

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND CASE NO. 110 OF 2021**

**ENTERTAINMENT MASTERS LIMITED ..... PLAINTIFF**

**VERSUS**

**SERAFINA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GREENLIGHT AUCTION MART ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

*Date of Order: 10/3/2023*

*Date of Judgment: 29/3/2023*

**A. MSAFIRI, J.**

The plaintiff Entertainment Masters has lodged this suit against the defendants namely Serafina Limited (1<sup>st</sup> defendant), and Greenlight Auction Mart (2<sup>nd</sup> defendant).

The factual claims constituting the plaintiffs case are pleaded in the Plaint. It is pleaded that the plaintiff and the 1<sup>st</sup> defendant entered into lease agreement on 03/3/2018, starting from 01/3/2018 which was to end on 28/2/2023. It was a five (5) year lease contract. It was agreed that the tenant (plaintiff) was to pay rent amounting to USD 3000 per month, and that the said rent will be paid to the 1<sup>st</sup> defendant on a half yearly basis in advance in a lump of six months' rent. It was stated that the plaintiff have been paying rent on time and without any inconveniences. And that by March

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2021 the plaintiff has already paid a total of USD 67,000 and hence he had no any outstanding rental arrears.

The plaintiff also averred that she has made renovations to the suit premises upon which she had injected a total of TZS. 500,000,000/= for the said renovations.

The plaintiff claims that on 21/9/2020, without any justification, the 1<sup>st</sup> defendant issued a Notice of termination of lease agreement to the plaintiff. That, on 28/01/2021, the 1<sup>st</sup> defendant instructed the 2<sup>nd</sup> defendant to forcefully evict the plaintiff and her tenants from the suit property and subsequently destroyed plaintiff's properties including stealing some of the items/properties and some of the items are being held at unknown place by the 2<sup>nd</sup> defendant until the date of filing this suit.

The plaintiff prays for judgment and decree against the defendants as follows;

- (a) A declaration that the 1<sup>st</sup> defendant has breached the terms of the lease agreement.
- (b) A declaration that the eviction made against the plaintiff by the 1<sup>st</sup> and 2<sup>nd</sup> defendants was illegal since the plaintiff had no rental arrears towards the 1<sup>st</sup> defendant.
- (c) An order for the 1<sup>st</sup> and 2<sup>nd</sup> defendants' jointly and severally to pay TZS 2,000,000,000/= being compensation for the properties/items stolen and destroyed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants during forceful and illegal eviction. *Alle*

- (d) An order for the payment of TZS 450,000,000/= for breach of Lease Agreement.
- (e) Payment of TZS 200,000,000/= as general damages.
- (f) Interest at Court's rate on the decretal sum from the date of judgment till full payment of decretal sum.
- (g) Costs of the suit be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- (h) Any other relief (s) and or order (s) that this Honourable Court may deem fit and just to grant.

The defendants filed their Amended Joint Written Statement of Defence (WSD) and vehemently denied each and every claim of the plaintiff. They stated that the plaintiff defaulted to comply with the payment terms of lease agreement and to date, the plaintiff has not paid the 1<sup>st</sup> defendant rental charges from September 2019 to February 2021. They added that the plaintiff has also not paid electricity bills currently totaling to TZS 24,274,148.75/=

The defendants averred that the issue of Notices of termination and eviction was justified since the plaintiff defaulted to honour the terms of lease agreement, and that the eviction of the plaintiff by the 2<sup>nd</sup> defendant was lawful and the procedure for levying distress for rent was properly followed.


The defendants prayed for the dismissal of the suit in its entirety, costs of suit and other reliefs as deemed fit by this Court.

The 1<sup>st</sup> defendant as plaintiff also filed a counterclaim against the plaintiff. In the counterclaim, the plaintiff was the 1<sup>st</sup> defendant and one Jean Claude Ciza, the Director of plaintiff in the main suit was the 2<sup>nd</sup> defendant.

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In the counterclaim, the 1<sup>st</sup> defendant (as plaintiff) claims a breach of lease agreement by the plaintiff (as 1<sup>st</sup> defendant) and Jean Claude Ciza (as 2<sup>nd</sup> defendant) for failure to pay rental arrears and subleasing the suit premises without prior consent of the 1<sup>st</sup> defendant. That, the acts of the plaintiff and her Director of dishonoring the lease agreement has caused injury to the plaintiff's business, loss of income and general sufferance.

The plaintiff in the counterclaim prays for judgment and decree against the 1<sup>st</sup> defendant and her Director jointly and severally as hereunder;

- a) Declaratory order that there exists a lawful binding contract between the parties herein.
- b) Declaratory order that the defendants have breached the lease agreement in respect of Plot No. 39 Mikocheni Light Industrial Area in Kinondoni Municipal Council comprised under Certificate of Title No. 24578.
- c) That this Honorable Court to lift the Corporate Veil to the 2<sup>nd</sup> defendant.
- d) Payment of USD 54,000 payable by the defendants to the plaintiff for the outstanding rental arrears.
- e) That this Honourable Court to order the defendants to pay TANESCO bills amounting to TZS 24,274,148.75/=
- f) That this Honourable Court order the defendants to pay an amount of TZS 40,000,000/= for compensation of breach of contract.
- g) Payment of general damages.
- h) Payment of storage charges. 

- i) Payment of commercial interest of 21% from the date of breach until the date of judgment.
- j) Payment of interest at Court's rate at 12% from the date of judgment until full satisfaction of the judgment.
- k) Costs of this suit.
- l) Any other relief (s) deem just to grant by this Honourable Court.

The counterclaim was tried along with the main suit. Before the trial, the following issues were framed and agreed upon;

1. Whether there was a lease agreement between the plaintiff and the 1<sup>st</sup> defendant.
2. Whether there was a breach of lease agreement by any party to the said agreement.
3. Whether the eviction of the plaintiff by the 1<sup>st</sup> defendant from the suit premises was lawful.
4. To what reliefs are parties entitled to.

At the trial, the plaintiff was represented by Mr. Nehemia Nkoko, learned advocate while the defendants were represented first by Mr. Malik Juma Seif, learned advocate and later by Mr. Shehzada Walli, learned advocate.

Beginning with the first issue on whether there was a lease agreement between the plaintiff and the 1<sup>st</sup> defendant; it is clear that there is no dispute from each party that there was a lease agreement between them. However, each party claim that the opponent party has breached that lease agreement. The plaintiff has claimed so in his Plaint, by which the 1<sup>st</sup> defendant has vehemently denied and filed a counterclaim, claiming that it

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was the plaintiff and her Director Jean Claude Ciza (who are the 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively in the counterclaim), who has breached the terms of lease agreement by their default on rent payments.

The fact of existence of lease agreement between the said parties was even agreed by both counsels for the parties in their final submissions filed in Court, that indeed there was a lease agreement between the plaintiff and the 1<sup>st</sup> defendant. Hence, the first issue is answered in the affirmative.

The second issue is whether there was a breach of lease agreement by any party to the said agreement. As observed earlier both the plaintiff and 1<sup>st</sup> defendant claims for breach of lease agreement.

Starting with the evidence by the plaintiff to prove her claims, she brought a total of two witnesses. PW1 was Jean Claude Antony Ciza. He testified that he entered into a lease contract as a Director of Entertainment Masters Ltd. The contract was between him and Mr. Muslim Jaffer, the Director of Serafina Limited (herein the 1<sup>st</sup> defendant). That the lease premises (suit property) is located at Mikocheni Industrial Area, measured at two (2) size acres and it was for business purpose.

PW1 stated further that he met with the Director of 1<sup>st</sup> defendant in November 2017, and the said Director agreed to lease the suit property to plaintiff. That on that first meeting, PW1 paid Muslim Jaffer USD 15,000. They agreed that the plaintiff should renovate the lease premises because it was in bad condition, and inhabitable and that Muslim Jaffer gave approval for renovations of the suit property. PW1 stated that he made assessment of the suit property and found that the area needs renovations worth TZS.

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450,000,000/=. That the renovations included the overhauling of the whole building, putting tiles, colouring, installing toilets, etc.

PW1 stated further that in December 2017, he again paid USD 3000, totaling amount of USD 18,000. That the period of December 2017 to March 2018 was period for renovations, and the lease agreement was signed by both parties i.e. the plaintiff and 1<sup>st</sup> defendant in March 2018.

PW1 went on to explain the terms of the lease agreement to be that; The rent was USD 3000 per month, to be paid by six months (6) lump sum; The duration of lease was five (5) years; After two years the landlord and tenant may agree whether to renew the rent according to the business appreciation, but the raise of rent not to be more that 7.5% of USD 3000; That any investment by the tenant into lease premises will be his obligation not the landlord's; That any investment by the tenant will be his property if the tenancy comes to an end.

PW1 proceed to tender a photocopy of a lease agreement. The reason given was that the original agreement was lost or taken by the defendants during forceful eviction. The Court admitted it as Exhibit P1. He stated further that, the plaintiff as tenant had to pay USD 3000 as rent charge per month. That they paid USD 112,000 by cash and were issued with petty cash vouchers.

PW1 said that, personally, he paid USD 18,000 but later the payments were done by his accountant. He tendered the said petty cash vouchers which were admitted as Exhibit P2 collectively. He said that Exhibit P2 shows the payments of the lease rent. That, the petty cash vouchers proves that the plaintiff paid USD 112,000.

*Adle.*

He analysed that on 02/7/2020 they (plaintiff) paid TZS. 1,500,000 as lease rent. On 13/9/2018, the plaintiff issued a cheque of ABC Bank worth USD 7,200. On 03/9/2018, they paid Serafina Ltd (1<sup>st</sup> defendant) a cheque of ABC Bank worth USD 9000. On 02/3/2019, they paid by cash USD 18,000 paid by PW1 to Muslim Jaffer. On 23/3/2018, USD 9000 were paid by cash by Emmanuel Nyanda, Chief Accountant of the plaintiff.

On 04/11/2013, lease rent of USD 15,000 was paid by Justina Ciza, received by one S.A Rich. On 16/12/2017, USD 3000 was paid in cash as lease rent and received by S.A Rich. On 03/7/2019, lease rent of USD 4000 was paid to Serafina Ltd, paid by Emmanuel Nyanda.

PW1 stated that the leased premises was known as Century Entertainment, even the electricity bills were issued in the name of Century Entertainment. He said that Muslim Jaffer is the owner of Serafina Ltd (1<sup>st</sup> defendant), Colloseum Hotel and Century Entertainment.

PW1 said that when the plaintiff rented the suit premises, the building had been abandoned and unused for a long time. That they agreed with the landlord to renovate the area. And that the plaintiff made renovations worth TZS 450 Million, and that she almost rebuilt the suit premises.

PW1 stated that on 28/01/2021 at 4.00 a.m. the defendants invaded the suit premises, break in and forcefully evicted the plaintiff. That he, PW1 went at the premises but was stopped from entering by the security guards of the defendants. That, he reported the matter at the Police Oysterbay with Justina Ciza whereby one Raymond Balemwa and Jessica Mwamoto who invaded the suit premises were arrested, but they were later released. That

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until now, plaintiff has not recovered her properties which were stolen by the defendants during eviction.

PW1 named the properties which were taken/stolen at the suit premises to be one small generator, Music sound including speakers and microphones, etc. He said the value of properties taken by the defendants are worth Tanzania shillings Two (2) Billion.

He maintained that the defendants have breached the contract and their claims in counterclaim are not true. He said that by the time the plaintiff was evicted forcefully and unlawfully by the defendants, he had paid the rental amount and the tenancy period was not due.

PW2 was Justina Antony Ciza. She testified that she is one of the Directors of Entertainment Masters Ltd and also one of the shareholders. She said that they had entered a lease agreement to lease a suit property at Century Cinemax, Mwenge area, Dar es Salaam. That, they had a first agreement in 2017 where the plaintiff has to pay some amount of money so that the 1<sup>st</sup> defendant can hand the keys. That the initial period was from November to December 2017. The total amount paid was USD 18,000.

She almost reiterated the evidence of PW1 and added that the total of amount paid as per the petty cash vouchers ranges from 112,000 USD to 118,000 USD. She said that the Plaintiff shows the payment of USD 67,000 only because all documents are still in the custody of the defendants in the safe inside the suit premises. She prayed for the Court to believe and accept the evidence of payment of 112,000 USD and not 67,000 USD. That was the evidence of the witnesses for the plaintiff.

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The 1<sup>st</sup> defendant have claims that the plaintiff has breached the lease agreement for default in payment of rent while the plaintiff claims that the 1<sup>st</sup> defendant has breached the lease agreement by forceful evicting the plaintiff while the period of the lease was not due.

In order to know the terms of the lease agreement particularly on the rental payments, I had to read the lease agreement Exhibits P1 and D1 (D1 is the original lease agreement which was tendered by DW1). At clause 4 of the agreement, it shows that, the lease was for a period of five years (5) commencing from 01 March 2018 to 28 February 2023. The plaintiff claims that, she was forcefully evicted on 28/01/2021 before the tenancy term has expired.

Clause 5 of the said agreement states that, the tenant will pay the landlord USD 3000 per month. Clause 8 states that mode of payment will be in a lump sum of six (6) month's rent. Clause 9 of the agreement provides that should any rental remain unpaid for more than 60 days from the date stipulated, the landlord may terminate the lease unconditionally.

The pertinent question here is did the plaintiff proved that she had paid the rent as required per the lease agreement?

In determining this, I will be guided by the principle embodied in Section 110 of the Evidence Act, Cap.6 R.E 2022 that, whoever alleges must prove. Section 110 of the Evidence Act reads;

- i) *Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts he asserts must prove those facts exists.*

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

This principle was elaborated further by the Court of Appeal in the case of **Lawrence Magesa t/a Jopen Pharmacy vs Fatuma Omary & Another**, Civil Appeal No. 333 of 2019, CAT at DSM at page 14 (Unreported) where it was observed that;

*"It is trite law and indeed elementary that he who alleges has burden of proof as per section 110 of the Evidence Act. It is equally elementary that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his **and the said burden is not diluted on account of weakness of the opposite party's case.**" (Emphasis added)*

I am bound by the above position in determination of the suit at hand.

In the current matter, it is the plaintiff who has obligation to prove that she did not breach the agreement by defaulting in payment of rental fee. According to evidence of PW1, the plaintiff has paid a rent bill up to 28/01/2021 when she was forcefully evicted by the defendants.

The proof which this Court have of rent payment is Exhibit P2 collectively. It shows that on 02/7/2020 Serafina was paid TZS. 11,500,000/= payment for Maisha Club rent. It is not clear who paid the amount, but PW1 said it was the plaintiff who paid the said amount and it was for lease rent. On 13/09/2018, Serafina was paid USD 9,000. It is not clear whether Serafina refers to Serafina Limited, the 1<sup>st</sup> defendant. *Alle.*

The exhibit P2 shows further that on 11/6/2019, Serafina was paid USD 4000, and 20/6/2019, Serafina was paid USD. 4000. On 20/09/2019, payment for Serafina was USD 10,000 and on 19/08/2019, Serafina was paid USD 3600 by Entertainment Masters, and on 03/07/3019, Serafina was paid USD 4000.

I did not include the petty cash vouchers dated 16/12/2017, 01/8/2019, 02/12/2019, 22/10/2019, 02/03/2019 and the one dated 23/3/2018 for the reason that the cash vouchers does not indicate that the payee was Serafina Ltd. Some of the vouchers does not show the payee (the receiver of the money), example are the vouchers dated 02/3/2019, 23/3/2018, 02/12/2019 22/10/2019 and 01/08/2019. The petty cash voucher dated 04/11/2013 does not show the amount being paid. The Court cannot do the guess work and assume that the payments were for Serafina Ltd while the petty cash vouchers does not disclose that.

There are also some petty cash vouchers which has been stamped with the official stamp of Century Hotel Ltd, Dar es Salaam. The Court was told by PW1 and PW2 that, the owner of Serafina Ltd also owns Century Hotel. PW1 in re- examination explained that there is an official stamp of Century Hotel and not Serafina Ltd because Serafina Ltd and Century Hotel are sister companies. That was the end of plaintiff evidence.

DW1 was Muslim Jaffer. He stated that he is a Director and shareholder of Serafina Ltd. He admitted to have leased suit property to the plaintiff. He said that the lease agreement was for a period of five (5) years from March 2018 to February 2023. That the tenant (plaintiff) paid rent from the start of

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the lease term up to September 2019 when they stopped payment. That, the plaintiff paid rent for 18 months in total.

DW1 stated that whenever rental payment was done, an invoice was issued. That, there were three invoices issued for three months each as per clause 8 of the agreement which states that rent will be payable in a lump sum of six months. DW1 tendered the three invoices issued by Serafina Ltd to Entertainment Masters. They were admitted collectively in Court as Exhibit D2. The invoices shows that they are for the period of March-August 2018, Sept 2018- Feb 2019, and March 2019 – August 2019. Each was of payment for rent amounting to USD 18,000.

DW1 stated that after that, there was no any payment from the plaintiff. Here, the 1<sup>st</sup> defendant admits to have received rental payments from March 2018 when the lease contract began until August 2019. Hence, according to the evidence of DW1, the plaintiff has defaulted on rental payments for a period of September 2019 – February 2020, March 2020 – August 2020, September 2020- February 2021. The plaintiff was evicted on 28 January 2021.

Having gone through the whole documentary evidence produced by rival parties to the suit, it is my finding that the plaintiff has failed to prove to the balance of probability that she has paid the rental charges for the period after payment of March 2018 – August 2019.

The reasons for my findings are that; First, the petty cash vouchers Exhibit D2 shows that the payments were done within the undisputed period i.e. March 2018 – August 2019; Second, the payments claimed to be done by *Atls*.

the plaintiff did not comply with the mode of payment set under clause 8 of the lease agreement whereby the rent has to be paid on a half yearly basis and to be paid in US Dollars. Third, as said earlier, the petty cash vouchers are not clear on whether the payments were done to and received by Serafina Limited. The vouchers contain the official stamp of Century Hotel Ltd instead of the official stamp of Serafina Ltd which is clearly seen on the lease agreement Exhibits D1 and P1.

Why the petty cash vouchers have the official stamp of another company which is not part to the lease agreement? The Court was told that it was because Century Hotel Ltd is Sister Company to Serafina Ltd. I find this not convincing since DW1 told the Court that each company has its own operations and management.

In addition, as said before, the lease agreement bears official stamp of Serafina Limited and not Century Hotel Ltd so I don't see any reason why the petty cash vouchers was stamped with the official stamp of another company.

Even if I disregard this fact of official stamp and consider the petty cash vouchers to be valid/or proper, still some of the vouchers are not stamped, some does not show the payee, some are not even signed.

In order to clarify this, the Court went to the task of going through each of the documents admitted collectively as Exhibit P2 and which the plaintiff relies upon to prove to the Court that she had paid all the rental charges and disclaim the 1<sup>st</sup> defendant's claims.

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**First**, there is a petty cash voucher dated 02/7/2020. This shows the amount in Tanzania shillings. The amount is TZS 11,500,000. It shows that it is for Maisha Club rent (World Cinema). It has no any official stamp.

This voucher is not clear whether the payment was done by the plaintiff to the 1<sup>st</sup> defendant. So, the Court could not be ascertained whether it was rental payments from the plaintiff. The signatures on the said voucher does not help either.

**Second**, are the two cheques. These are clear that they are from the plaintiff and for the payment to Serafina Limited. However, the vouchers are dated 13/9/2018 and 03/09/2018 which are the dates which are not disputed.

**Third**, the two petty cash vouchers dates 02/3/2019, this one does not show who is paying who. The same is for the voucher dated 23/3/2018 which also does not show the payer and payee. The voucher is blank and it is not signed.

**Fourth**, the two vouchers dated 11/6/2019 and 20/6/2019 are within the undisputed period.

**Fifth**, the voucher dated 23/09/2019 does not disclose whether it was payment to Serafina Ltd from Entertainment Masters, so the Court cannot make presumption. The voucher dated 19/08/2019 is for payment for withholding tax for rent by Entertainment Masters Ltd. The payment was within undisputed period.

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**Sixth**, the two vouchers dated 02/12/2019 and 22/10/2019. They does not disclose the payer (giver) and the payee (receiver) and does not relate to the plaintiff and the 1<sup>st</sup> defendant.

**Seventh**, the voucher dated 04/11/2013 is not properly signed. Despite that, the period does not cover the lease period. Also, the voucher dated 01/8/2019, does not disclose the payer and payee and is not relating to the plaintiff and the 1<sup>st</sup> defendant.

**Eighth**, the voucher dated 16/12/2017 is for the period before the lease agreement was entered and signed so I will not labor on it. The voucher dated 03/7/2019 is within the undisputed period.

By this analysis of the Exhibit P2 which was relied upon by the plaintiff to prove the alleged payments, it is crystal clear that the plaintiff has failed to prove his claims that he has paid the rent as per the lease agreement and has no outstanding rental arrears with the 1<sup>st</sup> defendant until February 2021.

The plaintiff has to prove that she paid rental charges for the three consecutive period, which is September 2019 – February 2020, March 2020 – August 2020 and September 2020 – February 2021 but she did not prove that.

Basing on that, I find that the plaintiff has breached the terms of lease agreement.

The third issue is whether the eviction of the plaintiff by the 1<sup>st</sup> defendant from the suit premises was lawful.

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Clause 9 of the lease agreement Exhibit D2 provides that should any rent fee remain unpaid for more than 60 days from the dates stipulated in clause 8, the landlord may terminate the lease unconditionally.

Clause 20 of the said lease agreement provides that breach of any terms and condition of lease agreement will be notified to the tenant in writing and that the tenant will need to rectify it in 60 days which upon failing, the landlord can issue a termination notice.

PW1 and PW2 stated that on 28/1/2021, at 4:00 a.m., the defendants invaded the suit property, break in and forcefully evicted the plaintiff and in the course, taking/ stealing/and destroying the plaintiff's valuable items and important documents. PW2 stated that they have never received a Notice of six (6) months from Serafina on termination of contract.

In the final submission which was drawn and filed by the counsel for the plaintiff, it was contended that the eviction of the plaintiff by the defendants from the suit property was unlawful due to the fact that, first; the plaintiff had no rental arrears. The lease agreement binds the parties so the rental payment should have been according to clauses of the agreement. Second; the 1<sup>st</sup> defendant never filed a suit to claim for specific performance in order to obtain an order of the Court to evict the plaintiff, third; the 1<sup>st</sup> defendant appointed an unqualified person to conduct the eviction.

To dispute the plaintiff's claims, the defendants brought witnesses to disprove the claims.

DW1 in his evidence adduced in Court stated that on 21 September 2020, the 1<sup>st</sup> defendant issued a termination notice to the plaintiff through their

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lawyers Stallis Attorneys and it was received by the shareholder of the plaintiff one Jean Claude Ciza. He tendered the said Notice which was admitted as Exhibit D3.

He added that, after 60 days have passed from the date of the Notice, and the plaintiff has taken no action, the plaintiff was given a grace period for (3) three months to make payments but did not.

DW1 stated further that the plaintiff has breached the terms of the lease agreement by subleasing the suit property without his consent. That, after three months upon failure to honour the agreement, the 1<sup>st</sup> defendant hired Greenlight Auction Mart, the 2<sup>nd</sup> defendant to evict the plaintiff. Acting on instructions by 1<sup>st</sup> defendant, the 2<sup>nd</sup> defendant issued 14 days' Notice to the plaintiff on 11/01/2021, the Notice was admitted as Exhibit D9. The Notice was received by the plaintiff representative on the same date. The plaintiff was evicted on 28/01/2021.

In the Plaint, the plaintiff claimed that, the eviction was done without any valid Court Order. However, DW3, Jessica Motto, who introduced herself to the Court as the employee of the 2<sup>nd</sup> defendant, contended that, the Auctioneer was legally operating as per the provision of section 220 of the Land lord Act, so there was no need of the Court's Order.

In the final submissions, the counsel for the plaintiff maintained that there was no eviction order from a competent court so the eviction was unlawful.

In their Joint WSD, the defendants vehemently denied the plaintiff's arguments and averred that the requirement to obtain an order of the Court for purpose of eviction is only applicable if there is a breach of peace.

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However, in the case at hand, the Court order was not necessary as there was no breach of peace, and the procedure for appointing a Broker was lawful.

The defendants referred this Court to the provisions of Section 102(1) and 2 of the Land Act, Cap. 113 R.E 2019 which provides that, the landlord may, where it is safe to evict peacefully, evict the defaulting tenant through a Court broker or Tribunal broker.

Basing on the analysis of the available evidence, I am of the view that the eviction of the plaintiff by the defendants was lawful.

The reasons for my observations are that; first, it is on evidence that the plaintiff has breached clauses 8 and 9 of the lease agreement by defaulting payment of rent from September 2019 to February 2021. Upon that, the 1<sup>st</sup> defendant invoked clause 9 and issued a Notice of termination to the plaintiff. The plaintiff did not fulfil her obligation even after the grace period so the 1<sup>st</sup> defendant exercised eviction through the 2<sup>nd</sup> defendant.

Regarding this evidence, the plaintiff was not forcefully evicted but she was aware of the termination of the contract and the intended termination. This was proved by Exhibits D3 and D9, Notice of Termination and Notice of Eviction respectively which were received by the plaintiff through her Director and agent, and also the Notice of eviction was served through Local Government Officer, who was a Ward Executive Officer.

On the necessity of obtaining Court's Order for eviction purpose, I agree with the submission by the counsel for the defendants that it was not necessary for the reason that the plaintiff did not prove that there was any breach of

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peace before, during or after the eviction. Hence, the defendants complied with the provisions of section 102 (1) and (2) of the Land Act which provides as follows;

*102(1) Subject to provision of subsection (3), a lessor may only exercise his right to levy distress for rent after service of a notice in accordance with the provision of Section 104.*

***(2) Where it is not possible to peacefully exercise a right to levy distress, the lessor shall only do so under the order of the Court. (Emphasis added).***

Since there was no any possible breach of peace, then the 1<sup>st</sup> defendant hired a broker as per section 102 (3) of the same Act and exercised the eviction process.

I have also taken into consideration the claim of the plaintiff that the 1<sup>st</sup> defendant did not actually hire the 2<sup>nd</sup> defendant but only instructed one Jessica Motto to conduct eviction. I have read Exhibit D5 which shows that indeed, the 1<sup>st</sup> defendant wrote a letter to Jessica Meckson Motto, giving authorization to evict the plaintiff.

While adducing her evidence, Jessica Meckson Motto as DW3 stated that she is an employee of Greenlight Auction Mart, and that she is Operation Manager and Chairman of Directors. She said that the 1<sup>st</sup> defendant hired the 2<sup>nd</sup> defendant through her as a representative of the latter. She said that Exhibit D5 is addressed to her as a representative of the 2<sup>nd</sup> defendant.

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It is my view that the 2<sup>nd</sup> defendant was engaged lawfully through DW3 who is/was employee of the 2<sup>nd</sup> defendant. The fact that the letter of engagement was addressed to DW3 is not fatal, because Jessica Motto was the Chairman of the Directors also as Operation Manager of the 2<sup>nd</sup> defendant so she represents the 2<sup>nd</sup> defendans. Even the plaintiff acknowledge this fact that is why she has sued the 2<sup>nd</sup> defendant in this suit instead of Jessica Motto.

The plaintiff also has questioned the validity of the Auctioneer's license during the eviction. This was raised by the counsel for the plaintiff in the final submission, and in cross examination in the course of hearing. It was claimed that during the eviction, the 2<sup>nd</sup> defendant had no valid license as the one she possesses has already expired.

However, I find that issue to be misconceived, because it is in the evidence that the eviction was conducted on 28/01/2021. The Auctioneer's general license of the 2<sup>nd</sup> defendant which was admitted in Court as Exhibit D8 shows the expiry date to be 31 December 2021. So, when the 2<sup>nd</sup> defendant conducted the eviction, she had valid license.

In the Plaint and the evidence adduced in Court by PW1 and PW2, in addition to the claims of forceful and illegal eviction, the plaintiff also claims that during the said eviction, the plaintiff's valuable items were either destroyed, or taken/stolen by the 2<sup>nd</sup> defendant agents or employees. Some of the items were named as speakers, disco lights, club sound system, air conditioning unit and amplifiers, etc. It was said further by PW1 that even the plaintiff's motor vehicle make Mercedes Benz 2008 was taken by the 2<sup>nd</sup> plaintiff. The

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plaintiff stated that the items have been listed but did not produce the said list of stolen/taken items in Court.

The defendants have vehemently denied to have either stolen or destroyed any of the plaintiff's items. At paragraph 18 of the Amended Joint WSD of the defendants, they averred that, whatever property which were taken by either of the defendants for storage purpose were listed in an inventory sheet in presence of Local Government officials as witness. As well the defendants did not produce this claimed list in Court.

On this, the plaintiff failed to prove to the Court on the claims that the named properties were destroyed, taken or stolen. The plaintiff did not produce proof of the value of purported taken/stolen properties. As pointed earlier, a list of purported items which were claimed to be taken or stolen by the 2<sup>nd</sup> defendant was never produced in Court. In the circumstances, the Court cannot rely on mere words of mouth from PW1 and PW2 that the said valuable items were destroyed or taken or stolen.

It is true that, in their WSD, the defendants have admitted that whatever was taken were listed in inventory sheet. But no such inventory sheet was produced in Court, and it was not stated the types or what kind of items were taken by the 2<sup>nd</sup> defendant and listed in the inventory.

The absence of evidence of proof from any party to this suit to ascertain the claims by the parties leaves this Court with nothing upon which to make its decision. Therefore, I find that the claims by the plaintiff about the destroy, forcefully taken, stolen properties worth Two Billion shillings (TZS 2 Billion) as it was put by PW1, were not proved. *Adly*

Other claims by the plaintiff is that the 1<sup>st</sup> defendant has to pay the plaintiff the amount of TZS 450,000,000/= being the money the plaintiff invested in the renovation and improving the suit property.

In his evidence, PW1 stated that before the commencement of the lease agreement which was to be 03 March 2018, the plaintiff and 1<sup>st</sup> defendant agreed on renovations of the suit premises. That, it was agreed that the plaintiff will renovate the suit premises, and that any investment made by the tenant will be his rightful property at the end of duration of the tenancy.

PW1 stated that a period of December 2017 to March 2018 was a period of renovations.

In the Plaint, the plaintiff claimed that, in agreement with the 1<sup>st</sup> defendant, she has injected money for the purposes of renovating the suit premises to the tune of TZS 500,000,000/=. Again, unfortunately, this claim was also not proved by the plaintiff. It remained to be the oral evidence by the witnesses of the plaintiff which was not backed by any supporting proof.

I have read clause 12 of the lease agreement, Exhibit P1 and D1. It is provided that the parties has agreed that all costs for any Civil/electrical/plumbing/paving or related expenses on the suit property will be at the expense of the tenant, and that the tenant committed to spend a sum of TZS 437,000,000/= for immovable improvement.

**Clause 12 of the lease agreement provides further that at the end of the lease term, the improvements will become the property of the tenant.**

The plaintiff is using this bolded word of clause 12 to claim breach of contract by the 1<sup>st</sup> defendant. That despite renovating the suit premise as agreed, the plaintiff was denied her right of owning the improvements she has installed in the suit premises.

In my view, there could be breach of terms of clause 12 only if the lease could have come to the end of the agreed term. However, the lease term did not come to an end, because the end term was February 2023. The lease was to be terminated between the parties after the tenant (plaintiff) breach of the agreement. Therefore, the terms of clause 12 cannot apply in the circumstances.

Having made analysis of the evidence adduced by both parties in this suit, I find that the plaintiff has failed to prove her case. I therefore dismiss the plaintiff's prayers with costs as she has failed to establish her case on balance of probabilities.

The 4<sup>th</sup> issue is to what reliefs are parties entitled to. As I have dismissed the plaintiff's suit, then she is not entitled to any reliefs claimed.

As it was stated at the beginning of this judgment, the defendants have filed a counterclaim in which they claimed a breach of lease agreement by the plaintiff and Director of the plaintiff one Jean Claude Ciza for failure to pay rental arrears and subleasing the suit premises without prior consent of the 1<sup>st</sup> defendant (plaintiff in counterclaim).

According to the analysis of the evidence adduced, the Court has already found that there was breach of contract by the plaintiff for the failure to pay rental arrears.

*Alle.*



On the claims of sublease by the tenant, the Court finds that the 1<sup>st</sup> defendant failed to prove that there were subtenants during the tenancy period of the plaintiff, with or without consent of the 1<sup>st</sup> defendant.

On the claims of the payments of electricity bills amounting to TZS. 24,274,148.75/=, the 1<sup>st</sup> defendant claimed in counter claim that the plaintiff had left an outstanding TANESCO bills which had to be paid by the 1<sup>st</sup> defendant.

In proving the said claims, the plaintiff in a counterclaim called Raymond Balemwa who testified as DW2. He said that he is an employee of Serafina Ltd, the 1<sup>st</sup> defendant, who is plaintiff in counterclaim. That, the plaintiff and 1<sup>st</sup> defendant has entered into lease agreement whereby the plaintiff was the tenant and 1<sup>st</sup> defendant the landlord.

He testified further that, upon default of the plaintiff on payment of rental arrears, the defendants executed eviction lawfully. That, after eviction, the 1<sup>st</sup> defendant discovered that the electricity power has been cut off for a long time on the suit property upon failure of the plaintiff to pay electricity bills.

That, he, DW2 went at TANESCO to inquire on the matter and he found letters of notice of power disconnection which were addressed to the plaintiff. That, after negotiations with TANESCO, the 1<sup>st</sup> defendant managed to pay the outstanding balance. The said letters of TANESCO on power disconnection was admitted in Court as Exhibit D6 collectively.

Looking at Exhibit D6 collectively, the letter about power disconnection was addressed to Serafina Limited and it was dated 22/9/2021. The electricity bill which was attached with the letter was addressed to M/S New World

*Alls.*

Entertainment and it was dated 09/09/2021. The evidence shows that the plaintiff was evicted on 28/01/2021, so obviously this letter with the electricity bill does not relate to the plaintiff, Entertainment Masters Limited.

In cross examination, DW1 admitted the fact that the electricity bills claims does not show that Entertainment Masters was billed by TANESCO. In re-examination, DW2 explained that when Entertainment Masters leased the suit property, no change of the name of previous occupier of the property was made so the name of the TANESCO bills remained to be M/S New World Entertainment, the previous occupier.

However, it is my finding that the 1<sup>st</sup> defendant did not prove to the Court that the previous occupier of the suit premises was M/S New World Entertainment. Hence, the fact and documentary evidence remains to show that Entertainment Masters, the plaintiff is not involved in the TZS 24,274,148.75/=, amount of electricity bills which was issued to Serafina Ltd for payment by TANESCO. I find that the 1<sup>st</sup> defendant (plaintiff by counterclaim) has failed to pin this on the plaintiff.

Also in the reliefs prayed by the 1<sup>st</sup> defendant (plaintiff) by counter claim, she prays for storage charges. There is no proof in the evidence by the 1<sup>st</sup> defendant on the storage charges, which storage and what amount is being claimed. So, this relief is hereby disregarded by the Court.

That having been said, the judgment on counterclaim is hereby entered in favor of the plaintiff in counterclaim and is hereby entitled to the reliefs as follows;

*Adhe.*

- a) The defendants in counterclaim have breached the lease agreement in respect of Plot No. 39 Mikocheni Light Industrial Area in Kinondoni Municipal Council comprised under Certificate Title No. 24578.
- b) The defendants shall pay USD 54,000 to the plaintiff for the outstanding rental arrears.
- c) The defendants shall pay the plaintiff an amount of TZS 40,000,000/= for compensation for breach of contract.
- d) The defendants shall pay commercial interest of 21% from the date of breach of contract to the date of judgement.
- e) The defendants shall bear the costs of the suit.

It is so ordered.

Right of appeal explained.



**A. MSAFIRI**

**JUDGE**

**29/03/2023.**