

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO. 263 OF 2021

(Arising out of the decision of the District and Housing Tribunal for
Temeke at Temeke in Land Application No. 54 of 2010)

NDATELE PETER LEMA APPELLANT

VERSUS

THE REGISTERED TRUSTEES OF CHAMA

CHA MAPINDUZI RESPONDENT

JUDGMENT

11/5/2022& 01/6/2022

A. MSAFIRI, J

This is an appeal from the decision which originates from the District Land and Housing Tribunal of Temeke District at Temeke (herein as trial Tribunal) in Application No. 54 of 2010.

The appellant Ndatele Peter Lema in 2010, instituted a suit before the trial Tribunal against the respondent the Registered Trustees of Chama cha Mapinduzi seeking for the following orders; a declaration that the respondent still owe the applicant an outstanding balance of TZS 3,147,510/-, a declaration that the applicant is not in breach of the lease agreement, and in alternative, the respondent to pay TZS. 36,000,000/- as compensation for

Atle

plot and suit premises which is described as Plot No. 383/3 Mtongani Bustani, Temeke, Dar es Salaam. He also pressed for costs of the suit.

The appellant claimed that he is a tenant of the respondent by the lawful lease agreement which was entered between them. That, the appellant granted a building permit to renovate the lease premises by adding another room and construct a medical laboratory services whereby he spent about TZS 4,767,510/- for the said constructions/ renovations. The respondent then issued a notice of eviction to the appellant to vacate the suit premises, the act which aggrieved the appellant, hence he instituted the hereinabove application before the trial Tribunal. The trial Tribunal dismissed the application where the appellant filed an appeal before this court for the first time in 2015. This Court ordered a retrial and remitted the case file to the trial Tribunal after having find that there was glaring errors on the face of record which occasioned injustice to the appellant. The retrial was conducted and on 10/11/2021, the trial Tribunal delivered its decision and dismissed the application with no order as to costs.

Again, the appellant was aggrieved and filed the current appeal which is supported by six grounds of appeal which are as herein below;

- 1. That, the Honourable trial Tribunal grossly erred in law and fact for failure to properly evaluate the evidence given for the Appellant which established conclusively that the notice issued by the Respondent on the 27/12/2009 requiring the Appellant to vacate from the suit*

Adde.

- premises was in contravention of the terms and conditions agreed by the parties in the lease agreement, thus amount to breach of contract.*
- 2. That, the Honourable trial Tribunal grossly erred in law and fact in having properly found that the respondent had granted building permit for the Appellant to construct a Medical Laboratory Services on Plot No. 383/3 situated at CCM Bustani Branch, Temeke Municipality but erroneously held that the Appellant do demolish and/ or remove the constructed Medical Laboratory Services on Plot No. 383/3 situated at CCM Bustani Branch, Temeke Municipality in contravention of the terms and conditions agreed by the parties in the lease agreement.*
 - 3. That, the Honourable trial Tribunal grossly erred in law and fact in failure to hold that under the circumstances of the case the Respondent is liable to compensate the Appellant, the claimed sum of Tshs. 36,000,000/= in lieu of an order for demolition and/ or removal of constructed Medical Laboratory Services on Plot No. 383/3 situated at CCM Bustani Branch, Temeke Municipality.*
 - 4. That, the Honourable trial Tribunal grossly erred in law and fact in failure to properly try the issues framed by the Tribunal. Thus leading to miscarriage of justice.*
 - 5. That, the Honourable trial Tribunal grossly erred in law and fact in having properly found that the Appellant had constructed the Medical Laboratory Services on Plot No. 383/3 situated at CCM Bustani Branch, Temeke Municipality and was paying the rents as per the terms and conditions agreed by parties in the lease agreement but failure (sic) to*
- Alle.*

held that the eviction notice issued by the Respondent on the 27/12/2009 was tainted with illegality.

6. That, the Honourable trial Tribunal grossly erred in law and fact in failure to hold that under the circumstances of the case the Appellant and Respondent had entered into agreement for construction of the Medical Laboratory Services on Plot No. 383/3 situated at CCM Bustani Branch, Temeke Municipality.

The appeal was heard by way of written submissions whereby the appellant was unrepresented and he appeared in person and the respondent was represented by Ms. Pancrasia Augustine Protas, learned advocate.

The appellant submitted on grounds of appeal seriatim. On the 1st ground, he submitted that, there is no doubt that sometimes in 27/12/2009, the respondent issued an eviction notice to the appellant requiring him to vacate the rented suit premises. That, the eviction notice was admitted as Exhibit SM3; and that the Notice was issued while the appellant had paid rent up to July, 2013. He said that, the respondent has not denied this fact as it is reflected at page 14 of the typed judgment. He argued that, it was unjustified for the trial Tribunal to fail to declare that, the eviction Notice by the respondent amounted to a breach of the lawful lease contract.

On the 2nd ground of appeal, the appellant stated that, the trial Tribunal found that, on the basis of the adduced evidence by both parties, the appellant did construct the rented suit premises on Plot No. 383/3 located at *Atle*.

CCM Bustani Branch. This is reflected at page 14 of the typed judgement. He submitted further that, the trial Tribunal then erred in law when it ordered the appellant to demolish and or remove the constructed medical laboratory instead of ordering the respondent to compensate the appellant for the total sum spent in the said construction.

On the 3rd ground of appeal, the appellant reiterated his submissions on the 2nd ground of appeal as they are all based on the injustice of the trial Tribunal's ordering the appellant to demolish or remove the constructed medical laboratory instead of awarding a compensation of Tshs. 36,000,000/- to the appellant.

On 4th ground of appeal, the appellant submitted that the trial Tribunal failed to try properly, the three issues which were framed before the trial, and instead, the Tribunal invoked irrelevant issues which was neither pleaded by parties, nor framed and not allowed to the parties to address on them.

To buttress this point, the appellant cited Order XX Rule 4 of the Civil Procedure Code Cap 33 R.E 2019 (herein as CPC) and the case of **Kashanga vs. Ernest Kahoya** [1976] TLR 10.

On the 5th ground of appeal, the appellant submitted that, in its decision, the trial Tribunal reasoned that the appellant had constructed the medical laboratory services on the suit premises and paid rents as per the terms and conditions agreed by parties in the executed lease agreement. He argued

Adls.

that, basing on that, it was prudent for trial Tribunal to nullify the purported eviction notice as the same was illegally issued.

On the 6th ground of appeal, the appellant argued that, he is faulting on the decision of the trial Tribunal when it failed to hold that, under circumstances of the case, the appellant and respondent had entered an agreement for construction of the medical laboratory services on suit premises. That, the evidence clearly show that the parties had entered into the said contract and the appellant promptly acted as agreed. He prayed for the court to allow the appeal in its entirety with costs.

Replying against the appeal, counsel for the respondent submitted on the 1st ground of appeal that the appellant failed to establish that there was relationship between the appellant and the respondent arising from lease agreement. She added that, the appellant never tendered a document evidencing a lease agreement between the appellant and the respondent and that the respondent has never executed such type of agreement with appellant.

On the 2nd ground of appeal, the respondent submitted that, the claims of breach of contract by the appellant cannot hold water since there was no agreement. The counsel said further that, the appellant has admitted to be a member of Chama cha Mapinduzi for years and he knew all properties of Chama cha Mapinduzi were vested to the Registered Trustees of Chama cha Mapinduzi.

That, the applicant stated that, he had never met with the Registered Trustees of Chama cha Mapinduzi but met with branch leaders where they had an agreement to develop the suit premises. She added that, the appellant's action of building the suit premises in absence of consent of the Registered Trustees was invalid and does not constitute contract at all.

To cement her point, she cited the case of **Felix Henry Kileo vs. The Permanent Secretary, Ministry of Works and 3 others**, Land Case No. 212 of 2012 (unreported).

The respondent's submissions on the 3rd, 5th and 6th grounds of appeal are the reiteration of what was submitted in the 1st and 2nd grounds of appeal so, I need not repeat the same here.

On the 4th ground of appeal, the counsel for the respondent submitted that, during retrial, there was only three issues which were framed by parties. Those are; whether the respondent was in breach of lease agreement, whether the notice by the respondent was valid and what remedies are entitled to the parties.

The counsel for the respondent submitted further that, the 1st and 2nd issues were answered in negative that there was no breach of lease agreement by the respondent since the appellant failed to establish the existence of the said agreement. *Alle*

She concluded that the trial Tribunal properly tried the framed issues and delivered its judgment through the issues. She prayed for the dismissal of the appeal with costs.

Having gone through the submissions by both parties to this appeal, as well as reading carefully the record of the trial Tribunal, I will determine this appeal by starting with the 4th ground of appeal. I have decided to start with this ground of appeal because it carries major issues which are subject of the whole dispute as it will be shown herein after.

In the 4th ground of appeal, it is stated that, the Honourable trial Tribunal erred in law and fact in failure to properly try the issues framed by the Tribunal, thus leading to miscarriage of justice.

According to the proceedings and the judgment of the trial Tribunal, three issues were framed and agreed by both parties.

The issues were as follows;

- “1. Je mjibu maombi amekiuka masharti ya Mkataba wa pango unaohusisha gharama za ujenzi katika Kiwanja Na. 383/3 CCM Bustani Mtoni, Temeke, Dar es Salaam.**
- 2. Je Ilani iliyotolewa na mjibu maombi kwenda kwa mwombaji ilikuwa halali.**
- 3. Nafuu zipi kila upande unastahili kuzipata”.** *Adls*

The indirect translation is that; first issue; whether the respondent was in breach of the lease agreement which stipulates the costs of construction on Plot No. 383/3 CCM Bustani, Mtoni Temeke, Dar es Salaam, second; whether the Notice issued by the respondent to the appellant was valid and third; what are the reliefs entitled to the parties.

In his submission, the appellant is of opinion that, going throughout the impugned judgment, the trial Tribunal has totally failed to properly try the three issues framed during the trial and thus leading to injustices to the parties.

However, in the impugned judgment, after analysis of adduced evidence by parties, the trial Chairman addressed the framed issues. This is seen clearly from page 13 of the impugned judgment. In addressing the first issue, the trial Chairman was of the view that the respondent could not have breached the lease contract because in the first place there was no contract between the appellant and the respondent.

Having gone carefully through the evidence adduced by the appellant during the trial, I am forced to agree with the Chairman's view that there was never a lease contract between the appellant and the respondent.

It is a trite law that who alleges must prove. Section 110 of the Evidence Act, Cap 6, Places the burden of proof on the one who alleges. It provides that; *Allee*

"Section 110 (1);

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

Section 110 (2);

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

In addition, the standard of proof in civil matters is on a balance of probabilities, and it is upon the applicant/plaintiff to prove his case on the standard required. There are plethora of cases on this principle among them being the case of **Attorney General & Two Others vs. Eligi Edward Massawe and 104 others**, Civil Appeal No. 86 of 2002.

In the present matter as per the evidence, and correctly found by the trial Tribunal, there is no dispute that the appellant has rented a suit premises and renovated the said premises by erecting a medical laboratory. It is not in dispute that the appellant was paying rent as per the agreement he has entered with the Chama cha Mapinduzi (herein CCM) Bustani Branch leaders. This is evidenced by a document titled "*Makubaliano ya Mwekezaji wetu Bw. Peter Lema na Wajumbe wa Kamati ya Siasa Tawi*".

The document is signed by the Branch Secretary one Scholastica, on one side and the appellant on the other side. The contents of the agreement are that the appellant is allowed to make an addition to the suit premises by *Alle*.

constructing one room for the expenses of Tshs. 4,767,510/-. This document is a photocopy which is among the documents in the court records. During the trial, the appellant produced a Police Loss Report which stated that he has lost important documents which were intended to be tendered during the trial.

The photocopy document was tendered as Exhibit P3 during the first trial. Furthermore, in the records, there is a photocopy of the document titled *"Mkataba wa kupangisha baina ya Baraza la Wadhamini wa Chama cha Mapinduzi na Ndatele Lema."*

The purported lease agreement, unfortunately and strangely is signed by one part only, i.e. the appellant who is a purported tenant. The part of the land lord who is supposed to be the Registered Trustees of CCM (respondent) is not signed.

In addition, the contract does not show the dates of signature nor the duration of the contract. During the trial, in cross examination, the appellant admitted that, the Branch Committee (Kamati ya Tawi), was the one which granted him the permission to renovate the suit premises. He admitted further that he had never seen the Trustees of CCM. He stated that he had sued the Trustees of CCM because they have breached the contract. *Adler*

As observed earlier, the pertinent question here is whether there was a contract between the appellant and the respondent which the respondent has breached as claimed by the appellant.

Again, I agree with the findings of trial Chairman that, the appellant had no evidential proof of the agreement between him and the respondent. In fact, according to the admission of the appellant himself, he has never entered into any agreement/lease contract with the respondent, but he has met and entered agreement with CCM Branch leaders of CCM Bustani Branch, Temeke. This is followed up by another equally important question on whether the CCM Branch leaders/Branch Committee had capacity to enter into an agreement with the appellant.

In his submission in support of the appeal, the appellant stated that he had built/constructed the rented suit premises as agreed between him and the principle officers of the respondent.

The respondent through her counsel, argued that according to the constitution of CCM, all properties of the CCM are vested to the Registered Trustees of CCM who are the one capable of entering contracts, sue and be sued on behalf of the Party. The respondent stated further that, the powers of the respondent is reflected in the Party's constitution and the Trustees cannot assign those powers to any person except to "Kamati ya Siasa ya Mkoa" i.e. Party's Regional Political Committee.

Adle

The CCM constitution was tendered and admitted during the trial as Exhibit D1. I have read Article 125 of Exhibit D1 which establishes the Registered Trustees of CCM. The Article provides that the Trustees can delegate its power to the Regional Political Committees.

By this, it is clear that, the CCM Bustani Branch leaders/Branch Political Committee had no capacity to enter into agreement as the Trustees had not delegated its powers to Branch leaders or Branch Political Committee to enter into lease contract. The appellant did not produce any evidence to prove that, the Branch leaders he termed as "the principle officers of the respondent" had powers and capacity to act on behalf of the respondent.

Another important question is whether the appellant was right to sue the respondent claiming for the reliefs as per his application before the trial Tribunal. The base of the claims of the applicant depended on the existence of valid contract between the appellant and the respondent which is binding on the parties. As there was no valid contract between them as it was correctly observed by the trial Tribunal, then the appellant has no any claim against the respondent.

On the second issue, the trial Chairman addressed it as clearly observed on page 17 of the typed impugned judgment. On the same, the trial Chairman was of the view that, the respondent was correct to issue a notice of eviction to the appellant for the reason that, there was no valid agreement between the appellant and the respondent.

Alle

During the trial, one Mariam Sultani, testified as DW1. She said that she is a CCM Secretary of Bustani Mtoni Branch, Temeke. She asserted that the Registered Trustees are the one invested with sole powers of administering the party's properties. She said further that, the Branch leaders/Committee had no power to enter into lease agreement with the appellant.

She admitted that, the eviction Notice issue to the appellant was lawful as the appellant had not complied with the party's procedure in leasing the suit premises. DW1 stated further that, the appellant was summoned by party's leaders for negotiations but decided to institute this matter.

In this issue, I also agree with the trial Tribunal's findings that the eviction notice was valid, for under circumstances the appellant's tenancy was not valid as he had not adhered to the proper procedures set under the Party's Constitution.

As pointed earlier, I decided to start with determination of the 4th ground of appeal as it is capable of deciding the fate of this appeal and disposing it. As I have already observed, it is my finding that the trial Tribunal, properly and clearly "try" the framed issues contrary to the claims of the appellant that it failed to do so.

Furthermore, I find that, the trial Tribunal was correct in its analysis on whether there was a valid contract between the parties, and correct in its findings that there was not. Since there was no lease contract/agreement *Alle*

between the parties to this dispute, then there cannot be a breach of contract by either party, and hence the appellant has no any claim against the respondent.

It is for the above reasons that I see no need to address the rest of grounds of appeal as they are interrelated with this major ground of appeal i.e. the 4th ground of appeal.

In the upshot, I hereby dismiss this appeal in its entirety, with no order to costs.

Right of appeal explained.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

A. MSAFIRI
JUDGE

01/06/2022