

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

LAND CASE NO. 106 OF 2023

DAR ES SALAAM DEVELOPMENT

CORPORATION.....1ST PLAINTIFF

THE ATTORNEY GENERAL.....2ND PLAINTIFF

VERSUS

GODLOVE RAPHAEL DEMBE T/A

THE IGOSI LOUNGE &

NIGHT LIGHT EXECUTIVE INN.....DEFENDANT

JUDGMENT

21/03/2023 & 28/04/2023

L. HEMED, J

On 9th May, 2022, the plaintiffs herein, **Dar es salaam Development Corporation (DDC)** and the **Attorney General** commenced this suit against the defendant one **Godlove Raphael Dembe T/A The Igosi Lounge & Night Light Executive Inn** claiming for payment of TZS. 223,400,000/= (Tanzanian Shillings Two Hundred Twenty Three Million Four Hundred Thousand Only) being rent arrears arising out of the lease agreement between the 1st Plaintiff and the defendant.

In response thereto, the defendant filed his written statement of defence on 16th June, 2022 disputing all the claims. He stated to have had no any contractual arrangement with the 1st plaintiff leading to the claimed amount in regard to Halls A & B situated at Msimbazi/ Mhonda

Street, Kariakoo within Dar es salaam. On 23rd June, 2022 the plaintiffs made a reply to the defendant's written statement of defence cementing on the claims.

Upon completion of all preliminaries, the final pretrial conference was conducted before my sister Hon. V.L. Makani, J where issues were framed and recorded for determination. The agreed issues were as follows: -

- 1. Whether there was a lease agreement between the parties.*
- 2. Whether there was breach of the said lease agreement; and if so whether there were any rent arrears payable.*
- 3. To what reliefs are the parties entitled to.*

In support of their case, the plaintiffs procured the attendance of two (2) witnesses. The said witnesses were Cyprian Ferdinand Mbuya (PW1) and Shabani Rajabu Stambuli (PW2). On the part of the defence case, one Godlove Raphael Dembe was the only witness (DW1) who was paraded to testify.

The plaintiffs side tendered a *toto* of ten (10) documentary exhibits to prove their case. Among others, was an affidavit of ownership of Night Light Executive Inn and the Igosi Lounge dated 30th September, 2013 (exhibit P1); a letter for request of tender dated 7th October, 2013 (exhibit P2); Lease Agreement No. PA/117/2013/14/Nos/1 dated 2nd November, 2013 between Dar es salaam Development Corporation and the Igosi Lounge & Night Light Executive Inn (exhibit P3); Demand letter dated 17th October, 2016 (exhibit P4); letter with subject notification of removal of

one partner dated 19th October, 2016 (exhibit P5); letter for renewals of contract for tender No. PA/117/2013/14/NS/1 & PA/117/2013/14/NS/2 in respect of running the bar and restaurant in the main hall A & B, Kariakoo dated 21st October, 2016 (exhibit P6); lease agreement between Dar es salaam Development Cooperation and M/S Igosi Lounge and Night Light Executive Inn dated 2nd November, 2016 (exhibit P7); demand notice dated 27th September, 2018 (exhibit P8); letter for recovery of rent arrears due to Igosi Lounge and Night Light Executive Inn dated 8th November, 2017 (exhibit P9); and Personal Current Account Statement from 28/02/2017 to 04/04/2017 (exhibit P10). On his side, the defendant tendered only one exhibit which was the decision of this Court in Land Case No. 149 of 2018 before Hon. B.S. Masoud, J dated 4th August, 2021 (exhibit D1).

During trial, the plaintiffs enlisted the legal services of Ms. Lucy Kimario and Mr. Bahati Mabula, state attorneys, whilst the defendant was duly represented by Mr. George Mwiga, the learned counsel. PW1 testified that, he is working with the 1st plaintiff as a Human Resource Manager and he knew the defendant as a business man trading under the name styled **Igosi Lounge and Night Light Executive Inn**, in co-partnership with one James Mgeni (exhibit P1 collectively).

He maintained that, the relationship between the 1st plaintiff and the defendant started sometimes in 2013 when the former advertised a tender to run two halls which are at Msimbazi/ Mhonda street, Kariakoo within Dar es salaam *vide* lot No. PA/117/2013/14/Nc/01 and PA/117/2013/14/Nc/02 which were successfully applied by the defendant (exhibit P2 collectively) through his business names. According to PW1, lease agreement was executed for the defendant to run hall A & B

commencing from 2nd November, 2013 to 1st November, 2016 (exhibit P3 collectively).

PW1 added that, upon execution of the 2nd agreement, the defendant did not fulfill the terms thereof including payment of rent in time as required under the lease agreement. He paid only TZS 35,000,000/=. The 1st plaintiff confronted him with a demand letter (exhibit P8) requiring him to pay the outstanding rent arrears. Going by arithmetically, he stated that, the rent amount due was TZS. 228,000,000/= whereas the penalty for delay was TZS. 18,000,000/=. Another amount was TZS. 19,000,000/= as mesne profit of one month which he overstayed making the grand total of TZS. 258,400,000/=. PW1 told the Court that since the defendant paid TZS. 35,000,000/= then the unpaid balance is TZS. 223,400,000/=.

He asserted that, the 1st plaintiff was compelled to engage the debt collector to assist in recovery of her monies (exhibit P9) but the same proved futile. He prayed for this Court, to declare that, the defendant has breached the lease agreements by failure to pay the rent as agreed and also be ordered to pay the sum of TZS. 223,400,000/= (Tanzanian Shillings Two Hundred Twenty Three Million Four Hundred Thousand Only) indebted to the 1st plaintiff and any other reliefs the Court may deem fit to grant.

PW2 evidence corroborated that of PW1. He averred that, parties herein executed the lease agreements and the defendant owed the 1st plaintiff the rent arrears of TZS. 223,400,000/= (Tanzanian Shillings Two Hundred Twenty Three Million Four Hundred Thousand Only). He specified that, he is the accountant of the 1st plaintiff with responsibilities to administer revenues of the Corporation, to take care and prepare

financial statements, to make bank reconciliation, custodian of documents. He tendered bank statement to prove how the defendant was paying his rent (exhibit P10 collectively). In brief, that marked the end of his testimony and prosecution case.

DW1 testimonial was to the effect that, he knows the 1st plaintiff as a government institution as he once engaged in business with her *vide* an advertised tender to develop and run their premises at Mlimani City which he successfully applied through Lwimuso Enterprises. He detailed that, he had never personally signed any contract with the 1st plaintiff nor owned a company in the names of the Igosi Lounge and Night Light Executive Inn. He further stated that, he had never deponed an affidavit of that nature (exhibit P1) as the company is duly recognized through a Certificate of Incorporation.

He elaborated that, as far as exhibit P2 is concerned, he does not know them as he did not write nor sign them. In addition, he uttered that, the signature in exhibit P4 resembles to his signature but it is not his. He refuted to recognize exhibit P5. He testified the letter (exhibit P6) was never served upon him.

He asseverated that, according to exhibit P10 he does not recognize any payments thereat save that he effected the payments through the 1st plaintiff's account in respect of the intended tender. He supplemented that, he has the Judgment of this Court which exonerated him from the claims at hand (exhibit D1). He concluded by praying for dismissal of the suit.

Having heard the testimonies of both parties and considering the final submissions, I will be guided by the cardinal principle embedded in

section 110 (1) (2) of the Evidence Act [Cap 6 R.E 2019], that he who alleges has the duty to prove. Flowing with the 1st issue as to *whether there was a lease agreement between the parties*.

It was the testimony of PW1 and PW2 that, there were lease agreements for the duration of three (3) years for hall A & B in respect to lease agreement No.PA/117/2013/14/Ns/1 and lease agreement No.PA/117/2013/14/Ns/2 respectively which both commenced on 02/11/2013 and expired on 01/11/2016 and the parties were the 1st plaintiff and the Igosi Lounge & Night Light Executive Inn.

On the other part, DW1 testified that, he had never personally signed any contract with the 1st plaintiff nor owned a company in the names of the Igosi Lounge and Night Light Executive Inn. He further stated that, he had never deposed an affidavit of that nature (exhibit P1).

It is a trite law that parties are bound by their agreement(s) they executed. According to section 10 of the Law of Contract Act, [Cap 345 R.E 2019], it is provided thus:-

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".

During cross examination by Mr. Mwiga, learned advocate, PW1 stated that, the name of Godlove Dembe was not in the lease agreement. He further testified that, James Mgeni was the one who signed the lease agreement. He qualified that, as per exhibit P7 parties were DDC and Igosi Lounge & Night Light Executive Inn, a private company.

Moreover, PW2 averred that, according to the Lease Agreements, the tenant was a company. With all these answers from the witnesses of plaintiffs' side, it suffices to articulate that, there was no lease agreement between the 1st plaintiff and the defendant as a natural person rather with a company which is not a party to this suit.

Equally, DW1 when cross examined by Ms. Kimario, learned State Attorney, elaborated that, he had never signed any lease agreement with DDC. The same when cross examined by Mr. Mabula, State Attorney, he stated that, the signatures in exhibit P4, P5, P6 & P7 and WSD do not resemble. The aforesaid, entails that, the defendant stoutly denies to have executed the lease agreement with the 1st plaintiff as the same binds the lessor and lessee thereof only.

I took time to examine the Lease Agreements which were tendered during trial as exhibits P1, P3 and P7. In fact, gatheing from such examination unequivocally shows that the 1st Plaintiff executed the agreements with **M/S IGOSI LOUNGE AND NIGHT LIGHT EXECUTIVE INN**, a Private Company, incorporated and registered under the Companies Act, Cap 212 as the "LESSEE". However, the said **M/S IGOSI LOUNGE AND NIGHT LIGHT EXECUTIVE INN** is not a party to the present suit. The plaintiff, opted to sue **GODLOVE RAPHAEL DEMBE T/A THE IGOSI LOUNGE & NIGHT LIGHT EXECUTIVE INN**.

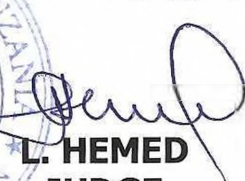
It is settled law that parties are bound by their own pleadings. Evidence adduced must substantiate what is pleaded and not otherwise. In the matter at hand, the plaintiff had the duty to prove that the the 1st plaintiff and the defendant herein executed Lease Agreements. According to evidence adduced, it is crystal clear that the 1st plaintiff entered into Lease Agreement with some other than the defendant in this matter.

Being mindful of exhibits P1, P3 and P7, this Court is reluctant to accept that there was a lease agreement between the 1st plaintiff and the defendant. The 1st issue is thus not affirmed.

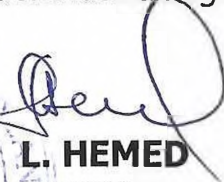
The 2nd issue was on *Whether there was breach of the said lease agreement; and if so whether there were any rent arrears payable.* The answer to this issue depends on the 1st issue. The fact that it has been established that the 1st plaintiff never executed Lease Agreement with the present defendant, the question of breach cannot stand. It is straight forward that the defendant could not breach agreements not executed. From the foregone, the 2nd issue is also answered in negative.

Regarding the last issue as to what reliefs are parties entitled to, the law requires that every claim must be proved on the required standard. In the instant case the plaintiffs have failed to prove their case against the present defendant. The fate of this matter is thus dismissal. I do hereby dismiss the entire suit. Each party to bear its own costs. It is so ordered.

DATED at DAR ES SALAAM this 28th April 2023.


**L. HEMED
JUDGE**

COURT: Judgment is delivered this 28th April 2023 in the presence of **Ms. Lucy Kimario**, State Attorney for the Plaintiffs and **Mr. Mohamed Nokolage**, advocate for the defendant. Right of appeal explained.


**L. HEMED
JUDGE**