

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL COURT)

AT DAR ES SALAAM

COMMERCIAL CASE NO 104 OF 2013

NAVTEJ SINGH BAINSPLAINTIFF

VERSUS

AFRICAN MEDICAL INVESTMENT

TANZANIA PUBLIC LIMITEDDEFENDANT

JUDGMENT

[07.08.2014 & 09.09.2014]

Nyangarika, J.

The claim against the defendant arise from alleged breach of the lease agreement entered between the defendant and the plaintiff on 28th January, 2009, which agreement, is in respect of the premises comprised under Plot No 589 Yatch Club Road, Coral Lane, Msasani Peninsular, Dar es Salaam together with building, improvement and erections thereof [hereinafter referred to as "demised premises"] for a period of 4 years.

It is stated in the originating summons that the modality of payment of rent was, that, for the first two years, the defendant would pay USD 33,000 per month payable every six [6] months in advance, then for the third year, USD 36,300 per month payable in

twelve months in advance, and USD 39,930, per month for the fourth [4]year, payable 12 months in advance.

It is also stated that before expiration of the said lease on 31/12/2012, the plaintiff made several attempts to have the lease renewed but the defendant employed delay tactics and the lease agreement was not renewed

The originating summons further states that the defendant paid rent in piece meal in the fourth [4] year of the lease agreement contrary to the lease agreement and in two occasions, some of its cheques, were dishonored by its bankers.

It is stated further that, since 1st January 2013, the defendant has been occupying the demised premises without paying rent and without lease agreement and thereby denying the plaintiff substantial income from the rent.

It is for this reasons that the plaintiff lodged this suit seeking determination of this court on the following questions, namely,

- a) What is the status of the defendant to demised premises?
- b) Whether the defendant is liable for removal and /or eviction from the demised premises.
- c) Whether the defendant is liable for payment of mesne profit arising from the use and or occupation of the premises and

utility charges interests thereof to the tune of USD 64,000 and /or as it may be determined by the Court.

Also, in his originating summons, the plaintiff has made several prayers for reliefs, namely,

- a) An order that the defendant vacates the demised premises popularly known as "AMI hospital and /or trauma centre' '
- b) An order to appoint the court broker to remove the defendant from the said demised premises popularly known as "AMI hospital and /or trauma centre' ' .
- c) An order for immediate payment of all mesne profits arising from and/or as may be determined by the honourable court; and/or in the alternative,
- d) An order to attach the defendants properties within the demised premises popularly known as "AMI hospital and /or trauma Centre' ' to discharge the said outstanding liability and/or charge
- e) An order for the costs of this originating summons to be provided for
- f) Any other reliefs as the honourable court shall deem just and equitable to grant

In the defendant's reply to statement of claim, the defendant avers that rent was paid and further that on 12th September 2012, more than three month before the expiry of the lease agreement, the defendant through its lawyers issued a three months notice expressing its willingness to renew the lease agreement where after lengthy discussions, they agreed on the new lease, rent rates and mode of payment, and that it was plaintiff's contractual obligation to grant lease to the defendant of the leased premises.

It is stated further that the plaintiff kept on changing mind regarding the agreed rent and mode of payment and that he demanded highly inflated, unreasonable and unrealistic monthly rent of US\$ 64,000.00 from the rent paid during the final year of the expired lease, which was US\$ 39,930.00, inclusive of VAT.

It is also averred that despite the fact that the plaintiff failed to grant lease in writing to the defendant as aforesaid, he demanded, received and accepted rent for the year 2013 under the old rates, and that on 10th April, 2013, the defendant deposited the sum of US\$ 150,000.00 into the plaintiff account being part of the years 2013.

Further that there was an amount of rent carried forward from year 2012, was US\$220,031.24, which provides total amount of rent paid by defendant to plaintiff in the year 2013 to be 370,031.24.

The defendant states further that acceptance of the rent under the old rates is evidenced by the fact that the plaintiff abstained from invoking clause 4 (c) of the lease agreement, which requires the parties to refer any dispute relating to the amount of rent payable to Knight Frank Tanzania Limited, for assessment.

The issues which were framed by this court and recorded to guide the determination of this matter are as follows:

- i. What were the terms of the lease now in dispute?
- ii. Depending on the issues No 1, whether there was breach of any term by either party?
- iii. To what relief, if any, are parties entitled to?

The plaintiffs were represented by his Advocate, Mr. Dillip Kesaria and the defendant's Advocate was Mr. Onesmo Michael.

Only two witnesses testified at trial, namely, Mr. Navteji Singh [PW1], for the plaintiff and Mr. Lawrence Ochole [DW1], for the defendant.

PW1, through his affidavit in support of the originating summons avers that they entered into the lease agreement in respect of the said premises on the 28th January, 2009. He stated the term of the lease agreement was that the defendant would pay USD 33,000 monthly for the first two years payable every six months in advance, USD 36,300 for the third year payable 12 months in

advance and USD 39,930 for the fourth year payable 12 months in advance.

PW1 stated further that in the fourth year of the lease, the defendant paid rent in piecemeal contrary to the lease agreement and in two occasions, a cheque of USD 10,000 and USD 8,000 both dated 24th August, 2012, were dishonored by its banker. And that the plaintiff has been demanding payment of rent from the defendant on several occasions.

PW1 went on to state that the defendant's performance of the lease agreement was saddled with breach ostensibly on payment of rent and subletting part of the demised premises contrary to the lease agreement.

According to PW1, the lease agreement expired since 31st December, 2013, and attempts were made by the plaintiff before that date to renew the lease but proved futile. He testified that the defendant defaulted in making annual payment of the rent during the fourth year of the existing lease, and further that defendant has, without his consent in writing, granted a license and parted with possession of part of the lease premises to third parties.

PW1 further stated that through a letter (exhibit P5) written by the Defendant's Group Chief Executive Officer [CEO] to the plaintiff, the defendant unequivocally confirmed renewal of the

lease for the rent of US\$ 60,000 per month for the main hospital and US\$ 4,000 for the back house, having a total of US\$ 64,000 per month.

PW1 stated also that according to an email [Exhibit P6 (a) from the defendants Chief Executive Officer to one, Ochola, it was confirming the agreement with the plaintiff of the separate contracts for the main hospital and the back house.

PW1 testified further that he had not allowed the defendant to continue occupying the leased premises without paying the rent nor has he executed any renewal of the lease agreement.

During cross examination, PW1 testified that if the new rent for the renewal of lease had not been settled, then the new rent was to be assessed by the Knight Frank Tanzania Limited as per exhibit P1, clause 4c, but since he had accepted on the proposed rent, there was no prepared lease to be signed.

DW1 testimony was that according to the lease agreement for the first two years, a monthly rent would be US\$ 33,000.00 , for the third year, a monthly rent would be US\$ 36,300 and for the fourth year, the agreed rent was US\$ 39,930 and further that according to clause 3(b), the plaintiff agreed on the payment of all the land rent and municipal rates payable in respect of the property and also all the existing charge and future rates,taxes,

assessment, imposition and outgoing, which were payable by the lesser.

It is his further testimony that despite the fact that the parties could not agree on the new rent, the plaintiff was in possession of USD 220,031.24, an amount carried forward from the year 2012, the plaintiff demanded, received and accepted additional amount of the new lease.

On 10th April 2013, the defendant deposited the sum of US\$ 150,000.00 into the plaintiff's account, being part of payment of rent for the year 2013, in addition to the amount carried forward, subject to the agreement of new monthly rental charge and mode of payment.

It was DW1 further testimony that a series of communication between the parties regarding the lease agreement were made to the plaintiff and that on 16th December 2012, the defendant wrote a letter to the plaintiff expressing its intention to renew the lease on the basis that the same rental as per year 2012 should be adopted and payable monthly.

Led by his counsel, DW1 continued to tell this court that the nature of dispute was regarding the execution of new lease. Through cross examination, DW1 testified that the rent agreed

between the defendant CEO and the plaintiff was USD 64,000, being 60,000 USD for the main hospital and 4,000 USD for the back house.

Having briefly gone through their testimonies and relevant pleadings together with the evidence tendered, I note that both parties acknowledge that their relationship was contractual by virtue of a lease agreement. I hasten to point out the following facts, a precursor to my judgment.

From the pleadings, testimonies and evidence adduced, the following facts are undisputed. These facts are as follows:

1. That the parties entered into a lease agreement for four years.
2. That the terms regarding payment was that the defendant could pay USD 33,000 monthly for the first two years, payable every 6 months, USD 36,300 monthly payable in 12 months in advance and USD 39,930 for the 4th year payable 12 months in advance.
3. That the Lease agreement expired on the 31st December, 2012.
4. That there has been no signed renewed lease agreement between the parties
5. That the defendant had paid a total of USD 150,000.00 to the plaintiff in respect of the 2013 rent.
6. That the defendant has been, since January, 2013, occupying the demised premises without a valid signed lease agreement.

Now regarding the first issues as to what were the terms of the lease agreement, the terms which I consider to be of relevancy here are those in respect of modality and amount of rent payable, and modality of renewal, if any, of the lease agreement. This is so because; the contention revolves around nonpayment of rent and occupation of the demised premises without lease agreement.

With regard to modality and amount of rent payable, PW1 stated that the terms and modality of the amount payable were that USD 33,000 monthly for the first two years payable every six months in advance, USD 36,300 for the third year payable 12 months in advance and USD 39,930 for the fourth year payable 12 months in advance. This is corroborated by clause 2(a) of Exhibit P1 (Lease Agreement).

Therefore, I find that those were the terms in regard to amount of rent payable and the modality of payment thereof.

As regards to renewal, clause 4(c) of the said exhibit P1 is to the effect that the lease is renewable subject to a three months notice by the lessee to the Lessor prior to expiration expressing his willingness to do so, that renewal should be for the same four years on same conditions and terms at a rent to be agreed between the parties, sixty days before expiration of the old lease, provided that any misunderstanding as to rent payable will be referred to Knight Frank Tanzania Limited as an Expert but not as

an arbitrator. That, to me, is the term as far as renewal of the lease agreement is concerned.

Having identified the terms of the lease in dispute in the first issues, I will now move to determine whether there was breach of the terms by either party, which is the second issue.

The defendant claims that three months before expiration of the said lease agreement, they wrote to the plaintiff expressing their willingness to renew the said lease. DW1 through his counter affidavit stated that on 12th September, 2012, more than three months before the expiry of the lease agreement, the defendant through its lawyer issued the said letter.

The said letter was tendered and admitted in court as Exhibit D2. Closely reading through the said exhibit, I do not find anything in the nature of a notice of three months to renew the rent as alleged.

What can be gathered on the face of it is an expression of a mere wish by the defendant to exercise their right under clause 4(c) of the lease agreement by issuing the said notice.

For avoidance of doubt, I reproduce the relevant paragraph of the said letter hereunder as follows:

"...We wish further to advice that in accordance with the arrangement made during the aforementioned meeting our client also wishes to exercise its right under clause 4(c) of the lease agreement by issuing a three month notice of intention to renew the lease for the term of one year commencing on 1st January, 2013..." . [underlining is mine for emphasis].

That, to me, is the paragraph, in the said letter, which, the defendant, certainly on the basis of his counsel's advice, mistakenly believed that it amounted to a three months notice of intention to renew the said lease agreement. That is why, one Dr. Peter Botha, endorsed as Group CEO, makes reference to the same letter in his 16th December, 2012 letter (Exhibit PE4) to the plaintiff captioned "Intention to renew the Lease:..." by stating that "As per our recent discussions, and our letter dated 10th September, 2012...we will exercise our rights under clause 4(c) of the lease Agreement to renew the lease for a term of one year commencing on 1st January, 2013" .

Any one, with an elementary understanding of English language, not necessarily a lawyer, would understand that the above quoted paragraph only expressed "a wish" to renew the rent, which would be accomplished by "issuing a notice" to that effect, and yet, the latter paragraph in the said Exhibit PE4 connotes yet an action to be undertaken in the future, because, by the use of the

phrase "we will" connote a contemplation by the defendants to issue the said notice in the future, whereas they were well aware that time to do so had long expired.

In any event, any reasonable land lord, or businessman for that matter, would not act on the same to conclude that the defendant thereby meant to notify the plaintiff on her intention to renew the lease.

That is certainly why one, Chandoo and Company, in their letter dated 15th January, 2013, notes this by informing the defendant's counsels that their client has never issued a three months notice of renewal.

From the pleadings and the testimony of DW1, it appears that the defendant relies entirely on the said document (Exhibit D2), to prove that he issued a three months notice to the plaintiff in compliance with the said clause 4(c).

I am afraid, as I have intimated that it does not accomplish his aim. I therefore hold that there was no notice of intention to renew the lease agreement and thus a breach of this term by the defendant.

But assuming for the sake of argument, that there was a valid notice issued, was that sufficient, in itself, so as to satisfy clause 4(c) of the lease agreement?

According to the said clause, after a notice being issued, the next stage could be an agreement in good faith between the duos as to the rent payable, given that other conditions, stipulations and terms were to remain *ceteris peribus*.

Both, defendant and plaintiff, admits through their pleadings and testimonies of their witnesses that there were a series of negotiations but the same did not result into finally signing a new lease agreement as required under clause four.

Both parties blame each other on dilly dallying in the signing of the new lease agreement. Thus, where as the plaintiff states that the defendant kept diverging signing of the new lease, the defendant insist that it was the plaintiff who kept changing his mind as regard to the new rent payable.

However, one thing is certain from their pleadings, arguments and counterarguments, that there was a meeting sometime in September, with regard to renewal of the lease agreement with terms, rent and conditions.

Nothing, though in form of say, minutes of that meeting, let alone resolutions made, was tendered by either part as evidence in court.

However, to guide me in disentangling this, I have a series of communications exchanged between the plaintiff and the defendant

under the auspices of their respective legal counsels. They will tell it all as to who is a culprit in this delay game.

The narration on the start of these series of communication is made by the 12th September, 2012 letter (exhibit P3), which in essence, make note of the meeting between the CEO of the defendant Company and the plaintiff. It is partly written, thus,

"We note that Dr. Peter Botha met with your client on 6th September, 2012 with regard to existing lease..."

Then, follows the 16th December, 2012 letters, (Exhibit P4), titled and written by the one, Dr. Peter Botha to Mr. Bains (the plaintiff) "Intention to renew the lease". This partly reads, thus,

"As per our recent discussions, and our letter dated 10 September, 2012 to Mustapha Chandoo & Company, we will exercise our rights under clause 4(c) of the lease agreement to renew the lease for a term of one (1) year. ... "We agreed to continue with the lease agreement from January 2013 on the basis:

- Same rental as per 2012
- Monthly payment in advance

We agreed this renewal would be included as an addendum to the current lease agreement..."

There is no response to this communication, which was made available in this case for the court's evaluations. However, immediately after this communication, is the 19th December, 2012 email contained in Exhibit P6 (a). This is from the same Peter Botha to Lawrence Achola and copied to Navtej Bains. It instructs Mr. Achola, thus,

...Pls...Follow up the rental arrangement with Mr. Bains Please...Following my telecom with him we agreed on the rental option as discussed

Option 1

Two separate contracts for the main hospital and the back house. \$60k for the main hospital and \$4k for the back house Pls get the lawyers to draw up as an addendum for signature.

Another communication is the 28th December, 2012 letter, titled "Renewal of the Lease" written by the same author as above and it partly states that:

"...As per our recent discussion and our letter dated 10th September and email on 24th December, 2012, AMI PLC hereby confirms the renewal of the lease agreement...We agreed that this renewal would be based on \$60k for the main building and \$4k for the back building...as discussed AMI PLC has no problem with providing you the annual rental..."

The next, in line of the relevant communiqué, is the letter dated 15th January, 2013 from Mustapha Chandoo and Company, titled also "Renewal of Lease" to Adept Chambers. I will once again quote the relevant parts thereof. It reads:

"On the instructions of our client, Navtej Singh Bains, we reply to your letter of 11th January, 2013, responding to our letter of 10th January, 2013 to your client AMI as hereunder;

1. N/A

2. Clause 4(e) of the lease agreement reads,

No provision in this Lease shall be waived or varied by either party hereto except by agreement in writing which shall be prepared and if the case so requires be duly registered at the sole costs and expense of the Lessee"

3. With your letter you haven' t attached any agreement in writing bearing our client' s consent to any waiver or variation of the contents of the lease agreement" ...

4. N/A

5. Again contrary to what you allege on page two of your letter, your client has not given a three months notice of renewal...

6. ...Furthermore, what you are alleging is contradicted by your client' s letters 28th December, 2012 wherein your client agreed to a revised rent of USD 64k per month payable yearly...

7. As is made clear in our letter you have replied, our client has not given consent to your client continuing to occupy the premises without paying revised rent yearly in advance. Your client is not a statutory tenant and does become so by merely continuing to remain in the premises after expiry of the lease..."

Another letter was written by Chandoo and Company on the 12th march, 2013, with the same caption "Renewal of the lease". (Exhibit P7). This time, it partly at paragraph 3, states, thus,

...In the premises, your client has lost all credibility and it appears that your client is not serious in the promises it makes. Your client has abused the courtesy shown by our client. The deadline⁴ given in our letter of 10th January, 2013 having well passed, please take notice that your client now is a trespasser to our client's property and its continued occupation is illegal..."

It seems that immediately after this letter, the defendant's lawyers responded thereto. This is manifested by exhibit P8(b), which is a letter from Chandoo and Company dated 14th March, 2013, which according to paragraph 1, is a response to the defendant's legal counsel's letter of 13th March, 2013 (certainly responding to the 12th March and 15th January, 2013 letter both authored by the plaintiff). This letter basically contains various propositions

for amendments to the draft lease sent to them by the defendant.
Of relevancy at this stage are statements that:

"Kindly incorporate these changes in your draft and let me have a second draft" and another one, that:

"You will appreciate that in normal circumstances no land lord would allow tenant to occupy the premises once the lease has expired. Hence your earlier response is of utmost urgency"

Then, on 10th April, 2013, at 11:44, A.M, Seni Malimi, advocate, who appears to have been acting for the plaintiff sent an email to Lawlense Acholo (and copied it to one John Laswai and Bains), with the subject line captioned thus "RE: LEASE ON PLOT NO 589, MSASANI PENINSULA, DAR ES SALAAM. Therein, he states that;

Dear Mr. Ochola,

This has reference to the tele-conversation we had yesterday in respect of the above captioned matter.

We have consulted our client who has instructed us to reply as hereunder;

-That our client is no longer interested in back and forth and /or endless negotiations on the Lease Agreement. The Position of our client remains as communicated to you at the last meeting held on Friday 5th April 2013 at Adept chambers.

In all your communications you have exhibited reluctance to execute the Lease Agreement despite several requests by our Client

-The Lease Agreement has to be executed latest 12th April, 2013; otherwise our client will take it that you are no longer interested in renting the premises.

-That you are in rent arrears for four months now and coupled with your apparent reluctance to execute the Lease Agreement, your continued occupation of the premises is essentially a trespass. -

-That without prejudice, your request to deposit some money towards payment of rent in arrears is agreeable. Details on how the deposit can be made can be obtained from our client directly...

We hope that the above is clear to you and that you will do the needful..."

Immediately after that communication, is a complaint by Mr. Bains on the inaction by the defendant through his electronic message sent to Mr. Seni Maiimi on the 27th April, 2013 at 12:53 (Exhibit P6(a)). Therein, Mr. Bains, states, thus,

"Dear Sir,

Kindly note the dates on the attached mail. This was five months ago. Now, definitely it is ,Achola and the local advocate who are delaying the process. This is the condition and even in the attached letter I sent addressed to me by the CEO in which he agreed to this and to be paid annually.

So is in the next few days they don' t comply as per this. NO DISCOUNT NOW! I request you to move pl as agreed..."

Certainly that was a signal for the legal action, because on the 16th July, 2013, K&M Advocates sent a demand notice captioned thus
"YOUR OCCUPATION ON PLOT NO.589 YATCH CLUB ROAD,CORAL LANE,MSASANI PENINSULAR, DAR ES SALAAM: NOTICE TO QUIT. I will let this note tell some of the relevant parts to this discourse,

"...all efforts by our Client to have the said lease renewed have proved futile.

That on various occasions you have endlessly promised and as such represented to our client that you were working to renew the said lease Agreement, but the same has turned out to be an empty promise while continuing to trespass onto our Client' s Property.

That our client is no longer interested in endless negotiations and /or promises and in this regard and without prejudice to Our Client' s rights to claim for damages and/or

any other legal redress, our instructions are to demand from you as follows;---

Finally, one John Ignace Laswai of Adept Chambers made a reply to the said demand on the 19th July, 2013. I will, also re-play the relevant clips of that communication hereunder

---Please be advised that before expiry of the lease, your client had lengthy discussions with our client in September, 2012 with regard to the new lease, new rent and terms of payment. Consequently, they managed to reach a consensus and mutually agreed on all these three aspects in September, 2012.

However, your client's persistent change of minds has been the cause of failure by our client to execute a new lease agreement with your client. This has led to exchange of correspondences and dialogue back and forth from both parties to-date. Your client has been asking for abnormally higher rent, than what is normally the case---

---However, your client demanded rent and our client paid US\$ 150,000.00 as part payment of the rent for this year pending discussions---

Therefore, our client cannot hand over the premises immediately within seven (7) days from the date of your letter as demanded or otherwise because

(a) ...N/A

(b) ...N/A

(c) Our client cannot pay or otherwise be compelled to pay rate at the rate (sic!) of US\$ 64,000.00 because no new monthly rent has ever been agreed. This has been the case since your client's departure from the rate agreed in September, 2012. Please note that clause 4 of the expired lease gives responsibility of granting a new lease to the Lessor, provided that there is a request from the Lessee for such extension. The rent was to be agreed sixty days (60) prior to the expiry of the lease, i.e. 31st December 2012- this being 2nd November 2012. A notice of renewal of the lease was given to the Lessor three (3) months before the expiry of the lease, but since your client's deviation to the rental agreed on 7th September, 2012, no new rent has ever been agreed between the parties..."

Well, as an old adage goes, 'justice must not only be done but also seem to be done', anyone, even the audio-impaired, would at least visualize what is clearly depicted by those series of communications.

My mental faculty concludes the following there from:

1. Indeed there were some negotiations regarding the renewal of the lease between the parties

2. The result of the negotiations regarding the lease and the rent was that rent payable was USD 60k(whatever k represents) for the main building/hospital and USD4k for the back house totaling to USD 64k monthly, payable annually for the whole premises(that is the main house/hospital and the back house, which was used as staff canteen and residence for the defendant' s staff, per the testimony of PW1)
3. The defendant was obliged to draw or prepare the new lease per clause 4(e) of the original lease. He did so but never finalized the process.
4. Since then, no new lease agreement had ever been concluded between the parties and save for the arrears paid in respect of the rent for the four months, nothing has ever been paid in that regard for the year 2013.

Also, based on the series of events as depicted in the above exchange of communications, it can be concluded, with due respect to advocate John Ignace Laswai, author of the last letter cum reply to demand note, that he never grasped the matter truly or he was misled by his client to believe that his client tried to renew the rent but was hampered by the plaintiff' s change of mind. This is because, at no time, and there is no evidence to that, to show that the defendant indeed was ready and willing to pay the new rent.

Looking at the 19th December Email and 28 December, 2012 letter (herein above quoted), one would conclude that the defendant was ready and willing to pay the said USD 60k for the main building used as a hospital and USD 4k used as the back house.

No communication which shows that the said amount had been contradicted by a different rate from the plaintiff. It is strange that the advocate confidently puts that the plaintiff kept changing his mind. Yet the DW1 maintains the same un-backed story.

Another apparent mistake of the defendant is the interpretation of clause 4 in regard to renewal of the said lease agreement. Thus, whereas the said clause at paragraph (e) casts the duty to prepare new lease on the defendant, the plaintiff, through the advice of her lawyers makes reference to clause 4 as a whole to interpret the duty to do so without considering the said sub clause (e).

That notwithstanding, from the said 19th December, 2012 email by the CEO of the defendant to one Achola, the statement that "Pls get the lawyers to draw up as an addendum for signature" connotes nothing but an understanding by the defendant that the duty to prepare the addendum for that purpose lies on her. Further, from the communication made by Chandoo and Company suggesting clauses for amendments in the addendum drawn by the defendant clearly shows that the defendant had all along been aware that it was her

duty to do so(the last paragraph at page 2 of exhibit P8(b) dated 14th March, 2013).

All these goes to show that the procrastination and failure to sign the new lease agreement was all orchestrated by the defendant. Hence, there was breach of the terms of agreement by the defendant in that she failed to adhere to the terms as to renewal of the lease and payment of rent and modality thereof.

I am oblivion to the requirement of their lease agreement that in case there was no agreement as to the rent payable, the rent payable was that to be assessed by one Knight Frank Tanzania limited as an Expert not arbitrator.

The defendant vehemently blames the plaintiff for ever failing to refer the matter to the said Knight Frank for assessment. When Pw1 was cross examined, on this, his responses were that there was no need to refer to the said person since there was an agreement on the rent payable.

I agree. The defendant, through its group CEO having indicated his willingness to pay the said amount of USD 60k per month for the main House and USD 4k for the back house per month annually(see exhibits P5 and P6(a)), indeed there was nothing to be referred to the said expert assessor.

Thus, the defendant cannot rely on the non referral to the Expert, to legalize his nonpayment of the rent.

Having answered issues one and two, suffice at this juncture, to look at the statement of questions which were raised in the originating summons for this court to determine. These, for easy of reference are:

- a) What is the status of the defendant to premises known as Plot no. 589, Yatch Club road coral lane road, Msasani Peninsula Dar es salaam

On the basis of the above analysis, it goes without saying that the defendant was and is knowingly continuing to occupy the plaintiff's premises without a signed lease agreement to that effect and without his consent, contrary to the laws of Tanzania

As a lease is a contract, the usual remedies available to any contractual parties are available and therefore a lessor can sue for termination for the lease, payment of rent arrears, if any, and levy distress, upon notice. Distress includes taking the tenants belongings and selling them if rent not paid.

In our case at hand, the defendant is therefore none other than a trespasser in the plaintiff's property.

b) Whether the defendant is liable for removal and /or eviction from the premises at plot number 589 Yatch club roads, coral lane road, Msasani Peninsula area Dar es Salaam.

In, as far as removal or eviction from landed property is concerned, I opine that once there is breach of the lease, the plaintiff is entitled to vacant possession of the demised premises since holding over of a lease determines at the will of either party.

Under SECTIONS 62 AND 64 OF THE LAW OF CONTRACT ACT, CAP. 345 RE 2002, a contract may be terminated by any party to a contract upon breach.

I am also aware that when a party breaches a contract, it does not mean that the obligation of the parties have been discharged but it is open to the innocent party to decide whether or not to accept the breach by either compensation in monetary terms or otherwise to cover the damages or by rescission of the contract as provided for under SECTIONS 62, 64 AND 75 OF THE LAW OF CONTRACT ACT, CAP. 345 RE 2002.

I cannot imagine a situation where a lessee is generating money from the business of a hospital but fails to discharge its fundamental term of the lease by paying the plaintiff his rent as agreed in the lease.

For this, in my view, would not be in the interest of the lessor fitted not to recovery his landed property, the source of his lease business.

As alluded to, this court is called upon to determine questions of law in regard to the contractual relationship of the parties to the lease agreement and declare entitlement of each.

I will therefore declare that the lease agreement between the parties no longer exists upon breach of the fundamental terms of the lease up to its expiry.

Next issue is whether the defendant is liable for payment of mesne profit arising from the use and or occupation of the premises and utility charges interests thereof to the tune of USD 64,000 and /or as it may be determined by the Court.

To me, this question also forms partly an answer as to what relief, if any, are the parties entitled. Thus, an answer thereto also goes to answer this latter question as to reliefs.

I have decided, after a thorough analysis, that indeed, the defendant had agreed earlier on and demonstrated her readiness to pay USD 60,000 for the main House and USD 4,000 for the back house. However, she has been in occupation without a new lease and on her admission, no new lease has been signed due to absence of new rates of rent payable.

It follows there from that indeed the defendant is liable to vacate the demised premises and for payment of mesne profit arising from the use and or occupation of the premises and utility charges and interest thereof to the tune of USD 64,000.

Nevertheless, considering that it is undisputed that the defendant had discharged about USD 150,000.00, in respect of the rent for the four months or so, for the year 2013, I find that, the plaintiff is only entitled to USD 64,000 per month from the year 2013 to the date of agreed variation (if there will be any) or to the date the defendant vacates the premises minus a total of USD 150,000.00, already discharged by the defendant.

This is in respect of a prayer for an order for immediate payment of all mesne profits arising from use and or occupation of the premises by the defendant.

The plaintiff has also prayed for several other orders as reproduced hereinabove. Unfortunately, save for the award of vacant possession and mesne profits as well as costs of the suit, the rest cannot stand as of now. I will explain.

Though I make an order that the defendant vacates the demised premises popularly known as "AMI hospital and /or trauma centre" for the reasons already stated unless the plaintiff opt otherwise,

the defendant need time to do so due to the nature of the hospital business conducted therein.

This is because there may be seriously sick patients at the moment in the hospital at the suit premises receiving treatment, patients who do not need disturbances an immediate order of vacant possession. In my considered opinion, a period of three (3) months from the date of delivery of this judgment is enough for that exercise.

But I cannot make an order to appoint the court broker at this juncture to remove the defendant from the said demised premises popularly known as "AMI hospital and /or trauma centre" for the time being until the grace period I have granted has expired for the very same reasons given hereinbefore.

As for an order to distress of the defendants properties within the demised premises popularly known as "AMI hospital and /or trauma Centre 'to discharge the said outstanding liability and/or charge, I think, this is not procedurally an opportune moment for it because the defendant has just been ordered to pay rent arrears and mesne profits at the rate declared.

Let it remain so until further notice of misbehavior or reluctance by the defendant to do so.

However, the defendant is liable to bear the plaintiff's costs that he has incurred in pursuit of this suit.

Therefore, the plaintiff is awarded costs of this suit.


At the moment and at this juncture, no any other orders I deem fit to grant.

I accordingly enter judgment for the plaintiff and decree that:

1. The defendant shall give vacant possession of the suit premises within a period of three (3) months from the date of delivery of this judgment.
2. The defendant shall pay the plaintiff a total of USD 64,000 per month minus USD 150,000.00, as mesne profit, charges and utilities arising from occupation and /or use of the said premises from January, 2013 to the date she vacates the premises.
3. The defendant shall pay the plaintiff costs of this suit.

It is so ordered.

Judgment for Plaintiff.


K. M. Nyangarika,

Judge.