

**IN THE HIGH COURT OF TANZANIA**

**COMMERCIAL DIVISION**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO 17 OF 2021**

**LINDI EXPRESS LIMITED.....PLAINTIFF**

**Versus**

**INFINITE ESTATE LIMITED.....DEFENDANT**

**JUDGEMENT**

*Date of Last Order: 27<sup>th</sup> June, 2022*

*Date of Judgement: 30<sup>th</sup> September, 2022*

**NDUNGURU, J.**

This suit is based on a Landlord and Tenant relationship and the breach of the lease agreements to it. The Plaintiff is legal person duly registered and carrying on real estate business here in Tanzania and she claims against the Defendant, a limited liability company incorporated in Tanzania, the payment of USD.60,557 equivalent to TShs. 140,492,240 being unpaid rent to the Plaintiff resulting from the Defendant's lease of business premises at Samora Tower Building, the interest of the principle amount at the rate of 25% per annum from the date of the breach of the agreement to the date of filing this suit, 25% interest of the decretal amount from the date of filing this suit to the date of judgement, interest on the decretal sum at the court's rate from the date of judgement to the date of full settlement, general damages for

inconveniences suffered by the Plaintiff as the result of the Defendant's breach of contract; and costs of this suit.

A brief background of this suit is that, sometimes in the 15<sup>th</sup> day of September, 2014, the Plaintiff entered into written agreement with the Defendant whereby the latter agreed to lease from the former, commercial business premises to wit: Basement Office No. 1, No. 2, No. 3, No. 4 and No. 5 (basement block) in Samora Tower Building Plot No. 123/50, Mansfield Street Samora Avenue, Ilala Dar es Salaam for an agreed price of USD.2,847 per Month which equals to USD 34,169 per year. The agreement commenced from the 1<sup>st</sup> of January of 2015.

On the same date, the two sides also concluded another agreement, where the Defendant agreed to lease from the Plaintiff business premises to wit Mid Mezanine No.1 and No. 2 (Mezanine Block) located at Samora Tower Building, Plot No. 123/50, Mansfield Street Samora Avenue, Ilala Dar es Salaam at an agreed price of USD. 1,720 per Month which is equivalent to USD. 20,640 per year which was commenced from the 1<sup>st</sup> of January 2015.

It is practical that payment be done upon the signing of a contract. Therefore, in both agreements above, the Defendant was required to make payments upon signing them, unfortunately, after the signing of the said contracts, the Defendant requested the Plaintiff to allow her to pay the agreed

rent on or before the commencement date, a request which was granted by the Plaintiff, however, once the Defendant took possession of the premises, she ignored to pay the agreed rent for all the period she was in possession of the same.

As a result, the Defendant retained and used the Basement Block for eleven Months that is from the 1<sup>st</sup> of January 2015 to the 30<sup>th</sup> of November 2015 and at the same time retained and used the Mezanine Block for Seventeen Months that is from the 1<sup>st</sup> of January to the 30<sup>th</sup> May 2016 whereas the rental fees had reached USD. 31,317 and USD. 29,240 respectively. In which, the Defendant's default in paying the rents in time as agreed amounts to a breach of contract and trust, whereas the Plaintiff has suffered damages, and claims not to have enjoyed his investments returns which made him claim for payment of the principal sum due and also damages for breach of contract.

In addition to that, despite the Plaintiff's several reminders and follow up, the Defendant has neglected to honor her obligation as per the terms and conditions stated in the agreement, and to that effect the Plaintiff was forced to knock the doors of this Court and seek redress after service of demand notice proved futile, hence this suit in which the Plaintiff claims as follows;

- i. Payment of USD. 60,557 equivalent to Tshs. 140,492,240 being rental

fees due to the Plaintiff.

- ii. Interest of the Principal sum at the rate of 25% per annum from the date of the breach of the terms of the agreement (1<sup>st</sup> January 2015) to the date of filing this suit.
- iii. Interest on decretal sum commercial rate 25% from the date of filing this case to the date of judgement.
- iv. General damages for breach of contract as may be assessed by this Honorable Court;
- v. Interest at the court's rate on the decretal sum from the date of judgement to the date of full settlement.
- vi. Costs of this suit be borne by the Defendant, and
- vii. Such further reliefs the court deems just and fit to grant.

However, the Defendant had a quite different story as compared to the plaint of the Plaintiff, as seen in the Written Statement of Defence. The Defendant states that there are no facts upon which the orders sought by the Plaintiff can be granted as prayed or at all.

On this side of the coin, the Defendant argued that on the 15<sup>th</sup> September, 2014 the parties executed a 12 months lease agreement commencing from the 1<sup>st</sup> December, 2014 to the 30<sup>th</sup> November, 2015 in

respect of premises located at the Basement block No. 1, No. 2, No. 3, No. 4 and No. 5 on Plot No. 123/50, Mansfield Street Dar es Salaam for a consideration total amount of USD 2847.00 per month which is equal to USD 32,169.00 per annum. On the same date, the Defendant states, they executed another lease agreement in respect of premises located at Mid Mezzanine No. 1 and No. 2 facing Mansfield Street on Plot No. 123/50, Samora Avenue-Dar es Salaam for a period of 12 months commencing from the 1<sup>st</sup> day of December, 2014 to the 30<sup>th</sup> day of November, 2015. That the agreed monthly rent for the entire lease agreement was USD 1720.00 per month, totaling to USD 20,640.00 for the entire lease period of 12 Months.

It is the Defendant's argument that she cleared the whole amount as agreed in the said lease agreements. The Defendant further states that prior to the execution of the said lease agreements both parties had numerous business transactions between them narrated as follows;

- i. In the 21<sup>st</sup> March, 2014, the Defendant advanced USD 500,000.00 as a purchase price of the bedroom apartment (which by then were under construction) N: 1903, 2003, 2103 and 2203 located at Plots Nos: 123/50,148/50 & 125/50 at Bridge and Mansfield Streets and Samora Avenue in Dar es Salaam with an option of buy back at a rental of USD 9,250.00 per month from the date it was advanced to

the date of payment of the same. The Defendant added that this agreement was affected through a Memorandum of Understanding dated 21<sup>st</sup> March, 2014 which was executed by the Plaintiff on one side and the Defendant's Director named Mohammedraza Tejani on the other side.

- ii. The Defendant added that in various dates, she advanced yet another loan (cash at hand) to the Plaintiff totaling USD 254,250.00
- iii. That, the Defendant purchased apartment No. 1601 from the Plaintiff at a purchase price of USD 225,000.00

In clarification, the Defendant proceeded that as there were various transactions between them, as of 17<sup>th</sup> September, 2014 the outstanding dues owed to each other were as herein;

- i. That, the Plaintiff's company owed the Defendant a total of USD 754,25
- ii. That, the Defendant's company owed the Plaintiff's company a total of USD 279,809.00 arising out of rent payment for both lease agreements, which are now subject to this suit, dated 15<sup>th</sup> September, 2014 (total rent is USD 54,809.00) and purchase price of Apartment No. 1601 (Purchase price USD 225,000.00)

Thereafter Defendant argued that, at all material times, the Plaintiff and Defendant were aware of those transactions and the outstanding dues. As both parties were always aware of the same, in 18<sup>th</sup> September, 2014 as they signed the two lease agreements subject to this suit; the two sides sat together and discussed the best way they could settle the dues owed to each other and upon discussions, they deliberately and agreed that;

- i. The Defendant had to pay the rent of both lease agreements totaling USD 54,809.00 by way of pay-off (set off) from the outstanding dues USD 754,250.00 (as principal sum excluding rent of USD 9250.00 per Month) owed to the Defendant.
- ii. That upon agreeing the payment of the rent by way of set-off, they signed a written memorandum (account statement) addressing the arrangement. That, after setting off (pay-off) all the transactions, on the 18<sup>th</sup> day of September, 2014 the Plaintiff owed the Defendant USD 600,000.00 as seen in the Written Memorandum (Account Statement).

Furthermore, the Defendant states that the executed lease agreements are explanatory that the lease period commenced from the 1<sup>st</sup> December, 2014 ending November, 2015. That, the Defendant further reiterates what has been stated in paragraph 6 of his witness statement. The Defendant also states that

the invoices annexed to the Plaint had never been served upon her and do not match with the actual amount that should have been invoiced had the Defendant failed to clear the same.

Conclusively, the Defendant insists that there are no dues owed to the Plaintiff as all the dues had been cleared by the Defendant's Company through the arrangement well explained above. The Defendant insists that the Plaintiff has never served demand notice to the Defendant and even the Demand Notice from Ardean Law Chambers purported to be annexed with the Plaint is absent, and that the Plaintiff never communicated to her in regard to the claims raised in the Plaint or at all. And therefore, all the allegations of facts contained in the Plaint are denied and the Plaintiff is not entitled to the amount claimed, and that this suit be dismissed with costs.

As the parties completed the battle of the pleadings, the case underwent mediation process, however, it was fruitless and consequently, a full trial was inevitable. During the final pre-trial conference, two issues were framed as reproduced hereunder: -

1. Whether the Defendant did pay and settle the claims of the Plaintiff.
2. To what reliefs are the parties entitled.

As this matter was scheduled for hearing, the Plaintiff was represented by Mr. Gratian Mmari and Hassan Salum, learned Advocates while the



defendant was represented by Mr. Jerome Msemwa also learned Advocate, and to that effect counsels were directed to file the witness' statements as per **Rule 49 (2) of the High Court (Commercial Division) Procedure (Amendment) Rules, 2019.** (Hereinafter referred to as "the Rules").

To that effect, the Plaintiff filed one witness statement and paraded him for cross examination before this court meanwhile the Defendant also filed one witness statement and also made sure the attendance of the particular witness as per the requirement of the law.

Whereas, both sides seem to be relying on the statements of their witnesses, and therefore each side made sure the particular witness attended the court as per **Rule 56 (1)** of the Rules, which requires any party who intends to rely on a witness statement to cause the attendance of its witness.

Therefore, Mr. Kurban Ahmed Khaki testified as PW<sub>1</sub> for the Plaintiff. In his statement, he submitted that he is the Managing Director of the Plaintiff since it was incorporated, and that his duties as the Managing Director of the company is to manage the business and all the operations of the company. He added, the Plaintiff is a legal person duly registered and carrying on real estate business here in Tanzania.

PW<sub>1</sub> submitted that the Plaintiff claims against the Defendant is for the

payment of US\$ 60,557 equivalent to Tshs. 140,492,240 being unpaid rent to the Plaintiff resulting from the Defendant's lease of business premises of the Plaintiff in the Samora Tower Building at Plot No. 123 Block 50 Mansfield Street in Ilala Municipality in Dar es Salaam.

He proceeded that, on the 15<sup>th</sup> day of September, 2014, the Plaintiff entered into written agreement with the Defendant whereby the latter agreed to lease from the former, commercial business premises to wit Basement Office No. 1, No. 2, No. 3, No. 4 and No. 5 (basement block) in Samora Tower Building Plot No. 123/50, Mansfield Street Samora Avenue, Ilala Dar es Salaam for an agreed price of USD 2,847 per Month which equals to USD 34,169 per year. The agreement commenced from the 1<sup>st</sup> of January of 2015.

In addition to that, PW<sub>1</sub> submitted that the Plaintiff and the Defendant executed another agreement, where the Defendant agreed to lease from the Plaintiff business premises to wit Mid Mezanine No.1 and No. 2 (Mezanine Block) located at Samora Tower Building, Plot No. 123/50, Mansfield Street Samora Avenue, Ilala Dar es Salaam at an agreed price of USD. 1,720 per Month which is equivalent to USD. 20,640 per year which was commenced from the 1<sup>st</sup> of January 2015.

He furtherly submitted that the Defendant retained and used the Basement Block for eleven (11) months from the 01<sup>st</sup> January, 2015 to 30<sup>th</sup> of

September, 2015 and also retained Mezzanine Block for 17 months from the 01<sup>st</sup> January, 2015 to the 30<sup>th</sup> of May, 2016 whose rental fees had reached US\$ 31,317 and US\$ 29,240 respectively, and that he is aware it was the requirement of both agreements that the Defendant should have paid the agreed rents upon signing of the contracts.

PW<sub>1</sub> also testified that, he is aware that after the signing of the said contracts, the Defendant requested to be allowed to pay the agreed rents on or before the commencement date. He added, once the Defendant took possession of the premises, the Defendant ignored to honor his request. He added that, the Plaintiff had made attempts of reminding and following up the debt but the Defendant neglected and that he remains adamant to honor the terms and conditions stated in both of the agreements, and that the Defendant's conduct amounts to the breach of the said agreements.

Conclusively, PW<sub>1</sub> testified that at different occasions they attempted to negotiate with the Defendant and also presented the matter to their community leaders for conciliation and mediation, but the Defendant was not cooperative and kept saying that he got loss in his business and that he had nothing to pay. However, PW<sub>1</sub> denied all the statements made by the Defendant in his written statement of defense and that the Plaintiff's business with the Defendant does not relate the business of the Defendant's Director in

his personal/individual capacity with the Plaintiff. He added, the reconciliation the Defendant is referring to in his statement of defense was not done and did not determine the Defendant's liability to the Plaintiff. Therefore, PW<sub>1</sub> insisted that the Plaintiff is entitled to all the reliefs from the Defendant based in the claims pleaded in the plaint, and that this Court should issue a judgement and decree in favour of the Plaintiff as prayed in the plaint.

When cross examined, PW<sub>1</sub> testified that the two parties had a landlord and a tenant relationship. And that the contract between them was only for one year. However, PW<sub>1</sub> did concede that he knows the Director of the Defendant who is Mohamedraza Tejani, and that there was no set off between the contracting parties instead the Plaintiff claims the rent to be paid by the Defendant.

Mohamedraza Tejani testified as DW<sub>1</sub> and in his testimony he said that he is working for gain in Dar es Salaam and employed as a Director of the Defendant's Company. He started off by denying the Plaintiff's entitlements to claims made in paragraph 3 of the Plaint as alleged or at all, and that there are no facts upon which the orders sought by the Plaintiff can be granted as prayed or at all.

DW<sub>1</sub> proceeded that, on the 15<sup>th</sup> of September, 2014, the Defendant and the Plaintiff executed a 12 months lease agreement commencing from the 1<sup>st</sup>

of December, 2014 to the 30<sup>th</sup> of November, 2015. He added that, the lease was in respect of the premises located at Basement Block Nos. 1, 2, 3, 4 and 5 on Plot No. 123/50, Mansfield Street, Dar es Salaam for a consideration of total amount of US\$ 2847.00 per month which is equal to US\$ 34,169.00 per annum.

Mr. Tejani continued to testify that on the same date, the two sides also concluded another agreement, where the Defendant agreed to lease from the Plaintiff business premises to wit Mid Mezanine No.1 and No. 2 (Mezanine Block) located at Samora Tower Building, Plot No. 123/50, Mansfield Street Samora Avenue, Ilala Dar es Salaam at an agreed price of USD. 1,720 per Month which is equivalent to USD. 20,640 per year.

He submitted furtherly that, the Defendant cleared the whole amount as agreed in the said lease agreements. He added that prior to the execution of the said lease agreements both, the Plaintiff and Defendant had numerous business transactions between them namely;

i. On the 21<sup>st</sup> March, 2014 the Defendant's advanced US\$ 500,000 as purchase price of the bedroom apartment (which by then were under construction) Nos: 1903, 2003, 2103 and 2203 located at Plots Nos; 123/50, 148/50 & 125/50 at Bridge and Mansfield streets and Samora Avenue Dar es Salaam with an option of Pay

back at a rental of US\$ 9,250.00 per month from the date it was advanced to the date of payment of the same. He added that this agreement was effected through a Memorandum of Understanding dated 21<sup>st</sup> March, 2014 executed by the Plaintiff on one side and the Defendant's Director named Mohammedraza Tejani on the other side.

- ii. He added that, the Defendant in various dates, advanced yet another loan (cash at hand) to the Plaintiff totaling US\$ 254,250.00
- iii. He stressed that the Defendant purchased apartment No. 1601 from the Plaintiff at the purchase price of US\$ 225,000.00.

Mr. Tejani proceeded that, following the above transactions as listed above, as of the 17<sup>th</sup> of September, 2014 the outstanding dues owed to each other was narrated hereunder'

- a. The Plaintiff's company owed the Defendant a total of US\$754,250.00
- b. The Defendant's Company owed the Plaintiff's Company total of US\$279,809.00 arising out from the rent payment for both lease agreements, which are now subject to this suit, dated the 15<sup>th</sup> of September, 2014 (total rent is US\$54,809.00) and purchase price of the Apartment No. 1601 (purchase price US\$225,000.00)

DW<sub>1</sub> continued to submit that, at all times, the Plaintiff and Defendant were aware of the transactions and the outstanding dues owed to each other and thus, on the 18<sup>th</sup> of September, 2014 both sides signed both lease agreements subject to this suit, they sat together and discussed on how would be the best way to settle the dues owed to each other. Therefore, he continued that upon discussions, both sides deliberated and agreed as follows here in;

- a. That, the Defendant had to pay the rent of both lease agreements totaling US\$54,809.00 by way of pay-off (set off) from the outstanding dues of US\$754,250.00 (as principal sum excluding rent of US\$ 9,250.00 per month) owed to the Defendant.
- b. That, upon agreeing the payment of the rent by way of set-off, both sides signed a written memorandum (account statement) addressing the arrangement after setting off (pay-off) all the transactions. That, on the 18<sup>th</sup> of September, 2014, the Plaintiff owed the Defendant US\$600,000.00 as seen in the Written Memorandum (Account Statement).

DW<sub>1</sub> submitted even further that, the executed lease agreements are explanatory that the lease period commenced from 1st December, 2014 and ending November, 2015. He furtherly reiterates what has been stated in

paragraph 6 of the Written Statement of Defiance. He also states that the invoices annexed to the Plaint had never been served to her and do not match with the actual amount that should have been invoiced had the Defendant failed to clear the debt. Also, DW<sub>1</sub> insists that the Defendant denies all the allegations raised in paragraph 7 of the plaint.

In winding up, Mr. Tejani stressed that there is no dues owed to the Plaintiff as all the dues had been cleared by the Defendant's Company through the arrangement well explained above, he however insists that the Plaintiff had never served the Defendant Demand Notice and even Demand Notice from Ardean Law Chambers purported to be annexed with the Plaint, which is not true. He also insists that the Plaintiff had never communicated to the Defendant in regard to the claims raised in the Plaint or at all. To this point, Mr. Tejani insists that the Defendant denies all the allegations of facts contained in the Plaint and that the Plaintiff is not entitled to the amount claimed in the Plaint, and that this suit deserves to be dismissed with costs.

It pleased the counsels for the parties to make their final written submissions in this suit, the court had no objection thus availed the counsels with the opportunity to file the same.

In the closing submission, the counsel for the plaintiff told the court that the parties to this suit are artificial persons registered and operating under the



laws of Tanzania. They are legal entities which in relation to **Section 15** of the **Companies' Act Cap. 212 of 2002**, are capable of suing and be sued on their own name, and can enter into any contractual obligations.

The Counsel referred this court to the case of **Mussa Shaibu Msangi vs Sumry High Class Limited Misc. Commercial Cause No. 20 of 2012** where this Court observed that the longstanding principle of corporate personality, was in **Salomon vs Salomon & Company** and is reflected under **Section 15 (1) and (2) of the Companies' Act, No. 2 of 2002** that a company has a legal personality separate and distinct from its shareholders (or Directors)...."

He proceeded that, the reason of starting his submissions with the explanations on the principle of corporate legal personality is to assist this court to see it from the outset that actions or transactions of directors or members of the company in their individual capacity should not be branded as actions of their companies unless it is well established that they had acted for and on behalf of the companies.

He stressed that the Plaintiff is a corporate entity dealing with real estate business. That, on the 15<sup>th</sup> September, 2014, the Plaintiff signed two contracts with the Defendant whereby the latter agreed to lease from the former, commercial business premises to wit Basement Office No. 1, No. 2, No. 3, No.

4 and No. 5 (basement block) in Samora Tower Building Plot No. 123/50, Mansfield Street Samora Avenue, Ilala Dar es Salaam for an agreed price of USD.2,847 per Month which equals to USD 34,169 per year and Mid Mezzanine Nos. 1 & 2 at a contract sum of US\$ 1,720 per month which equals to US\$20,640 per year,

He added that, the Plaintiff claims against the Defendant is for payment of USD.60,557 equivalent to TShs. 140,492,240 being unpaid rent resulting from the Defendant's use of the above-mentioned premises. He proceeded that from the Plaintiff and also the Statement of Witness of the Plaintiff, the Plaintiff stated that the Defendant retained and used the Basement Block for eleven months and then retained the Mezzanine Block for 17 months whose rental fees had reached US\$312,317 and 29,240 respectively.

However, most of the submissions made by the counsel as his final submissions to a satisfying extent could be shortened that he summarized what has been submitted in the entire proceedings. The emphasis was made on the fact that the Defendant has not paid what is claimed by the Plaintiff and that the Plaintiff prays for this court to enter judgement in his favour.

Unfortunately, the counsel for the Defendant had not submitted his final written submission as of the date this judgement was drafted, and thus, I considered what was submitted by his client to be satisfactory submissions to

his camp.

After a keen perusal of the battle of the pleadings from both sides, and this being a civil case, the law places a burden of proof upon a person "who desires a court to give judgment" and such a person who asserts...the existence of facts to prove that those facts exist as prescribed under **Section 110 (1) and (2)** of the **Evidence Act, Cap 6 [R.E 2019]** (herein after "the Act") As it is known, in civil matters matters a fact is said to be proved when its existence is established by preponderance of probability as it is stipulated under **Section 3 (2)(b)** of the Act.

This position was also the stand in the Court of Appeal case of **Godfrey Sayi v. Anna Siame as Legal Representative of the late Mary Mndolwa, Civil Appeal No. 114 of 2012** (unreported) where it was held that: -

*"It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on a balance of probabilities."*

In determining where the head and the feet of this puzzle lie, I am fortified to adopt the agreed raised issues during the final Pre Trial-Conference which suffices in disposing of this suit. As a reminder, the raised issues

- i. ***Whether the Defendant did settle the claims of the***

of pay-off.

As I have highlighted above that, the law places the burden of proof upon a person "who desires a court to give judgment" and such a person who asserts...the existence of facts to prove that those facts exist as prescribed under **Section 110 (1) and (2)** of the Act. In this case at hand, the Defendant did prove the existence of his claims but tendering **Exhibit D1** which revealed the amounts owed by each party and even more, the Plaintiff never objected its admission into evidence which implies that she too accepts the claims of the Defendant.

As hinted earlier that both sides do agree that they entered into two lease agreements, one for the Basement block and the other for the Mezzanine block which were both executed on the same date. However, the Defendant claimed that he does not owe the Plaintiff any monetary claim as the two had sat down and agreed to settled their dues through Set off (pay off). It was the burden of the Defendant to prove that he does not owe the Plaintiff any money, and he did.

To that fact, I am convinced that the Defendant's submissions have proved that through their agreement of settling their dues through pay off; indeed the Defendant did settle the claims of the Plaintiff. In that, the 1<sup>st</sup> issue raised has been dealt with in affirmative, and therefore the second issue as

raised falls upon the Defendant for he deserves the costs of this suit.

In view of the above analysis, this suit stands to be dismissed for incompetent and, therefore I proceed to dismiss it, and order that the costs of this suit to be borne by the Plaintiff.

It is so Ordered.



*D. B. Ndunguru*  
**D. B. NDUNGURU**

**JUDGE**

**30/09/2022**

ORIGINAL