

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
CIVIL LAND APPEAL NO. 234 OF 2023**

**BETWEEN
BYBLOCK CONTRACTORS LTD..... APPELLANT
VERSUS
SALUM SAID HAMED RESPONDENT**

JUDGMENT

Date of last Order: 07/8/2023

Date of Judgment: 25/08/2023

A. MSAFIRI, J.

This appeal arises from the judgment and decree of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala (here in as the trial Tribunal) in Application No. 15 of 2023 which was delivered on 08/6/2023.

At the trial Tribunal, an applicant Salum Said Hamed (who is now the respondent), has instituted a claim against ByBlock Contractors Ltd (who is now the appellant), that he has entered a five-year lease agreement with the respondent (now appellant). That the said five (5) years lease agreement commenced on 1st June 2016 and expired on 31st May 2021. The applicant claimed that the respondent has continued to

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stay in the suit premises without lease agreement. That the applicant has directed the respondent to vacate the premises but the respondent has refused.

After hearing on the application, the trial Tribunal decided in favour of the applicant and ordered the respondent to vacate the premises. The respondent was aggrieved hence this appeal. The appeal is based on three grounds as follows;


- 1. That the trial Tribunal Chairman erred in law and in fact when he failed to hold that the Respondent's conduct and acts of continuously taking rent for more than one and half year after the expiration of the Lease Agreement dated 1st June 2016 amounted to an automatic renewal of the said Lease Agreement under the similar terms and conditions for the next five years period.*
- 2. That the trial Tribunal Chairman erred in law and in fact when he totally disregarded and or failed to analyze the evidence establishing the payment of rent for a period of one and half years after the expiration of the Lease Agreement and based his decision on a Lease Agreement which had already expired and no longer in force.*
- 3. That the trial Tribunal Chairman erred in law and in fact when he failed to make a finding and hold that the respondent's conduct and acts of taking rent for more than one and half years after expiration of the lease Agreement, waived the contractual requirement of issuance of the three months' Notice provided under Clause 3.2 of the Lease Agreement.*

Alls.

The appellant prays that the judgment and decree of the trial Tribunal be quashed and the appeal be allowed with costs.

The hearing of the appeal was conducted *viva voce* and the appellant was legally represented by Mr. Charles Mutakyawa, learned advocate while the respondent had legal services of Mr. George Mwalali, learned advocate.

Mr. Mutakyawa was the first to address the Court. In his submission he prayed to consolidate grounds of appeal No. 1 and 3 and argued them together. He stated that the appellant and respondent entered a five (5) years lease agreement with an option for renewal. That the lease agreement contained Clause No. 3.2 which required the tenant to issue a three (3) months' notice before the expiration of the lease agreement expressing intention for renewal.

Mr. Mutakyawa stated that there was no Notice issued as per the terms of Clause 3.2 up to the expiration of lease agreement, but the appellant continued to pay rent upon the expiration of the lease agreement for the period of June - Dec.2021, and for the period of January - Dec. 2022. That, the appellant has paid a total of TZS. 58 Million which was proved by vouchers of payment which were collectively admitted as Exhibit P.2. 

Mr. Mutakyawa said that the trial Tribunal erred in its findings that there was no contract between the parties. He submitted further that, there was contract and it was renewed by conducts of parties. That, the act of the respondent to continue receiving rent from the appellant, gave the latter a legitimate expectation that the lease agreement has been renewed for the next five (5) years. He said that the conduct by the respondent of receiving rent has waived the requirement under Clause 3.2 of the lease agreement. That, hence, under the principle of Promissory Estoppel, the respondent is estopped from insisting on the legal effect of Clause 3.2 since it is of no legal effect.

To cement his points, he cited the case of **Trade Union Congress of Tanzania (TUCTA) vs. Engineering systems Consultants Ltd & others**, Civil Appeal No. 51 of 2016 at page 18-19; and Section 123 of the Evidence Act, Cap. 6 R.E 2019.

On the 2nd ground, which I find to relate to the contents of the 1st and 3rd grounds of appeal, Mr. Mutakyawa submitted that the trial Chairman, failed to analyse the evidence which was adduced during the trial. He said that during the trial the respondent presented the lease agreement which was admitted as Exhibit P1 and Voucher of payments as Exhibit P2. *Adle.*

That, while Exhibit P2 is on record, it was not stated anywhere in the judgment and was not considered in the same.

It is Mr. Mutakyawa's belief that if Exhibit P2 had been considered and evaluated, then the trial Tribunal could have easily established that the lease agreement between the parties has been renewed by default, and then, the decision of the trial Tribunal could have been different. He prayed for the appeal to be allowed.

Mr. Mwalali responded on the 1st and 3rd grounds and submitted that, as per the lease agreement under Clause 3.2, the appellant had to issue three (3) months' written notice to the respondent prior to the expiry of lease, expressing intention of renewing the said lease. That, however, the appellant never opted to renew the lease. After the expiry of the said lease the respondent required the appellant to comply with the said requirement but the appellant failed to do so.

Mr. Mwalali submitted that the appellant and respondent never renewed their lease agreement in writing but upon expiry of the said lease agreement, they agreed orally that the appellant will pay rent until end of December 2022, and then vacate the premises after that.

That, according to Clause 4.3 of the lease agreement, there was increase of rent by 20% of the monthly rent. That in 2022, the monthly

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rent was TZS. 4,848,000/= and the appellant was supposed to pay TZS. 58,080,000/= for the year 2022. However, the appellant paid only TZS.58 Million only. Mr. Mwalali contended that the rent amount for this year 2023 is TZS. 5,324,000/= per month, but the appellant is still occupying the suit premises without paying a single cent.

He argued that by failing to renew lease agreement in writing, the parties had created periodic lease or periodic tenancy. That failure to pay rent means that the appellant has breached the contract and he is now a trespasser to the suit premises. To buttress his argument, Mr. Mwalali cited several cases including the case of **Lawrence Magesa t/a Jopen Pharmacy vs Fatuma Omary & Another**, Civil Appeal No. 333 of 2010, CAT at DSM (Unreported).

In response to the 2nd ground, Mr. Mwalali submitted that the trial Chairman evaluated the evidence presented before him and made his findings based on that evidence. He argued that, the evidence of the respondent was strong hence the Tribunal was right to consider the said evidence. He cited the case of **Hemed said vs. Mohamed Mbilu**, [1984] TLR 113. He prayed for the appeal to be dismissed with costs.

On rejoinder Mr. Mutakyalwa submitted that there is no evidence of the oral agreement claimed by the respondent, but what is in evidence is

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that the parties have been in conduct of agreement from June 2021 to Dec 2022. That Exhibit P2 was the last payment for that period, indicating that from January 2023, it will be another payment. He argued that the evidence indicates that after expiration of the lease agreement, the appellant has been paying rent amounting to TZS.58 Million by Dec. 2022. That, after serving the notice upon the appellant, the respondent has declined to take any money from the appellant, while the appellant is ready to pay at any time. He reiterated his submissions in chief and prayers.

Having gone through the submissions of the parties, I have also gone through the trial Tribunal records and read the evidence which was orally adduced by the parties along with documentary evidence.

According to the records, initially it was the appellant who instituted Misc. Land Application No. 15 of 2023, before the trial Tribunal, against the respondent, seeking for a declaration that the Lease Agreement between the parties dated 1st June 2016 over the suit premises has been renewed for another five years with rent increment of TZS. 4,320,000/=. He also claimed for general damages and costs. The respondent filed his written statement of defence, and along with it, he filed a counterclaim and among the reliefs sought was for a declaration that the lease

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agreement between the parties had already expired, and an order for eviction of the respondent from the suit premises.

On 11/4/2023, when the matter was set for hearing, it was dismissed by the trial Tribunal for want of prosecution and the Tribunal ordered for the hearing of the counterclaim. Before the trial, two issues were framed namely; first, whether there was renewal of lease agreement for the second time, and second; the reliefs entitlements by the parties.

In the evidence, there was no dispute that there was lease agreement for a period of five years. According to Exhibit P1, the agreement commenced on 1st June 2016 and continued for initial period of five years, hence it was to expire in 2021. Clause 3.2. provides that;

*"The lessee shall, however, have an option to renew this Agreement provided always that **the lessee shall notify the lessor in writing of its intention to exercise its option** to renew at least 3 (three) months prior to the termination of the initial period, failing which the **lessee shall have foregone its right to exercise the option**". (emphasize mine).*

The now respondent testifying as PW1 during the trial, said that the appellant did not give/issue notice of intention to renew as per the requirements of clause 3.2 of the agreement.

Atts.

That, he (PW1) followed the appellant and told him about the expiry of the agreement, and he served him the notice of expiry of lease agreement. That the appellant begged him (PW1) not to evict him, and after sometime he decided to extend one year up to 31/12/2022. That the appellant (tenant) paid rents for that period. He produced payment vouchers for the three periods, 02/5/2022, 09/6/2022 and 14/7/2022. That the voucher dated 14/7/2022 was the last payment, as the parties have agreed that, there will not be further renewal of lease agreement. The vouchers were admitted as Exhibit P2. PW1 (respondent) stated that after December 2022, he served Notice of vacant possession to the appellant on 16/1/2023. The Notice was admitted as Exhibit P3.

In cross examination, PW1 stated that agreement was to expire on May 2021. He said that there was one year agreement which commences from January 2022 to December 2022. That in this addition of one year there was no need to put into writing, but it was oral agreement. In re-examination, PW1 said TZS. 58 Million was for rental payments up to December 2022.

DW1 was Rasul Colak who testified as a witness for the defence. He admitted that the lease agreement which commenced June 2016, expired on 2021. He said however that after the expiry of the initial five (5) years

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period, the parties continued with another five years period up until 2026. That after expiry of the first agreement, they paid rent for a period of one and half year. DW2 said that the second period of lease agreement was not put into writing because PW1 refused saying that, he is waiting for his son. DW1 said further that they have invested a lot of money and capital in the suit premises, hence if the applicant (PW1) wants to evict them, then he should refund them USD. 250,000.

In cross examination, DW1 stated that, they did not sign any additional or addendum agreement, but the applicant (PW1) received rent money after the expiry of the initial contract. Hence he (landlord) recognized them (DW1) as tenants. In further clarification to the assessor, DW1 admitted that they are still occupying the suit premises. That they have not paid rent for January-June 2023 because the landlord wants Ten (10) Million shillings per month while initially, they were paying Five (5) Million shillings per month. He admitted that, the last rent payment was done in 14/7/2022.

Having carefully read the evidence adduced during the trial, now I come back to the pertinent issue in the appeal at hand on whether there was renewal of five years agreement between the parties by their conducts after the expiration of the initial agreement. This was the issue

Adle.

before the trial Tribunal although it was put in a different way that; whether there was renewal of lease agreement for the second time.

It was the finding of the trial Chairman that there was no renewal of the lease agreement after the expiry of the first one. The trial Chairman based his findings on the terms of the lease agreement particularly Clause 3.2 that, the lessee have an option to renew the agreement provided that the lessee shall notify the lessor of the intention to renew at least three months prior to the termination of the initial period. The trial Chairman was of the opinion that since there was no evidence that the lessee (appellant) notified the lessor (respondent) of his intention to renew the agreement, then there was no renewal.

I agree with the trial Chairman that as per Clause 3.2, the appellant was obliged to issue notice of intention to renew the contract to the landlord, (respondent) but he did not do so. The appellant himself has admitted in his evidence at the trial Tribunal testifying as DW1.

However, after the expiration of the initial agreement, the evidence shows that there was informal agreement between the parties or verbal agreement whereby the lessor/Landlord agreed and received rent from the lessee/tenant for a period of more than one year. The respondent (lessor/landlord), in his evidence as PW1, admitted to have agreed and

Atts.

decided to extend one year of lease up to 31/12/2022 where the appellant was to pay rent after every six months in that period.

The proof that the landlord received rent after expiration of the lease agreement is clearly shown by petty cash vouchers which were collectively admitted as Exhibit P2 collectively. It shows that on 02/5/2022, the landlord received TZS 29,000,000/= from the tenant. On 09/6/2022, the landlord received TZS. 15,000,000/= and on 14/07/2022, the landlord again received TZS. 14,000,000/= from the tenant.

According to Mr. Mutakyawa, these conducts of payment and receiving of rent between the landlord and tenant after the expiration of the initial term made the lease agreement to be renewed by default for the next five years. The Counsel is of the firm view that, under the principle of estoppel, the respondent (landlord) is estopped from insisting on the legal effect of clause 3.2 of the agreement since it is of no legal effect.

Since there is evidence which is not disputed that the landlord received the rent after the expiry of the initial agreement then it is my finding that the position of the landlord and tenant changed and falls under Section 82(2) of the Land Act, Cap 113 R.E 2019, which reads as follows; *Alls -*

*"82 (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 months to months shall be deemed to have come into force.**" (emphasis added)*

By the provisions of Section 82(2) of the Land Act, the principle of estoppel does not apply in the case at hand. I say so for the reason that, Mr. Mutakyawa has argued that the landlord having accepted the rent, he is estopped from evicting the tenant as the act of acceptance of rent has automatically renewed the lease agreement. However, Section 82 (2) of the Land Act states that the act of the landlord of accepting the rent after the term of the lease has expired, is not to be taken as a consent of the landlord to the lessee to remain in the suit premises.

Hence, although the respondent as landlord accepted the payments as per Exhibit P2, it did not mean that he has agreed for a five (5) year *Atts.*

lease renewal. Instead of automatic renewal of the term of lease, the parties created a lease agreement known as periodic lease or tenancy. This is clearly laid down under Section 82 of the Land Act, that, a periodic lease from month to month shall be deemed to have come into force where the lessor continues for two months to accept rent from a tenant who remains in possession of the premises after the termination of the lease.

This position was clearly elaborated by my learned Brother Hon. Mhina, J in the case of **Mikumi Hospital Dar Ltd vs. Costa George Shinganya (the Administrator of the late Mwami Theresa Mtare) and another**, Land Case No. 71 of 2022 HC Land Division, DSM (Unreported). The Hon Judge, basing on the provisions of Section 82 of the Land Act, ruled thus;

*"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 fulfil all the obligations as per the original lease agreement.**" (Emphasis added).*

In the case at hand, after expiry of the initial lease agreement, the parties created a periodic lease which is proved by payments as per

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Exhibit P2. They are bound by the provisions of Section 82 as stated. Furthermore, as per Section 82(1) of the Land Act, the lessee is bound to fulfill all the obligations as provided in the original lease agreement. Section 82 (1) provides that;

*"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.**"*(Emphasis added).

It is my finding that, there was no renewal of the lease agreement BUT there was a periodic lease. If there was a periodic lease then the respondent (Landlord) cannot be said that he has consented for the appellant (tenant) to remain in possession of the premises for another term of five years. The periodic lease was a term of one year and a half as it is evidence by both parties and the payments of rents as per Exhibit P2. Hence after being served the Notice to vacate the premises, the lessee had no valid ground to refuse to vacate the same.

The appellant was served with Demand Notice and Notice to vacate premises on 16 January 2023 as evidenced by Exhibit P3. According to Exhibit. P3, the one year and a half lease, which I have found to be a *Auth.*

periodic lease expired on 31 December 2022. However, the appellant has refused to vacate the premises and has not paid rent since the end of periodic lease.

Section 82 (1) of the Land Act, provides that the lessee under the lease has an obligation to pay rent as per the terms of the lease agreement until he ceases to be in possession of the premises. So, in the case at hand, all the obligations of the appellant continue in force until he will vacate the suit premises. Among the obligations is to pay rent as per terms of the agreement. The lessee is bound to pay the accrued rent for all the time he has been in possession of the suit premises as per the terms of Clause 4.0 of the initial lease agreement. The lessor also is bound to receive the rent as per the terms of Clause 4.0 of the terms of the initial lease agreement. It is my finding that as of now there is no any valid tenancy by the appellant as he has already received a Notice to vacate premises and has not paid rent since January 2023.

Section 79(4) of the Land Act provides as follows;

A periodic tenancy may be terminated by either party giving the other notice, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

ALLS

On the unwritten periodic tenancy of the parties, the said tenancy supposedly ended on December 2022. The periodic tenancy was of the sixth months' terms of rental payment. Hence the said periodic tenancy has already expired. Therefore, the appellant is unlawfully occupying the suit premises as of now.

Going back to determine the grounds of appeal I find that the first and third grounds of appeal has no merit for reason already explained herein above that there was no renewal of the terms of lease agreement to another five years by conduct of the respondent.

After the expiry of the initial lease, the parties created periodic lease which did not waive the appellant's obligations under the initial agreement, nor did it meant that the respondent has consented to the appellant's continuance to remain in possession of suit possession. Therefore, basing on the provisions of Section 82 of the Land Act, the respondent's conducts did not waiver any obligation of the appellant under the initial lease agreement. I find these consolidated grounds of appeal to have no merit and I dismiss them.

On the second ground, I find that the trial Tribunal Chairman did analyse the evidence which was adduced before him. *Alle*

It is true that, the trial Chairman neither mentioned nor considered Exhibit P2 in his findings and judgment. Exhibit P2 is the payments for a period of one and half year after expiration of the lease agreement. However, it is my finding that this was not fatal as the trial Chairman considered the enforcement of the terms of the initial lease agreement which bound the parties to it. Hence, although there was payments, the terms of lease agreement were still enforceable and the appellant as a lessee was bound to execute them.

Furthermore, as the Court of first appeal, I have gone through the whole evidence, re evaluated it and come with a finding that there was no renewal of lease but there was a periodic tenancy. I also find that the second ground has no merit and I also dismiss it.

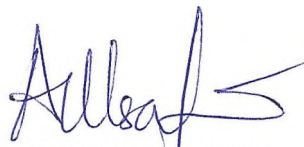
For the foregoing reasons, I find that the appeal has no merit and I dismiss it. I uphold the judgment of the trial Tribunal. However, on the reliefs granted, I alter the third relief where the trial Tribunal ordered the appellant to pay the respondent the rent amount for the whole period since the expiry of the lease agreement. This is for the reason that this Court has found that there is evidence on Exhibit P2 and admission by parties that there was a payment of TZS. 58,000,000/= after expiration of the lease agreement by the appellant to the respondent. The third

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relief now shall be that the appellant shall have to pay rent for the time he has continued to occupy premises after December 2022 until the date he will vacate the premises. The payment shall be as per the terms of the lease agreement which has expired (Exhibit P1). The other reliefs by the trial Tribunal remains intact.

The appeal is dismissed to such extent, with costs. Right of further appeal explained.

It is so ordered.

A handwritten signature in blue ink, appearing to read 'A. Msafiri', is written over a horizontal dotted line.

A. MSAFIRI
JUDGE
25/8/2023.