

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO 1 OF 2019

BRAY PROPERTIES LIMITED.....PLAINTIFF

VRS

CZECH REPUBLIC CONSULATE.....1ST DEFENDANT

JOHN CHAGGAMA.....2ND DEFENDANT

JUDGEMENT

B.K.PHILLIP,J

This case arises from the tenancy agreement between the plaintiff and the 1st defendant. The plaint reveals that the 2nd defendant is a Honorary Consul of Czech Republic Consulate of Tanzania. It is the plaintiff's case that the plaintiff leased to the 1st defendant its residential premises located on Plot No.80, House No.6, Kinondoni Road for period of three years from 1st April 2016 to 31st March 2019, at the agreed rental of USD 2,500 per month, payable in advance in a lump sum for six months on the first day of the billing circle. The plaintiff alleged that the defendants breached the aforesaid lease agreement for failure to pay the rent as agreed. Thus, in this case the plaintiff prays for judgment and decree against the defendant as follows;

- i. Payment of United States Dollars thirty thousand (USD 30,000) or its equivalent in Tanzania Shillings being the remaining outstanding rent arrears as of September, 2017.

- ii. Payment of United States Dollars thirty-Seven thousand and five hundred (USD 37,500) or its equivalent in Tanzania Shillings being mesne profits from September 2017 to date.
- iii. Payment of interest on the outstanding rent arrears at the commercial rate.
- iv. Payment of General damages for breach of contract to be assessed by the honourable Court.
- v. Courts of the suit.
- vi. Any other relief(s) this honourable Court may deem fit and or equitable to grant.

In their defence the defendants did not dispute the existence of the tenancy agreement, however disputed the allegation that they breached the same.

Following the defendants' none appearance in Court at the final pre-trial conference, I ordered the case to proceed *exparte* against them. At the hearing of this case the learned Advocates Thomas Sipemba and Angela Paulo appeared for the plaintiff. The following issues were framed for determination by the Court;

- i) Whether there was a breach of the tenancy agreement by either party and to what extent.
- ii) To what reliefs are the parties entitled to.

To prove its case the plaintiff brought in court two witnesses namely Nikki S. Aggarwal (PW1) and Mukesh Shah (PW2). PW1 is the plaintiff's manager. His testimony was to the effect that on 25th October 2015, the plaintiff entered into a lease agreement, (*Exhibit P 1*) with the defendant for a lease of the plaintiff's premises located on plot No 80, Kinondoni Road for period of three years from 1st April 2016 to 31st March 2019, at a rental of USD 2,500 per month, payable in advance for a period of six months. PW1 testified further that the defendants breached the tenancy

agreement for failure to pay the rent as agreed as a result USD 30,000 remained unpaid despite the plaintiff's effort's to convince the defendants to pay the outstanding amount. PW1 tendered in court letters addressed to the Ministry of Foreign Affairs and East Africa Corporation (henceforth "the Ministry of Foreign Affairs") concerning the unpaid rentals (*Exhibit P2*) and the response thereof (*Exhibit P3*). In addition to the above PW1 testified that in endeavours to solve the dispute between the parties, on 13th June 2017, the Ministry of Foreign Affairs, organized a meeting between the parties, in which the 2nd defendant admitted that he owes the plaintiff a sum of USD 45,000 being arrears of rentals for the period between 1st April 2016 and 31st May 2017. PW1 testified further that the resolution reached at the aforesaid meeting was to the effect that the outstanding rentals to a tune of USD 45,000 would be paid in three equal installments. The 1st installment of USD 15,000 was payable on 31st July 2017 while the remaining two installments were payable on or before 31st August 2017 and on or before the 30th September 2017 respectively. It was PW1's testimony that contrary to the tenancy agreement and to what extent was agreed during the aforesaid meeting, the 2nd defendant paid the first installment only and left the rest of the outstanding rentals unpaid despite the demands for the payment of the same (*Exhibit P4 and P6*) and the commitment made by the defendants to settle the outstanding rentals (*Exhibit P7*). In conclusion of his testimony he reiterated the prayers made in the plaint.

On the other hand, PW2, Mr. Mukesh Shah who is the chief accountant of the plaintiff, his testimony was to the effect that on 13th June 2017, he attended a meeting that was held at the Ministry of Foreign Affairs to discuss on the payment of the outstanding rentals due to the plaintiff. PW2 testified further that during the meeting the 2nd defendant admitted that he owed the plaintiff USD 45,000 and he promised to pay the same in three installments of USD 15,000 each starting from July 2017 to September 2017. In addition to the above, PW1 testified that the 2nd defendant wrote a commitment letter for payment of the said outstanding

rentals (*Exhibit P7*), however he paid the 1st installment only and the remaining rentals stands outstanding up to date. He also reiterated the prayers made in the plaint.

Having analyzed the evidence adduced, let me proceed with the determination of the issues. Starting with the 1st issue that is, ***Whether there was a breach of the tenancy agreement by either party and to what extent***, the testimonies of PW1 and PW2 which stand uncontroverted prove that there was a breach of the tenancy agreement between the plaintiff and the 1st defendant for failure to pay the rent as agreed in the tenancy agreement (*Exhibit P1*). The tenancy agreement is not disputed. It states clearly the terms of the agreement, the agreed rent and the mode of payment as testified by PW1. Exhibit P7 which is a commitment letter written by the 2nd defendant for payment of the outstanding amount proves that the defendant breached the tenancy agreement for failure to pay the rent as agreed and also shows the defendants' admission that they are indebted to the plaintiff. On top of that Exhibit P7 states the commitment to pay the outstanding rent. On the other hand Exhibit P8 proves that the defendants paid the 1st installment only and the remaining amount stands unpaid up to date as testified by PW1 and PW2. Under the circumstances, I am inclined to agree with the views held by the plaintiff's advocate as revealed in his closing submission that the defendant breached the tenancy agreement for failure to pay the outstanding rentals as agreed.

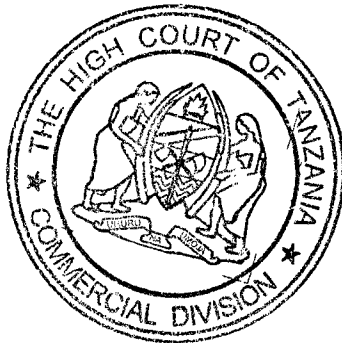
As regards the last issue on ***the reliefs to which parties are entitled to***, in their closing submissions, the plaintiff's advocate was of the view that the plaintiff is entitled to be paid the outstanding rent to a tune of USD 30,000, that is the outstanding arrears of rent up to September 2017, USD 37,500 being mesne profit from the continued occupation of the suit premises and general damages to be assessed by the Court. Furthermore, the plaintiff's advocate referred this court to the case of **Razia Jaffer Ali Vrs Ahmed Mohamed Sewji and 5 other (2006) TLR 433**, in which

the court of Appeal of Tanzania cited the case of **Livingstone Vrs Rawyards Cool Co. (1880) 5 App. Case 25** in which Lord Blackburn said that *"damages is that sum of money which will put the party who has been injured ,or who has suffered ,in the same position as he would have been in if he had not sustained the wrong of which he is now getting his compensation or reparation."*

Looking at the evidence adduced by PW1 and PW2. I am inclined to agree with the plaintiff's advocates, that the plaintiff is entitled to the payment of the outstanding rentals to a tune of USD 30,000 and USD 37,500 or its equivalent in Tanzania Shillings as mesne profit from continued occupation of the suit premises. However, as regards to the prayer for payment of damages, I have noted that none of the plaintiff's witnesses did testify on the claim for general damages. I am alive that general damages do not need to be specifically proved, but in my understanding the plaintiff's witnesses were supposed to give some explanations/reasons behind the claim for general damages to enable the court to make a fair and proper estimates of the same as it deems fit. In the absence of any explanations on the justification for the payment of general damages by the plaintiff's witnesses, this court cannot be able find the basis for granting the same.

The defendants will bear the costs of this case.

Dated at Dar es Salaam this 7th day of February, 2020.




B.K.PHILLIP
JUDGE