

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

LAND APPEAL NO. 232 OF 2023

*(Arising from Land Application No. 251 of 2020, of the District Land and Housing
Tribunal for Kinondoni)*

PLAZA INVESTMENT LIMITED..... APPELLANT

VERSUS

24 HRS LOW PRICE HYPER & SUPERMARKET.....RESPONDENT

J U D G M E N T

Date of Last Order: 17.08.2023

Date of Judgment: 31.08.2023

T. N. MWENEGOHA, J.

This appeal originates from the District Land and Housing Tribunal for Kinondoni District, herein referred to as the Trial Tribunal. The appellant above named, is challenging the Judgment and Decree of Hon. Mbilinyi, learned Chairman of the Trial Tribunal, dated 8th May, 2023, vide Land Application No. 251 of 2020. The dispute at the Trial Tribunal was on arrears of rent, to the tune of 5000 USD, allegedly owed to the respondent and three others, by the appellant. The following are the grounds upon which the appeal lies; -

- 1. That, the Honourable Chairperson erred both in law and fact to award the respondent specific damages of USD 55,00 without the same being proved under required standard of law.**

- 2. That, the Honourable Chairperson erred both in law and fact in holding that, the appellant breached the lease agreement in absence of the clear evidence to that effect.**
- 3. That, the Honourable Chairperson erred both in law and fact for holding that, there was oral agreement allowed the respondent to enter into lease premise which is different from the initial written agreement.**
- 4. That, the Honourable Chairperson erred both in law and fact for failure to consider rent arrears owed to the respondent which were specifically proved without any dispute.**
- 5. That, the Honourable Chairperson erred both in law and fact for holding that, the appellant was supposed to issue 90 days' notice of default and not 30 days' notice subject to their lease agreement.**
- 6. That, the Honourable Chairperson erred both in law and fact to award general damages of 23,200,000/= to the respondent without giving clear basis for such assessment.**

The appeal was heard through written submissions. Advocate Lucy Kiangi, appeared for the appellant, while the respondent was represented by Advocate Michael O. Kabekanga.

Sadly, as I was composing this Judgment, I came across an issue, which in my opinion, affects the competence of the entire appeal. I have noted that, the names of the parties appearing in the Memorandum of Appeal is different from those appearing on the original case, vide Land Application No. 251 of 2020. This being a sensitive issue as far as the records of the case are concerned, I ordered the parties to address this Court on the

legality of this appeal based on the aforesaid issue. Both parties complied with the order and addressed this Court.

I have considered and highly appreciated their submissions. For serving this Court's precious time, I will not reproduce them in my Judgment. However, the same have been incorporated in my analysis of the issue so raised herein above.

Unquestionably, the position as far as of names of parties to the case at the appeal stage or otherwise, is well settled. The names cannot be changed at the will of the litigants. The citation of a case plays a central role in the identification of the parties to the case. If the case at the trial stage had six persons for example, all of them must be listed at the appeal stage, regardless if some of them are interested or not. We do so for mainly two reasons. Firstly, to maintain proper records of the case and secondly, to avoid multiplicity of cases, as the Judgment on appeal will have effect to all the parties regardless of their interests.

Therefore, in this case, the appellant should have listed all names appearing in the former case to this appeal too. There are number of authorities that have established this position. These include the case of **Salim Amour Diwan versus The Vice Chancellor Nelson Mandela African Institution of Science and Technology and Another, Civil Application No. 116/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam (unreported)** and the case of **CRDB Bank PLC {Formerly CRDB (1996)} versus George Mathew Kilindu, Civil Appeal No. 110 of 2017, Court of Appeal of Tanzania at Dar es Salaam(unreported).**

I therefore find that the actions of appellant, to exclude some of respondents which were present in the trial case have created a new case which has no roots. Other names which exist in the original case have not been included in the present case. The omission is fatal as per the authorities listed above. Hence this appeal has to fail for being incompetently filed.

For these reasons, I struck out this appeal with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE

31/08/2023