibits, each of which received admission from the Court.

During the sworn testimony, **Mr. Mohamed Hassanali Kanji - PW1** affirmed his professional status as an Engineer and asserted legal ownership of the suit land since 30th November 2018. He narrated that before 2018, the Plot was owned by his sister, **Najma Hassanali Kanji**, which was subsequently transferred to him out of natural love and affection. The purpose of this transfer was for the construction of 6th Floor Commercial Buildings. He asserted further that, during the 1990s, he was granted power of attorney by his sister to oversee the Plot, a responsibility that concluded in 2018 upon the expiration of the Power of Attorney and transferred to him.

Mr. Kanji detailed the defendant's forceful invasion of the plot, involving the use of bouncers, and the subsequent construction of structures against his wishes. Despite reporting the incident to the Police, Municipal, and Regional Commissioner, no action was taken. He identified the defendant as a seller of used clothes ("**Mitumba**") and

claimed that the defendant broke the existing fence and commenced construction without any agreement.

The plaintiff, Mr. Kanji, emphasized that he had never entered into any agreement with the defendant. He prayed for the court to grant his claims and submitted **Exhibit P1**, the Certificate of Title, as part of the plaintiff's evidence. With no further witnesses, the Plaintiff concluded his case.

In the defense case, **Mr. Ramadhani Hamisi Ntunzwe** who testified as **DW1** took a different stand and told this court that, he is a businessman dealing with shops at Kariakoo. And that, he had known the plaintiff since 2010 and that he was the plaintiff's tenant in one of his houses at Uhuru/Kongo at Aggrey Street. According to him, he rented a plaintiff's business frame for which he paid a total of Tshs. 1,800,000 as rent for three months, each month being Tshs. 600,000/=. He said that he paid money to the plaintiff on 10th February 2010 and on 30th May 2010 the rent was exhausted. Thereafter he was told by the plaintiff to effect payment of the rent monthly.

Similarly, DW1 provided testimony regarding various interactions with the plaintiff. That, in July 2010, the plaintiff borrowed three (3) million TZS from the defendant and later borrowed 30 million TZS, both of which were repaid. Subsequently, their relationship developed into a

family friendship. He said, that in August 2011, the plaintiff informed him about a plot in Kongo Street and took him to visit the site with his family members; to wit; his wife (Justamarry Dowson Manga), Zainab Shaban, and Anna Raymond John. They found a container business which was highlighted as the plaintiff's venture, and introductions were made to the Ward Executive Officer's wife (Mzimaduka). DW1 further testified that the plaintiff proposed a joint venture, requesting 204 million TZS, which he provided a week later. To him, the plaintiff outlined plans to construct a six-floor business building in six years, with each other contributing 400 million TZS. It is his testimony that the 204 million TZS secured his share in the plot. Subsequently, the construction commenced, using the plaintiff's vehicle ("Canter") to clear debris, and finally completing forty (40) business shops (frames) by 2012.

He goes further saying that, on 1st January 2016, the plaintiff approached him, suggesting a sale of the suit premise to a client linked to AMANA BANK. However, he declined to sell his share, leading to a misunderstanding with the plaintiff. He narrated that, a meeting on 2nd January 2016, involving him, Steven Dowson Manga, and seven others, saw the plaintiff asserting his intention to sell the plot. His engagement with the plaintiff followed after he had declared the plot belonged to his sister, claiming only a Power of Attorney role. After such a

misunderstanding, the plaintiff sought a refund of 204 million TZS and a calculation of construction costs for potential reimbursement, but he refused.

The witness also said, that on 21st January 2016, he received a notice from Adv. Samson Mbamba to vacate the trespassed premises. His response on 16th February 2016, led to a summons from the Ward Executive Officer on 4th April 2016. Following a meeting, the Ward Executive Officer determined that the defendant was not a trespasser. **Exhibit DE1** "Muhtasari wa Shauri" was presented by **DW1** and admitted as part of the defendants' evidence.

Additionally, on 25th June 2023, he was arrested by the Police and taken to Msimbazi Police Station, but later the police realized that he was not a trespasser. Again, he was called to the District Administrative Secretary concerning the same dispute; where, after visiting the site, they also concluded that he was not a trespasser. He pointed out that, the said **Najma Hassanali Kanji** through the plaintiff who held power of Attorney filed a suit in 2016 against him and it was dismissed. Lastly, DW1 prays for the court to dismiss the suit against him with costs and order the plaintiff to abide by their agreement. To support his testimony, he tendered **Exhibit DE2**, Case No.93 of 2016 between him and the

said Najma Hassanali Kanji which was admitted as part of the defendant's evidence.

Taking the stand, **Justamarry Dowso Manga** testified as DW2. She is identified as the defendant's wife and provides crucial insights into the financial dynamics between the plaintiff and the defendant. She recounted the plaintiff's receipt of 240 million TZS at the defendant's shop, constituting part of the joint venture agreement. Notably, that the plaintiff's attempt to sell the plot in 2016 strained the relationship between the parties.

The other witness is **Zainab Shaban Issa** who testified as DW3; she is a niece of the defendant, corroborating the joint venture narrative. She said, that in 2011, she actively participated in a visit to the disputed site and also witnessed the transfer of 204 million TZS from the defendant to the plaintiff. **Dowson Manga** testified as **DW4**, acknowledged as the defendant's brother-in-law, detailed a significant meeting on 2nd January 2016. During this meeting, the plaintiff expressed a desire to sell the plot, a proposition that the defendant vehemently opposed. According to him, the plaintiff then asserted that the plot belonged to his sister, escalating tensions between the parties.

Collectively, the defense witnesses provided a comprehensive and detailed account of the joint venture agreement, the plaintiff's attempt

to sell the plot, and the subsequent legal actions. They fervently requested the court to dismiss the plaintiff's suit and uphold the integrity of the original joint venture agreement.

Following the conclusion of the hearing, both parties were granted leave to submit their final arguments. The plaintiff's side commendably demonstrated their industrious legal acumen by compiling and filing their submissions on time.

Embarking on the merits of the case, the primary objective of this Court is to assess the validity or lack thereof of the framed issues. For consistency, I would prefer to resolve the third issue first as to **whether the defendant is a trespasser.**

Proceeding to delve into the substance of this matter, it is apparent that the third issue does not need to detain this court; It can be swiftly addressed. After a meticulous examination of the evidence presented by both parties, the court notes the absence of any written agreement tendered by the defendant to justify his presence on the plaintiff's suit land. Consequently, the pivotal query revolves around the existence of an oral agreement, as asserted by the defendant.

It is a trite law that, a contract may be written or unwritten. It is written where parties' expressions are reduced into writing and is unwritten where the proposal and acceptance take the form of words or

conducts of the parties. The latter form is sometimes referred to as an implied contract. The way an offer is communicated by one party and accepted by another determines the form of a contract. **See**, Sections 4, 5, 6, 7, 8, 9, and 10 of the Law of Contract Act, Cap. 345 R.E. 2019.

The above legal position was buttressed in the case of **Mexon's Investments Limited vs DTRC Trading Company Limited**, Civil Appeal No. 91 of 2019 (CAT-Unreported). Further, in the case of **Leonard Dominic Rubuye t/a Rubuye Agrochemical Supplies vs YARA Tanzania Limited**, Civil Appeal No. 219 of 2018) [2022] TZCA 419 (13 July 2022), it was stated;

*"It is trite that terms of any contract may be deduced from the **conduct of the parties and the nature of transactions made between them.**" (Emphasis is mine)*

After going through evidence adduced by both parties, I have discovered that there is an implied or oral agreement demonstrated through the evidence of the defendant and the conduct of the plaintiff. Proving an oral contract, as contended by the defendant, is inherently a matter of factual inquiry. Typically, it relies on oral testimonies from involved parties and individuals present during the agreement's formation.

As I have indicated earlier, the terms of an oral agreement may also be inferred from the parties' conduct preceding and following its formation. See the case of **Wanachi Group Tanzania Ltd Vs Maxcom Africa Ltd**, Commercial Case No. 120 of 2019 (HCT-unreported). The testimonies from **PW2, PW3, and PW4** establish a relationship between the plaintiff and the defendant, acknowledging visits to the plaintiff's plot. Though the evidentiary landscape lacks documentation or transactions demonstrating the nature of their relationship I agree submission of the defendant's position that there cannot be such development forcefully undertaken in an area like Kariakoo, which is busy and densely populated, without an agreement of any form; and the plaintiff remains minded absent for years (2011 - 2012).

We all know that the construction exercise, even though shops(frames), is a process and takes considerable time and equally it involves several law enforcement agencies in case of permits and setting up businesses. It is not a mushroom-shaped cloud that can grow overnight. The testimony of the defendant and even the plaintiff shows that the construction of the shops started in 2011 and was completed in 2012. Within such a period, had there been no agreement of any form or consent of the parties, the plaintiff would have shown at least an iota

of evidence complaining about the illegal construction as he alleges from the time of construction to the time of its completion.

Apart from that, the plaintiff's claims of the general damages from 2018 exclusion of other periods (2012 -2017) are also evidence that he allowed the defendant to construct the shops. Undoubtedly, the one whose name is registered in the land register is the plaintiff as tendered in the evidence Certificate of Title No. 44547, which was marked as (Exhibit P1). He has not narrated how the construction of the shops by the defendant was enabled without first obtaining necessary legal documents such as permits in the name of the plaintiff or his deceased sister. In view of the above, any ordinary person would conclude that the construction of the shops was made with the consent of the plaintiff.

On his side, the defendant brought evidence in exhibit DE1 which is a decision of Baraza la Serikali ya Mtaa wa Kriakoo Magharib regarding allegations against him trespassing or invading into the plaintiff's land. He says the authority declared that there was no trespass by him. The decision regarding the controversy was reached on 9th March 2016 by the "*Baraza la Serikali ya Mtaa wa Kriakoo Magharibi*" which had this observation;

"Turejee maazimio yao waliyokubaliana kuwa Ramadhani Ntunzwe akithibitsha kuwa anatambulika na si mvamizi wa eneno hilo,

*Ndugu Mohamedi H. Kanji amwachie eneo hilo lakini Ndugu Ntunzwe akishindwa kuthibitisha juu ya uwepo wake eneo hilo basi na yeye ataondoka katika eneo hilo na kumuachia ndugu Mohamed H. Kanji bila kudai chochote. Angalizo hili alitoa Ndugu Ramadhani Nktunzwe na Ndugu Mohamed H. Kanji akakubali". Hivyo baraza la Serikali ya Mtaa limeamua/linashauri maazimio yaliyofikiwa kati ya ndugu Mohamed H. Kanji na Ramadhani Ntunzwe yafuatwe jinsi yalivyoazimiwa na wao wenyewe: **Ni ushauri wa Baraza la Usuluhishi la Mtaaa kuwa eneo hilo libaki kama ilivyo mpaka hapo suluhu baina ya pande zote mbili zipatikane au hatua za sheria na vyombo husika vya juu kutoa maamuzi"***

Much of interest to me in the above is not the decision itself or the observation made by the Baraza la Mtaa wa Kariakoo. But rather the time taken by the plaintiff from the decision of the Baraza to the filing of this suit, which is almost five years. This reluctance or inaction of the plaintiff to take legal action as stated in that decision is a clear envision that, the defendant did not invade the suit's land as the plaintiff wanted this court to believe.

More or so, the plaintiff told the court that he had been reporting this incident to the police, DAS, and Regional Commissioner but

contented that, the police always sidelined with the plaintiff. However, there is no evidence of reporting the matter to proof to substantiate the claims that, he was sidelined by the relevant authorities. His contention is the mere unsupported story. For example, from the year 2012 when the construction of the shops was completed to 2016, when the complaint was lodged at the Baraza a Serikaili ya Mtaa, there is no evidence that he lodged his claim to any authority. Likewise, from 2016 to the year 2021 when this suit was filed nothing is shown that there is any report of complaint that the defendant trespassed onto the plaintiff's land. What does his silence mean? To me, it means nothing but consent. A Swahili is saying "***Kukaa kimya nako ni jibu***" which can be translated as "**to remain silent where you are supposed to speak is also an answer.**" That answer is that there is an oral agreement and that the plaintiff had agreed to the actions of the defendant to construct the shops in the suit premise.

The jurisprudential understanding of trespass to land is firmly grounded in clarity and legal precedent. In the case of **Grace Olotu Martin vs Ami Ramadhani Mpungwe** (Civil Appeal 91 of 2020) [2023] TZCA 193 (20 April 2023), the held that;

*"The law on trespass is certain and free from ambiguity. **Trespass to land means interference with the possession of land***

without lawful justification and, on this, we agree with the definition given by Lugakingira J. in *Frank S. Mchuma vs Shaibu A. Shemdolwa (supra)* that ***trespass is an unjustifiable intrusion by one person upon the land in the possession of another. Such interference entitles the one in possession of the land recourse to the court for either eviction/ejection or for payment of compensation termed as mesne profit due to non-use of it during the period of his dispossession.*** Explaining in detail that right, R. K. Bangia in his book: *Law of TORTS, Twenty-First Edition, 2008* page 407 has this to say: - "Trespass is actionable per se and the plaintiff need not prove any damage for an action of trespass. ***"Every invasion of property, be it ever so minute, is trespass."*** Neither use of force nor showing any unlawful intention on the part of the defendant is required. Even an honest mistake on the part of the defendant may be no excuse and a person may be liable for trespass when he enters upon the land of another person honestly believing it to be his own. The probably inevitable accident will be a good defense as it is there in case of trespass to persons on chattels". ***(emphasis is mine).***

From the above decision, it is my view that the plaintiff was aware of the construction of shops from 2011 and the completion of the project in 2012. That is why he only complained to the Baraza la Kata la Kariakoo Magharibi 2016. Being aware of such action and his inaction in the conduct of the defendant suggests that there is an existence of oral agreement and that the defendant had lawful consent legitimizing his occupation of the plaintiff's land. This palpable deficiency in evidentiary support aligns with the recognized legal principles, unequivocally affirming the defendant's occupation as lawfully, per the established legal standards.

Given this contention, my considered view is that the plaintiff was well aware of the existence of an oral agreement, therefore, the defendant is not a trespasser in the plaintiff's suit land. In this case, the third issue whether the defendant is a trespasser is answered in the negative.

The resolution of the third issue takes me to the first issue as to **whether there existed an agreement between the parties for the joint development of the disputed plot.**

The assertions emanating from this issue relate to the defendant's case in two areas. **One**, that he paid the plaintiff Tshs. 204,000,000/ as his shares of the piece of land. **Two**, that there was a joint venture

agreement with the plaintiff for the construction of a floor-commercial building in the suit land.

As I have clearly stated, the defendant's defense, as presented through the testimonies of **DW1, DW2, DW3, and DW4**, centers around the assertion of a mutual oral agreement to enter into a joint venture for the construction of a commercial building on the land. DW1 contends that he contributed TZS 204,000,000 as his share in the suit land. Conversely, a critical examination of the testimonies reveals inconsistencies and a lack of supporting and corroborating evidence that the defendant contributed TZS 204,000,000 as his share in the suit land. The wife of the defendant (DW2) claims that the plaintiff was given Tshs 240,000,000/=at the DW's shop. Though this may be confusion in figures due to the passage of time, nevertheless, as rightly submitted by Mr. Mbamba, the narrative put forth by the defendant regarding the transactions is not only doubtful but also constitutes a blatant falsehood, challenging the intellect of any reasonable person. The claim that a substantial amount of Tshs. 204,000,000 was handed over without any form of acknowledgment or memorandum by the recipient raising serious doubts about the veracity of the transaction. Ordinarily, it defies ordinary business prudence and legal norms for such a significant financial exchange to occur without any documented evidence, though

the wide of the defendant wanted this court to believe that, such money exchanges are a very normal business environment at Kariakoo-Kongo. I worry that, if we let it go like that, it would have dangerous and serious repercussions for the economy. Be that as it may, there is no proof that the money changed hands between the parties.

More or so, the assertion regarding the existence of a joint venture agreement for the construction of the commercial building is also not only entirely doubtfully but also unsupported in any form. As rightly highlighted by Mr. Mbamba, no comprehensive construction plan, or business projection to mention the least, or any other documentary evidence to support the defendant's assertion. Furthermore, the oral testimonies of the defendants regarding the matter have no link with the assertion of the defendant or implied conduct that can be deduced to show that there was an oral agreement to that effect, that is relating to the construction of the commercial building. Such a dramatic and long story, that one of the independent witnesses would testify to the defendant's narratives. The defendant's evidence primarily rests on oral agreements, with limited documentary support. **DW1's** account of financial transactions lacks tangible proof.

In **Sarkar's Law of Evidence, 18th Edition M.C. Sarkar, S. C., published by Lexis Nexis** and quoted the following words: -

"the burden of proving a fact rests 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 has been able to discharge his burden. Until he arrives at such a conclusion, he cannot proceed based on the weakness of the other party..."

In light of the above, it becomes evident that the assertion presented regarding financial transactions is not only perplexing but also lacks credibility in this aspect. In the upshot, this court is compelled to view such assertions with skepticism and, consequently, finds the defendant's account to be unreliable and unconvincing.

Because of such analysis, the assertion of a mutual oral agreement to enter into a joint venture for the construction of a commercial building on the land is also dismissed. For the avoidance of any doubt,

the oral agreement can be seen in the construction of the shops only through the conduct of the plaintiff.

In conclusion, therefore, the first issue is answered in the negative that, there was no agreement between the parties for the joint development of the disputed plot.

That being said, the third issue whether **there has been a breach of the aforementioned agreement is also answered in the negative.** There cannot be any breach of agreement in the absence of such a particular agreement.

The fourth and last issue is **Whether there is a documented loss of earnings on the plaintiff's plot and what appropriate reliefs are the parties entitled to.**

To respond to this issue will need to reiterate the contention of the defendant's defense, as presented through the testimonies of **DW1, DW2, DW3, and DW4.** DW1 contends that he lawfully entered the land in 2011, built business structures with the plaintiff's knowledge and consent, and contributed TZS 204,000,000 as his share. The defendant himself contended that he agreed with the defendant that construction of a floor commercial building would start after five years, that is from 2011 and that, it would cost Tshs. 800,000,000/=. After five years, that is 2016, the project did not commence but the defendant continued

occupying the premises, possibly awaiting the takeover of the suit land by the plaintiff, and solely benefited from the rent collected at the shops alone. Admittedly, he said, the contract with the tenants shows that he is the owner of the frames business and the plaintiff is not involved. He also admitted that, the allegedly, Tshs. 204, 000,000/- was not part of the construction projects.

Now, considering the decision of the "*Baraza la Serikali ya Mtaa wa Kriakoo Magharibi*" that the status quo be maintained until the settlement is reached or the relevant decision-making body decides on the matter; I, have the following observations. **One**, such a partnership does not exist as there is no agreement to construct the contemplated commercial building. **Two**, the period of five years contemplated by the defendant has lapsed counting from 2012 to 2017. **Three**, the defendant has at all times collected rent and used it for his benefit alone from the shops from 2012 to 2023 while the owner of the land, the plaintiff received nothing. Though not calculated such conduct by itself has made the defendant recoup the construction costs of the shops over and above.

There is the defendant's acknowledgment, during his testimony, that of constructing 40 shops on the plot with a monthly rent of TZS. 4 million per shop. This is the fact that he has collected enough for

almost over 11 years, in the land which does not belong to him. The safest thing he can do now is to vacate the suit land without any confrontation, jittery, or fiasco.

Because the plaintiff consented to the construction of the shops in his plot and contributed nothing to the construction. Admittedly, it is not his business and there was no agreement that he was entitled to profits. On account of that, I find no loss of earnings and mesne profit can be claimed. Again, no general damages out of the consented actions of the plaintiff.

In the circumstances of this case, and to be more specific, the appropriate remedies this Court finds palatable to grant are the following:

1. The defendant is ordered to demolish all structures(shops) he has erected on the suit premise, remove all debris therein, and vacate the premise within three months from the date of this decision.
2. The defendant, his agents, workmen, and anyone claiming to work under his instructions are perpetually restrained from encroaching upon or interfering with the affairs of the suit land in whatever manner after the expiry of the state period.
3. Each party should bear its costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "H. R. Mwanga".

H. R. MWANGA

JUDGE

16/2/2024