

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 303 OF 2022

NGETA PROPERTY HOLDING LIMITED.....PLAINTIFF

VERSUS

JACKSON JASON NDEGANYISO KESSI.....1ST DEFENDANT

RACHEL KESSI.....2ND DEFENDANT

EX-PARTE JUDGMENT

Date of Last Order: 12.07.2023

Date of Judgment: 31.07.2023

T. N. MWENEGOHA, J.

The dispute leading to this Judgment follows a claim of breach of Lease Agreement by the plaintiff, as against the defendants jointly. Unfortunately, both defendants did not appear to defend the case against them, though they filed their joint Written Statement of Defence. Therefore, the matter proceeded exparte against them.

The plaintiff, who was represented by Advocate Athanas Wigan brought one witness and tendered 5 Exhibits being Lease Agreement and Addendum to it (Exhibit 1), a copy of a photograph (Exhibit P2), Event Promotion and Agency Agreement and a letter cancelling the said agreement (Exhibit P3 collectively), 2 Business Licences (Exhibit 4 collectively) and Ngeta Property Board Resolution for instituting a case (Exhibit P5).

In his testimony, PW1, Mr. Pennington Paschal (Director of the plaintiff's company) insisted that, the Agreement was executed on the 17th October, 2019, between the plaintiff and the 1st defendant. It is on a property, located at Plot No. 61, Mbezi Kawe Beach, Kinondoni Municipality, within Dar es Salaam Region. Under the agreement in question, the property was leased to the plaintiff for a period of 5 years, commencing from November, 2019. That, the plaintiff is a company which deals with property and events management and has licence to that.

It was further claimed by PW1 that, the plaintiff has been enjoying peacefully the use of the premises until on the 13th November, 2022, when the 2nd defendant locked with chains, the main access to the suit premises without any notice. That, the actions of the 2nd defendant over the suit property has blocked the entry of the plaintiff to the leased property. That, the same constitute breach of the terms and conditions of the Agreement and has caused the plaintiff to suffer loss to the tune of 90,000,000/=.

That, at the time of breach, the plaintiff had an Agreement with JHN Services Limited, to host 9 of their future events for an agreed sum of 9 million per event. PW1 insisted that, the defendants are obliged to pay the loss estimated from the projected income of the company. Above that, they are obliged to pay a general damage and be restrained from interfering with the Lease Agreement. PW1 also produced documents to back up his testimony as highlighted above.

After the conclusion of PW1's testimony, the plaintiff's counsel, Mr. Athanas Wigan prayed to close the case and to file filled his closing submissions. He was not far from the testimony of PW1. He insisted that, there was a Lease Agreement between the plaintiff and the 1st defendant. The said lease was breached by both defendants, leading to monetary

loss on part of the plaintiffs. Therefore, they are entitled to the reliefs claimed. He referred the Court to **section 73 of the Law of Contract Act, Cap 345, R. E. 2019** and the case of **Golden Palm versus Cosmos Properties Limited, Civil Case No. 157 of 2014, High Court of Tanzania at Dar es Salaam, (unreported)**.

In this case, three issues were agreed for determination: -

1. Whether there was a contract between the plaintiff and the 1st defendant.
2. Whether there was breach of the contract on part of the defendants.
3. Whether there are any reliefs entitled to the plaintiffs.

Starting with the 1st issue, it has been proved to the satisfaction of the Court that, the plaintiff and the 1st defendant entered into a Lease Agreement, over a landed property, located at Plot No. 61, Mbezi Kawe Beach, Kinondoni Municipality, within Dar es Salaam Region. As evidenced by Exhibit P1, the contract was executed on the 17th October, 2019 and commenced on the 1st November, 2019, for a period of 5 years. Therefore, the 1st issue has been affirmatively answered.

Turning to the 2nd issue on the breach of the Agreement by the defendants. The term breach of contract simply means, an act of one party in the agreement to break or go against the terms set out in a contract. It was claimed by PW1 in his testimony that, the 2nd defendant, closed the doors leading to the leased premises by chains, hence blocking the main entrance by the plaintiff to the leased property. To the plaintiff, the actions of the 2nd defendant constitute a breach of their agreement.

To answer this issue, I will dwell on the agreed terms of the Lease Agreement. Upon going through Exhibit P1 (Lease Agreement), I found the following statement on the recital clause....

"And whereas the lessee has agreed to rent the demised premises, to hold and enjoy the same for residential purposes for a period of five (5) years from the date of signing this agreement on terms and conditions here in after appearing".

As per the quoted clause herein above, it is clear that the Lease Agreement plainly conferred the plaintiff the rights to use it for residential purposes only.

In her plaint as also supported by the testimony of PW1, the plaintiff has claimed to have been using the property in question for his commercial activities, including hosting various events as licenced to do. One is easily convinced that it is on this reason; the defendants chained the main entrance leading to the leased property.

In other words, it is the plaintiff's actions that have breached the Lease Agreement between the two. She has been using the leased premises contrary to the agreed terms. It is not the defendants who are at fault here, rather the plaintiff. The defendants' actions are justifiable for protection of their land. For these findings, the 2nd issue has been negatively answered.

Addressing on the reliefs claimed by the plaintiff, based on the findings on the 2nd issue, it is clear that the plaintiff has nothing to claim. She is a wrong doer who cannot benefit from her wrongs. Therefore, the authorities referred by the plaintiff's counsel in his closing submissions,

favour much the defendant. These are **section 73 of the Law of Contract Act, Cap 345, R. E. 2019** and the case of **Golden Palm versus Cosmos Properties Limited**, (supra).

For the reasons I have given herein above, I find the plaintiff to have failed to prove her claims against the defendants as required under sections **110, 111 and 112 of the Evidence Act, Cap 6 R. E. 2019**. Her case has to fail owing to the weak evidence produced by her and her witness, PW1, see see **HEMED SAID VS. MOHAMED MBILU 1984 TLR 113 HC**.

In the event, this case is dismissed. No order as to costs.




T. N. MWENEGOHA

JUDGE

31/07/2023