

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 272 OF 2022

(Appeal from the judgement and decree of Honourable A. R. Kirumbi dated 19th May 2022 in Land Application No. 17 of 2016)

REGINALD BUGERAHA..... APPELLANT

VERSUS

KARIAKOO MARKET CORPORATION.....1ST RESPONDENT

JAPHET YONA MZAVA.....2ND RESPONDENT

ALBERT TURUKA.....3RD RESPONDENT

JOYCE KAMBUGA.....4TH RESPONDENT

SELEMANI MSOFE.....5TH RESPONDENT

JUDGMENT

4th May 2023 & 31st May 2023

L.HEMED, J.

This matter originates from the decision of the District Land and Housing Tribunal of Ilala in Land Application No 17 of 2016. In the said suit, the Appellant herein sued the 1st respondent for breach of Lease Agreement and the 2nd up to 5th respondents for trespass in leased premises.

The back ground of the instantaneous matter is that on 29th October 2014 the Appellant and the 1st Respondent entered into lease agreement for a space on the ground floor of Kariakoo Market Complex

measuring 131m² for purposes of running a business thereat. The agreed monthly rent was Tshs 1,703,000/= . It was also agreed that the Appellant (the tenant) would renovate the demised premises at his own expenses. The Appellant renovated the suit premises at own costs as agreed. It was alleged by the Appellant that during existence of the lease agreement, the Appellant paid monthly rent to the 1st Respondent promptly. When the 1st Lease Agreement expired on 28th October 2015 the Appellant and the 1st Respondent executed another Lease Agreement for a term of one year commencing on 29th October 2015 and was to expire on 28th October 2016.

It was also alleged by the Appellant that sometimes in February 2015, the 2nd up to 5th respondents entered the suit space demised to the Appellant and started running their businesses without any colour of right. Following such alleged trespass, the Appellant knocked the gated of the District Land and Housing Tribunal Seeking for among others, declaration order that he is the lawfully tenant in the suit premises and for eviction of the 2nd up to 5th respondents.

Having deliberated over the matter, the trial Tribunal found that the Appellant was the lawful tenant of the suit premises up to 28th October 2016. The 2nd up to 5th respondents were ordered to

compensate the amount of Tshs.34,600,000/= being the rent he paid to the 1st respondent. The 2nd up to the 5th respondents were also ordered to the appellant the general damages of Tshs 15,000,000/= each. The Appellant was aggrieved by the said decision hence the appeal at hand on the following grounds:-

"1. That, the honourable Chairperson erred both in law and fact by finding that the appellant was a lawful tenant in the suit premises until 03/02/2016.

2. That having found that the 2nd, 3rd, 4th and 5th respondents trespassed into the suit premises the honourable Chairperson erred both in law and fact by failing to find that by virtue of exhibit P6, the 1st respondent breached the lease agreement with the appellant because the reason for repossession of suit premises was the allegation that the appellant sub-let demised premises to the 2nd 3rd 4th and 5th respondents."

At all the time of determining the appeal at hand the Appellant was duly represented by **Mr. Wilson Edward Ogunde**, learned advocate appeared, the 1st Respondent was served by **Mr Oresto Njalika** learned advocate, while the 2nd, 3rd, 4th, and 5th respondents enjoyed the legal service of **Mr Abdallah Matumla** learned counsel. The matter was argued by way of written submissions which were promptly filed as directed by the court.

Arguing in respect of the first ground, Mr. Ogunde submitted that the trial tribunal erred in law and fact by declaring that the appellant is a lawful tenant until 03.02.2016. The lease agreement between the appellant and the 1st respondent commenced on 29.10.2014(exhibit PI) up to 28.10.2015. After the expiration of the lease agreement, the first respondent renewed it on 29.10.2015(Exhibit P2). According to Mr. Ogunde, records clearly indicate that the 2nd up to 5th respondents trespassed into the leased premises in February 2015 before the termination of the second lease agreement. The appellant filed the suit to challenge the trespass of the 2nd up to 5th respondent into the leased premises. He further argued that the holding that the appellant was the lawful tenant until 03.02.2016 was inconsistent with the evidence on records. He prayed the court to allow the first ground of appeal.

With regard to the 2nd ground of appeal, Mr. Ogunde asserted that the tribunal erred by failing to find that the 1st respondent breached the lease agreement with the appellant. He stated that it is trite law that parties are bound by their own pleadings as was held in **James Funke Gwajiko vs Attorney General** [2001] TLR 455 and section 60 of the Evidence Act [Cap 6 R: E 2019]. He further submitted that the 1st respondent in his written statement of defence averred that the reason

for termination of the lease agreement between the appellant and 1st respondent, was due to the reasons that the appellant sublet the leased premises to the 2nd, 3rd, 4th, and 5th respondent. According to Mr. Ogunde, the 1st respondent is the one who breached the contract. He further argued that the appellant is entitled to an order of repossession of the leased premises. He prayed the appeal to be allowed with cost.

In reply thereto, Mr. Njalika on behalf of the 1st Respondent contended that it was the appellant who breached the lease agreement as he was not in the suit premises. Mr Oresto Njalika opposed an order to pay compensation of Tshs 34,600,000/= and general damages of Tshs 15,000,000/= on the ground that the appellant could not benefit from his own wrong. In his opinion, the trial tribunal was lenient in awarding general damages to the appellant. He prayed the honourable to declare the appellant the one who was in breach of the Lease Agreement.

He submitted further that the lease agreement was supposed to end on 28.10. 2016. The appellant sub-leased the premises to the 2nd up to 5th respondents without the consent of the 1st respondent as he was aware of the existence of the 2nd up to 5th respondents in the suit premises. He finally prayed the court to dismiss the appeal with cost.

On his part, Mr. Matumula in opposing the appellant's submission argued that the appellant had no *locus standi* to sublease the premises to another person. He relied on the case of **Bishgme Motor Financing vs Transport Brokers Ltd**, 1902 AC 325. In respect to the 2nd ground of appeal, he stated that the 2nd up to 5th respondents are lawful tenants and are not trespassers. He prayed the appeal to be dismissed with cost.

In his rejoinder submission, Mr. Ogunde emphasised that the first respondent was duly informed on the trespass of the 2nd up to 5th respondents as clearly demonstrated in Exhibit P4 and P5. He reiterated that the respondents failed to prove that they were the lawful tenants in the suit premises. He asseverated that the appellant is entitled to be restored to the premises.

Having gone through the rival submissions and scrutinized the records of the trial Tribunal, the issue for determination is whether the appeal is meritorious. The answer to this issue will be posed after having determined each ground of appeal.

In the 1st ground of appeal, the Appellant is faulting the decision of the trial Tribunal for having declared him as the lawful tenant of the lease premises up to 03.02.2016. Upon perusal of the records of the trial Tribunal I found that the last Lease Agreement

(exhibit P2) was entered on 29th October 2015. The said agreement was to last for one (1) year that is by 28th October 2016. The appellant proved entered into a leased agreement for two periods only. According to exhibit P2 (the Lease Agreement), the appellant's tenancy expired on the 28th October 2016. In **Lulu Victor Kayombo vs Oceanic Bay Limited**, Consolidated Civil Appeals Nos. 22 of 2020, 155 of 2020) [2021] TZCA 228 (07 June 2021), the Court of Appeal of Tanzania had this to say;-

"...it is common knowledge that parties to a contract are bound by the terms of their contract... It is not the role of the courts to re-draft clauses in agreements but to enforce those clauses where parties are in dispute."

One of the terms that bound the parties in the Lease Agreement is the expiry date of the agreement. According to the said Lease Agreement which was admitted into evidence (exhibit P2) by the trial Tribunal, the Agreement was to last up to 28th October 2023. Going through the terms of the Lease Agreement, the Appellant was the tenant in the demised premises up to 28th October 2016. I have also extensively read the Judgment of the trial Tribunal and found that, on page 12 of the typed copy, the trial Chairman observed that the Lease Agreement expired on 28th October 2016. He said:-

"Hata hivyo sikubaliani na hoja hivyo kwani kama nilivyosema hapo awali kuwa mkataba wa upangishaji wa eneo bishaniwa kati ya Mdai na Mdaiwa Na.5 ulifikia tamati tarehe 28/10/2016..." (Emphasis added).

From the above findings of the trial Tribunal, I find that the assertion of the counsel for the appellant that the trial Tribunal held that the appellant was the lawful tenant until 03.02.2016, is unfounded. The said argument lacks bases from the Judgment. The fact that the Lease Agreement expired on 28th October 2016, and since there was no further renewal of the same, the trial Tribunal was justified to hold that the Appellant was the lawful tenant up to 28th October 2016. The 1st ground of appeal therefore fails.

The appellant's counsel also argued that the 1st Respondent is the one who breached the Lease Agreement by leasing the premises to the 2nd up to 5th respondent prior to the expiry of the lease agreement. However, evidence on record proves to the contrary that the 1st respondent did not lease the premises to the 2nd, 3rd, 4th and 5th respondents, rather the encroached the premises. I have also read clause 10(iv) of the Lease Agreement (Exhibit P2) and found it readth as follows:-

"...Kutokuipangisha kwa mtu mwingine sehemu

iliyopangingishwa, pasipo ridhaa ya kimaandishi ya SHIRIKA, wala kuondoa kitu au kifaa chochote kilicho mali ya SHIRIKA.”

The above clause, imposed the duty to the appellant not to sublet the premises without the consent of the 1st Respondent. Additionally, upon execution of the said Lease Agreement, the suit premises fell into possession of the appellant who became duty bound of taking care of the suit premises. Evidence on record shows that the 2nd up to 5th respondent took advantage of the absence of the appellant in the suit premises by entering and taking occupation therein. Therefore, the Appellant cannot blame the 1st Respondent the acts of the 2nd, 3rd, 4th and 5th respondents.

The appellant has also insisted to be reinstated into the suit premises. The question in the circumstance of this case, is whether the court can order reinstatement of the appellant into the premises. Evidence on record reveals that the Lease Agreement between the Appellant and the 1st Respondent expired on 28th October 2016 and they never renewed it. It is trite law that courts have power to only enforce the terms of the contract voluntarily entered between parties but it has no jurisdiction whatsoever to force them enter into contract. This was echoed in **Simon Kichele Chacha vs. Aveline M. Kilawe**,

Civil Appeal No.160 of 2018 (unreported), where the Court of Appeal of Tanzania stated thus:-

"Parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. "

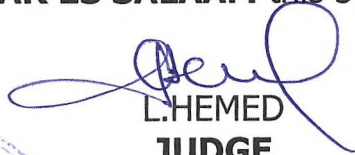
The fact that there is no existing Lease Agreement between the Appellant and the 1st Respondent as from 28th October,2016, it would be improper and unjustifiable for the trial Tribunal to order reinstatement or restoration of the Appellant to the suit premises. I am holding so because by so doing it would amount to forcing parties to enter into Lease Agreement unwillingly contrary to the cardinal principle of the law of contract.

While going through the submissions, I noted from those made by the learned counsel for the respondents that they challenge the amount awarded to the appellant by the trial Tribunal. They opposed an order to pay compensation of Tshs 34,600,000,00/= and general damages of Tshs 15,000,000/= on the ground that the appellant could not benefit from his own wrong. Having seen this argument in the reply submissions, I found apt to peruse the records of this matter to find if the respondents had raised a cross- appeal, but I could find none. It is my firm view that, if at all the respondents were

aggrieved by such orders they ought to have appealed against them. In the absence of cross-appeal thereof, the court has to presume that the respondents were satisfied by the findings and decision of the trial Tribunal.

In the result and for the foregoing reasons, the appeal is without merits. I hereby dismiss in its entirety with costs. It is so ordered.

DATED at DAR ES SALAAM this 31st May 2023.


L. HEMED
JUDGE

