

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

LAND CASE NO. 71 OF 2022

MIKUMI HOSPITAL DAR LTD..... PLAINTIFF

VERSUS

COSTA GEORGE SHINGANYA (The Administrator of
the late **MWAMI THERESA NTARE**).....**1ST DEFENDANT**

RIMINA AUCTION MART AND COMPANY
LTD.....2ND DEFENDANT

J U D G M E N T

Date of last Order:23/02/2023

Date of Judgment:30/03/2023

K. D. MHINA, J.

The main dispute between the parties is the eviction of the plaintiff by the 2nd defendant from the landed property described as House No. 112, located at Mbweni Street Magomeni Mikumi within Kinondoni Municipality, the property owned by the 1st defendant.

The plaintiff and the 1st defendant had the tenancy agreement, and the parties to the suit are **Mikumi Hospital Dar Limited**, a limited liability company duly incorporated in Tanzania carrying out the provision of hospital and health services, the plaintiff herein ("the plaintiff"), lodged this suit on 31 March 2022 against **Costa George Shinganya**, the administrator of the

estate of the late Mwami Theresa Ntare (“the 1st defendant”) and **Rimina Auction Mart and Company Limited**, a company duly registered company which deal with debt collection and loan recovery (“the 2nd defendant”)

The background to this matter briefly, as can be discerned from the pleadings, is that the plaintiff and the 1st defendant had a tenancy agreement over house No 112 located at Mbweni Street, Magomeni Mikumi area, owned by the 1st defendant for about fifteen (15) years for the rent of USD 1500 per month. The plaintiff was conducting health and hospital services on that premises.

According to the plaint, at a time, the plaintiff was undergoing a difficult financial situation caused by the failure to receive payments from the major health insurance institutions such as the National Health Insurance Fund (NHIF), NSSF, AAR Insurance, Strategies Insurance, Jubilee Insurance, and Resolution Insurance. This caused chaos in the regular provision of services, including creating rent arrears. The shortfall was communicated to the 1st defendant, who initially was cooperative, but on 5 March 2022, the 1st defendant instructed the 2nd defendant to evict the plaintiff from the lease house.

The plaintiff further alleges that the eviction and attachment of hospital properties were tainted with illegalities, fraud, and malice to obscure the plaintiff from exercising the right of quiet enjoyment and performing its business activities. The attachment was done to the properties worth TZS 897,617,125/= while the actual outstanding amount was USD 47,788, equivalent to TZS 110,418,110/=

Further, he alleges that the eviction and attachment were conducted without issuing notice to the plaintiff.

This triggered the plaintiff to seek relief from this Court. He now prays for Judgment and Decree against the defendants for the following reliefs;

- i. A declaration that the eviction of the plaintiff and attachment of Hospital apparatuses, records, equipment, and machinery was null and void ab initio for being unlawfully and maliciously conducted.*
- ii. Issuance of an order for the return of all attached apparatuses, records, equipment, and machinery worth TZS 897,617,125/=, alternatively;*

- iii. *Payment of actual cost value of the attached properties if at all the defendants shall fail to heed prayer (ii) above.*
- iv. *An order for compensation of TZS 200,000,000/= being the amount that the plaintiff is likely to incur for termination of employment of its employees as a result of unjustifiable disturbances caused by the defendants, which led to the stoppage of the provision of hospital services.*
- v. *An order for payment of TZS. 25,000,000/= per every day being a mesne profit for loss of proper use of the disputed property unjustly with effect from 05th March 2022.*
- vi. *Payment of TZS. 25,000,000/= for the destruction of the ICT System for Data Transmission.*
- vii. *An order for payment of interests of the decretal amount at the rate of 15% per annum.*
- viii. *An order for payment of interests at the court's rate of 7% per annum.*
- ix. *Payment of punitive damages to the minimum amount of TZS. 100,000,000/= to prevent the occurrence of similar acts in the future.*

- x. An order for payment of general damage to be assessed by this Honorable court.*
- xi. Defendants be condemned to pay the costs of the suit.*
- xii. Any other relief this court may deem just and equitable to grant.*

In their joint written statements of defence, the defendants vehemently disputed the claim. They allege that the defendants legally exercised their right and duty in evicting the Plaintiff. Further, there was no sale, destruction, or tempering whatsoever with the records, infrastructures, machines, equipment, and any other accessory connected or associated with the operation of the hospital's day-to-day routines as pleaded by the plaintiff.

Also, the 1st defendant alleges that the plaintiff had no lease agreement after failing to renew it upon its expiry. Therefore, he had occupied the premises without a valid lease agreement. Regarding financial constraint, the 1st defendant alleges that it was a regular song sung by the plaintiff for many years in an effort to escape paying the rent. In the end, he prayed for this Court to dismiss the Plaintiff's claims, which he termed as sympathy-oriented, for it is baseless, frivolous, and vexatious

aiming at depriving the 1st Defendant's realization of rights accruing therefrom.

Moreover, the 1st defendant preferred a counter-claim where he alleges that the claimant (1st defendant) claims against the respondent (plaintiff) the sum of USD 50,309.83, equivalent to TZS. 117,018,734 arising from the respondent's willful neglect of paying rent on the leased house. Therefore, the respondent had been illegally occupying the premises and doing business without paying rent. Thus, the claimant prays for judgment and decree against the respondent as follows: -

- i) This Honourable court will be pleased to order the Respondent to pay USD 50,309.83 for specific damages.*
- ii) This honorable court be pleased to order the sum of TZS 70,000,000, being general damages caused by the respondent for mental distress, loss of profit from not paying rent, and costs of evicting the Respondent.*
- iii) The Respondent be declared a trespasser in the suit premise for failure to pay rent.*
- iv) General damages to be determined by the court.*
- v) Costs of the suit.*

vi) Any other relief (s) this Honorable court deems fit and just to grant.

Following the above controversies, as shown in the main suit and the counter-claim put the parties at issue; therefore, on the first day of the hearing, the following issues were framed and were accordingly recorded by this court for the determination of this suit, namely:

- i. Whether the lease agreement between the plaintiff and 1st defendant was lawfully terminated.*
- ii. Whether defendants are entitled to reliefs as per the counter claim*
- iii. To what relief (s) is each party entitled.*

At the hearing, the plaintiff was represented by Mr. Bernard Mpwaga, learned Advocate, while the defendants were represented by Mr. Said Aziz and Haji Mlosi, both learned advocates.

In his testimony **(PW1), Sama Augustine Msoka**, the Chief Executive Officer and one of the plaintiff's Directors, testified that the Mikumi Hospital is a registered Hospital located at a rented building at House No. 112 Mbweni Street-Magomeni Mikumi. They started to rent that

building in July 2007, succeeding Doctor Hashim, who had a dispensary. When they occupied the building, Dr. Hashim had six months left in his contract, which he had already paid the rent.

He further testified that later they entered into a contract with the Land Lord one Costa Shinganya, but the one who signed the agreement on his behalf was Bilkis Shinganya. The contract commenced on January 2008 for a rent of USD 1500 per month, payable after every six months. He said that at that time, 1 USD was equivalent to TZS 1250. Further, in case of anything, he was told to communicate with Bilkis, Lucy George, Flora George, or Nesto.

PW1 told this Court that the dispute started in 2017 after the plaintiff failed to pay the rent after every six months as per the contract due to economic difficulties. Instead, they began to pay a one-month rent which the Land Lord received. Later, because of financial difficulties, they failed even to pay the amount of one month's rent, and instead, they started to pay part of the month's rent. Therefore, the outstanding rent arrears was equal to the rent of 30 months. They continued to occupy the building after informing the owner of the house in writing the financial difficulties they were facing.

Further, he testified that on 5 March 2022, he was at home and sick he was phoned by the Hospital staff, who informed him that Costa and Bilkis, with other people, were at the Hospital to close it, but they had no notice to that effect. After that information, he phoned the Acting CEO to inform the matter and directed him to report the issue to the Police. When the Acting CEO went to the Hospital, he found the Hospital gate was broken, and everything was taken/ removed from the 30 rooms of the Hospital, including the theater, labor room, laboratory, and all patients wards, without any eviction notice from the owners. Further, during the eviction process, there was no representation from the Hospital.

Later, he was informed by Bilkis that Rimina Auction Mart took the Hospital properties; therefore, he should contact them.

In further testimony, he said he contacted Mtaa Executive Office (MEO) one Alex Mwisongo for help and to report the matter to the police station. Still, because it was Saturday, there was no help.

On Monday, 7th March 2022, the Police Officers visited the scene. Further, on that day, the Hospital CEO and the MEO were shown the eviction notice at the Police station. But the plaintiff was never served with

that notice, and the MEO did not know anything regarding that notice. The notice indicated that the Street Chairman and OCS Magomeni Police Station endorsed it.

That notice indicated that the owner of the house, Costa Shinganya, via the District Commissioner, directed Rimina Auction Mart to evict Mikumi Hospital from the premises. To that effect, PW1 tendered;

- i. Notice from Remina Auction Mart dated 14th February 2022 as Exhibit P1

PW1 also testified that the Mikumi Hospital was registered as Regional Referral Level. He tendered the following to that effect;

- i. Certificates of registration as private Health Facilities No. 071353 dated 15 June 2015 as exhibit P2.

When they were evicted, the Hospital operated at the Regional Referral Level, attending and receiving referred patients from District Hospitals. After the eviction, there was an outcry from the Hospital staff. The employment of 25 full-time staff was affected. On 14/03/2022, the Board met, and a resolution to institute the suit was passed. He tendered the following to that effect;

- i. Board Resolution of Mikumi Hospital Dar Ltd as Exhibit P3.

Further, after eviction, they took stock of the properties, and the Acting CEO prepared the list of the lost properties. He tendered the following to that effect

- i. List (inventory of fixed assets and medicine as of 5/02/2022) as exhibit P4.

Before the eviction, there were communication between the plaintiff and the 1st defendant dated 10/10/2019, 2/7/2021, 5/11/2021, 19/11/2021, and 7/2/2022 communication between their advocates on various dates. He tendered the following to that effect:

- i. Correspondences dated 10/10/2019, 2/7/2021, 5/11/2021, 19/11/2021 and 7/2/2022 as exhibit P5.

After the correspondence of 07/02/2022, Bilkis and Lucy reported the issue of unpaid rent arrears to the MEO.

PW1 further testified that during the tenancy, the rent was received by Bilkis, and last was on 1 February 2022, and it was TZS, 1,000,000/= . Therefore, the lease contract's termination was improper because they

were in good communication for about 16-17 years in a relationship that was more than a Land Lord and tenant, and they were receiving rent.

He concluded by testifying that the properties taken from the Hospital were at least seven times in value compared to the unpaid rent. He was not a trespasser because the 1st defendant continued to receive rent though it was true that unpaid rent was USD 50,309.83.

Therefore, he prayed for compensation for the staff who claimed their terminal benefits, compensation for the distraction of ICT system, CCTV and Intercom system, compensation for what happened and costs and any relief the court deemed fit to grant.

The second plaintiff witness was **Alex Jairos Mwisongo (PW2)**, the Mtaa Executive Officer (MEO) of Makumbusho Street Mzimuni Ward since January 2022. He testified that on 07/02/2022, he was copied a letter by Mikumi Hospital addressed to the Land Lord regarding the unpaid rent. W Within that week, the hospital was invaded, and the equipment were removed and taken from the patient wards and other offices.

He further testified that upon receiving that information from the owner of the Hospital, as a justice of the peace, he visited the scene. He

found the doors were broken, and the hospital equipments were removed. Also, the premises' owners were present, and when he asked them if they had the court order, they replied that the documents were with their advocate. Because at the scene, there were no police officers but only bouncers, he advised the plaintiff to report the matter to Magomeni Police Station, where they were advised to report the issue to the RPC at Oysterbay Police Station. Then the RPC directed them to the OCD at Mburahati Police Station. At Mburahati, they were shown the documents, but in his view, they were improper, and as the MEO, he was not served with any notification of eviction, which was unprocedural.

In the defence case, **Bilkis George Sherali (DW1)** testified that; as a family, they own house No. 112, located at Mbweni Street -Magomeni Mikumi Area. The house was for commercial purposes, and Mikumi Hospital rented the house. Initially, Mikumi Hospital was owned by Dr. Hashim, the founder of the Hospital, but later the ownership was transferred to Mr. Msoka, who continued to rent. In 2008 they entered into a two years lease contract for the rent of USD 1500 per month, and rent be payable after every six months. To that effect, DW1 tendered;

- i. Lease Agreement dated 7 October 2008 as D1.

DW1 further testified that at first, the plaintiff was paying rent as agreed, but in 2017 he started to delay paying rent and was paying in a small amount. In 2019, they requested the plaintiff in writing to pay the debt arising from unpaid rent or to vacate the premises. PW1 promised to pay the debt as he wanted to dispose of one of his houses, and he was waiting to be paid by NHIF. After that, he paid TZS 20 million. They sent the plaintiff another notice (Exhibit P5) and referred the matter to the local government. Then in 2021, the MEO one Abdul convened a meeting whereby at that meeting, they told the plaintiff that what they wanted was the payment of the debt. Further, they offered the plaintiff to come up with a proposal for payment. The plaintiff prepared a proposal and committed himself to pay each month the agreed monthly rent and, in addition, to pay another amount for the payment of the debt. They refused that proposal and requested the plaintiff to pay half of the debt within three days and to vacate the premises while continuing to pay the remaining half. To that effect, DW1 tendered;

- i. A document titled Deni la Pango la nyumba USD 47,288.27 (TZS 110,418,110) dated 1/1/2022 as Exhibit D2.

The plaintiff neither responded to the notice nor paid half of the debt and did not vacate from the premises.

DW1 testified that the plaintiff stopped communicating, and PW1 told them he was sick. Then they decided to engage Rimina Auction Mart to evict the plaintiff from the house, and Rimina evicted the plaintiff.

She testified that she prayed for the case to be dismissed and the plaintiff to be ordered to pay the debt. Further, the plaintiff was a trespasser because they did not renew the contract after it expired, nor did he not pay the rent. When they evicted the plaintiff, they had no contract with him.

The last defence witness is **Abdallah Bakari Nabahadi (DW2)**, the Director of Rimina Auction Mart since 2010, who testified that Costa and Bilkis requested him to evict the tenant, Mikumi Hospital, from their

house for a failure to pay rent and the amount was more than TZS. 100 million. He was appointed by a letter dated 28/4/2020.

He further testified that after that appointment, he issued a 14 days notice to Mikumi Hospital. However, the exercise did not proceed because there were negotiations between the landlord and the tenant.

In 2022, the landlord directed him to proceed with eviction after the negotiation failed; therefore, he issued another 14 days' notice to the plaintiff because the earlier notice had already expired.

Then he went to WEO, who had an official stamp and served the eviction notice. By letter, he informed the Kinondoni Regional Police Commander, the OCS and OCD of Magomeni Police Station, the District Commissioner for Kinondoni, and the Director of Kinondoni Municipality. To that effect, DW2 tendered;

- i. The notice dated 14th February 2022 and a letter dated 02/03/2022 from Rimina Auction Mart addressed to the District Commissioner of Kinondoni of Kinondoni, RPC of Kinondoni, Director Kinondoni Municipal Council and copied to the

Chief Medical Doctor of Kinondoni Municipal
Council as Exhibit D3

When he went to Mikumi Hospital, he was told the owner was sick. Then he handed over the notice to his two children after he was shown by one of the staff, and those children promised to send the same to the owner.

He further testified that he also communicated with a Hospital located at Tabata in case they found a patient during the eviction exercise so that they could transfer them to that Hospital.

After the lapse of 14 days, he informed all people he had notified earlier and proceeded with eviction. During the exercise, the MEO and "mjumbe," and police officers were present. The hospital staff and the owner's children, who received the notice earlier, were also on the plaintiff's side.

After the eviction exercise, he took all the properties to his yard for safekeeping except patient files after they were told by one of the doctors that they should not take the same. Also, they did not take the computers and machines dealing with blood issues as they were told

the same belonged to the Government and not the Mikumi Hospital. Further, they recorded every property they took from the hospital. To this, he tendered:

- i. Document titled "Vitu vilivyotoka Mikumi Hospital" as Exhibit D4.

After the closure of the defence case, the parties filed their final submission, and I commend both learned advocates for the job well done in narrating the issues in the submissions.

Further, having summarized and considered the evidence brought before this court, the following are the deliberations of this Court in the disposal.

Starting with the 1st issue as to whether the lease agreement between the plaintiff and 1st defendant was lawfully terminated, the entry points are two sub-issues;

One, whether there was a lease agreement between the plaintiff and the 1st defendant and what were the terms.

Two, whether there was a breach of that lease agreement.

According to the online Law Dictionary found at *Legal Dictionary / Law.com*, the term lease is defined as

"a written agreement in which the owner of property (either real estate or some object like an automobile) allows use of the property for a specified period of time (term) for specific periodic payments (rent), and other terms and conditions."

In this matter, the lease agreement between the plaintiff and the 1st first defendant was entered on 7 October 2008 (Exhibit D1). The conditions contained in the agreement were as follows;

- i. The term was two years, starting from 1 September 2008 to 1 September 2010.
- ii. Monthly rent of USD 1500.
- iii. Right to request for renewal of lease after giving a prior notice of 3 months was accorded to both parties. But the Land Lord was vested with the power to grant renewal.

Further to that, both PW1 and DW1 testified that they agreed the rent be payable after every six months.

That lease agreement ended on 1 September 2010, and from the evidence adduced by both parties, nothing was revealed if, after the expiration of the lease agreement, there was a renewal in writing.

In his evidence (PW1) stated that the plaintiff continued to occupy the premises despite the expiration of the lease agreement. On her side DW1 also confirmed that issue by testifying that the plaintiff continued to occupy the premises by paying rent as agreed.

The problem started in 2017 when the plaintiff started delaying paying the rent and paying "*in-piece meals*," contrary to the agreement. After the situation arose, there was no evidence on record that the lease agreement terms were negotiated and altered; therefore, the lease agreement terms remained intact.

From the evidence and discussion above, it means that by failing to renew the lease agreement in writing, the parties created a kind of lease agreement known as a **periodic lease/tenancy**.

The instructive law for such kind of lease agreements is Section 82 of the Land Act, Cap 113 R: E 2019 ["the Land Act"].

The section reads;

"82. (1) Where a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, **all the obligations of the lessee under the lease continue in force** until such time as the lessee ceases to be in possession of the land.

(2) A lessor who **accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired** is not, by reason only of that fact, to be taken as having given **consent to the lessee remaining in possession** of the land or as having given upon any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease but where the lessor continues for two months to accept rent from a tenant who remains in possession after the termination of the lease, **a periodic lease from month to month shall be deemed to have come into force**". [Emphasis provided]

The following can be gleaned from the above provision of law; **one**, there must be an acceptance of rent by the lessor. That, even after the expiration of the period of the lease, if a lessor accepts the rent, then it means a periodic lease is created. **Two**, the lessee must fulfill all the obligations as per the original lease agreement.

The question is whether the plaintiff and the 1st defendant fulfilled their obligations.

As shown earlier, according to DW1, in which her evidence stands uncontroverted, since 2017, the plaintiff was delaying to pay rent, and when he paid, it was in piece meals, i.e., below the agreed rent, which was contrary to the contract. It accumulated and reached the amount of USD 50,309, which was equal to 33 months. Therefore, there was a breach of the tenancy agreement by the plaintiff for failure to pay the rent as agreed in the tenancy agreement, which clearly states the terms of the agreement, the agreed rent, and the mode of payment. This was not denied by PW1 himself when he testified that in 2017 the plaintiff failed to pay rent as agreed because of the economic crisis.

Further, exhibit P5 (collectively), which are the commitment letters and requests for extension of time written by the plaintiff for payment of the outstanding amount, proves that the plaintiff breached the tenancy agreement for failure to pay the rent as agreed and also showed the plaintiff's admission that they are indebted to the 1st defendant.

Therefore, section 82 (1) of the Land Act requires that even in the absence of the renewed contract, the plaintiff was still obliged to pay rent according to terms and conditions.

In my further analysis, having gone through the lease agreement [Exh.D1] between the parties, it does not contain any clause on the way forward regarding the breach of contract by defaulting to pay rent. Exhibit D1 is silent.

From the above discussion, I am not persuaded that the plaintiff was unlawfully evicted from the premises, and my reasons are as follows;

One, the plaintiff's act of failing to pay rent as per the lease agreement amounted to a breach of contract. Following that breach of contract, it means he occupied the premises unlawfully. Therefore, the unlawful continuation of the occupation of the premises means that the plaintiff was a trespasser. The evidence of PW1 that on February 2022, the plaintiff paid TZS 1,000,000/= is of no weight. The question is, what was that? Was it the payment to reduce the outstanding debt or the rent of six months as agreed in the contract? That TZS 1,000,000/= was paid when he was supposed to pay the outstanding debt of USD 50,309.

Therefore, the plaintiff was not a lawful tenant as he had breached the lease agreement and became the trespasser; consequently, he was not eligible to be issued a notice of eviction. The Court of Appeal in **Princess**

Nadia (1998) Ltd vs. Remency Shikusiry Tarimo and two others,

Civil Appeal No. 242 of 2018 (Tanzlii), held that;

"Since it was proved that the appellant was a trespasser, she had no right to benefit from her wrongful act. At worst, the appellant assumed the risk arising from her unlawful occupation in the premises. Just as she was not entitled to any notice before eviction".

Two, the plaintiff was notified to terminate the lease and vacate the premises for failure to pay rent. Section 79 (4) of the Land Act provides discretion for any party in a periodic tenancy for a lease created under section 82 (2) of the same Act to terminate it by giving the other party notice whose length must be not less than the period of tenancy which is one month.

In this suit, according to the evidence of DW1, on 1 January 2022, the plaintiff was notified of the termination of the lease and to vacate the premises for a failure to pay rent accrued to the tune of USD 50,309.83 [Exhibit D2]. For ease of reference, I quote;

1. Mlipo deni nusu kwa mkupuo, kisha litakalobaki lilipwe kwa awamu.

2. Mtoke katika pango ili kuepusha malimbikizo kisha muendeleo kulipa deni mkiwa nje ya pango kwa utaratibu tutakao kubaliana.

Before that, on 2 July 2021, the plaintiff was notified to vacate the premises for failure to pay rent. At that time, it was USD 44,309 (Exhibit P5 collectively). According to DW1, despite those notifications, the plaintiff did neither pay the outstanding debt and the rent according to the lease agreement nor vacate the premises.

Section 105 (c) of the Land Act provides that;

"In the event, the breach is not remedied the lease shall terminate on expiry of thirty days from the service of the date of service of the notice."

As shown above, Exhibit D1 was served to the plaintiff on 1 January 2022; therefore, 30 days expired on 31 January 2022. After that 30-day expiration, the plaintiff neither paid the unpaid rent nor vacated the premises.

From the above, it is crystal clear that;

One, the plaintiff was notified of the termination of the lease contract and notice of vacant possession.

Two, the plaintiff failed to remedy the breach of the lease within 30 days which expired on 31 January 2022. Therefore, the lease agreement was deemed terminated on 1 February 2022.

Three, therefore, from 1 February 2022, the plaintiff unlawfully occupied the premises.

Deliberating further, in his evidence, PW1 stated that they were evicted without prior notice. His evidence was corroborated by the evidence of PW2, the Mtaa Executive Officer (MEO), who testified that he was not served with any notice of eviction. On the other hand, DW2, the auctioneer who evicted the plaintiff from the premises, testified that he served the 14 days' notice to the plaintiff through his two children, whom he found at the premises. It was after he was informed that PW1 was sick. He also served the notice to Ward Executive Officer, who had the official stamp, the OCS, and OCD Magomeni Police Station (Exhibit D3 collectively). Again, after the expiration of 14 days, he informed the persons he served the notice earlier together with the District Commissioner of Kinondoni of Kinondoni, RPC of Kinondoni, Director Kinondoni Municipal Council and copied to the Chief Medical Doctor of Kinondoni Municipal Council (Exhibit D3 collectively)

Having gone through the above pieces of evidence from both sides, the auctioneer rightly evicted the plaintiff after serving the notice to the plaintiff.

Further, as I alluded earlier that the plaintiff occupied the premises unlawfully because the tenancy agreement had already expired, therefore, he was a trespasser.

Therefore, flowing from above, in respect of the first issue, I hold that the eviction of the plaintiff was lawful.

The 2nd issue on defendants being entitled to reliefs as per the counter-claim should not detain me long because the plaintiff did not dispute the central claim in the counter-claim.

In para 4 of the counter-claim, the claimant (1st defendant in the main suit) claims USD 50,309.83 (TZS 117,018,734/=) being unpaid rent.

In her evidence, the DW1 testified that the plaintiff (defendant to the counter-claim since 2017 started delaying paying rent, and when he paid, he was paying below the agreed rent. According to exhibit D2, which she tendered, the unpaid rent accrued up to UDS 50,309.83. This evidence stands uncontroverted.

In his evidence, PW1 admitted that the plaintiff did not pay the rent arrears equal to the rent of 30 months, which he failed to pay. When cross-examined, he acknowledged and stated that the unpaid rent was USD 50,309.83, equal to the rent for 30 months.

From the above admission, the 2nd issue is decided in the affirmative that the 1st defendant (claimant to counter-claim) is entitled to the outstanding unpaid rent.

The last issue is on reliefs sought by the plaintiff as enumerated in his pleadings. For clarity, I will deal with each relief claimed. In the first relief, the plaintiff prayed;

- i. A declaration that the eviction of the plaintiff and attachment of Hospital apparatuses, records, equipment's, and machinery was null and void ab initio for being unlawfully and maliciously conducted.

Since I have found, as I elaborate above, that the plaintiff was lawfully evicted from the premises, this relief is declined.

For the 2nd to 11th prayers i.e.

- ii. Issuance of an order for the return of all attached apparatuses, records, equipment's, machineries worth TZS 897,617,125/=, alternatively;
- iii. Payment of actual cost value of the attached properties if at all the defendants shall fail to heed prayer (ii) above.
- iv. An order for compensation of TZS 200,000,000/= being the amount that the plaintiff is likely to incur for termination of employment of its employees as a result of unjustifiable disturbances caused by the defendants which led to stoppage of provision of hospital services.
- v. An order for payment of TZS. 25,000,000/= per every day being mesne profit for loss of proper use of the disputed property unjustly with effect from 05th March, 2022.
- vi. Payment of TZS. 25,000,000/= for destruction of ICT System for Data Transmission.
- vii. An order for payment of interests of the decretal amount at the rate of 15% per annum.
- viii. An order for payment of interests at the court's rate of 7% per annum.

- ix. Payment of punitive damages to the tune of the minimum amount of TZS. 100,000,000/= to prevent the occurrence of similar acts in the future.
- x. An order for payment of general damage to be assessed by this Honorable court.
- xi. Defendants be condemned to pay the costs of the suit.
- xii. Any other relief this court may deem just and equitable to grant

The entry point as far as these reliefs are concerned is the cited case of **Princess Nadia (Supra)**, where it was held that;

*"Since it was proved that the appellant was a trespasser, she had no right to benefit from her wrongful act. At worst, the appellant assumed the risk arising from her unlawful occupation in the premises. Just as she was not entitled to any notice before eviction, **she had no right to claim any compensation from the forceful eviction**". [Emphasis provided]*

Therefore, since the forceful eviction of the plaintiff was lawful, he does not deserve it, and he has no right to be granted the prayers listed in the 2nd -11th reliefs claimed. Consequently, I decline to grant the prayers.

In the final analysis, the main suit is devoid of merits and is hereby dismissed.

On the side of the claimant in the counter-claim, the 1st relief claimed is ;

- i. This Honorable court will be pleased to order the Respondent to pay USD 50,309.83 for specific damages.

This resulted from the outstanding unpaid rent. Since I have already held that the plaintiff (defendant in the counter-claim) is owed USD 50,309.83, being unpaid rent for the period equal to the rent of 30 months. I grant this relief ordering the defendant in the counter-claim to pay the claimant a total of USD 50,309.83 being unpaid rent (specific damage)

For the 2nd and 4th reliefs

- ii. This honorable court be pleased to order the sum of TZS 70,000,000, which is general damages caused by the respondent for mental distress, loss of profit from not paying rent, and costs of evicting the Respondent.
- iii.
- iv. General damages to be determined by the court.

Unfortunately, the pleadings do not establish the damages suffered by the claimant, and the pleadings do not even mention why the claimant is requesting such damages. Therefore, the prayer of damages is declined.

For the 3rd reliefs prayed;

That the Respondent be declared a trespasser in the suit premise for failure to pay rent.

This one should be granted because, as alluded to earlier, the defendant to counter-claim was found to be a trespasser after he occupied the premises unlawfully after the lease agreement was terminated. Therefore, the defendant to the counter claimed it is hereby declared that he was a trespasser from the period the periodic lease was terminated.

In conclusion, the judgment and decree are entered in as follows;

- A. In the main suit, the suit is dismissed for want of merits.
- B. In the Counter-claim, the judgment and decree entered in favor of the claimant as follows.
 - i. The claimant be paid a total of USD 50,309.83 being unpaid rent (specific damage) by the defendant to the counter-claim.

- ii. The defendant to counter-claim is declared a trespasser by occupying the premises unlawfully after the lease agreement was terminated
- iii. Claimant to have his costs from the defendant to the counter-claim.

It is so ordered.

