

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

LAND CASE NO. 22 OF 2023

MAHAMUD MOHAMED.....PLAINTIFF

VERSUS

VIVO ENERGY TANZANIA LIMITED.....DEFENDANT

JUDGMENT

12/09/2023 to 19/09/2023

E.B. LUVANDA, J

In this suit the Plaintiff named above proprietor of a Plot No. 64 Block 42 Morocco Kinondoni Dar es salaam as per certificate of occupancy exhibit P1, had entered into a long term lease agreement of twenty five years in respect of the suit Plot No. 64 Block 42 Morocco Kinondoni Municipality which was executed on 12/05/2021, as per exhibit P2 with the Defendant named above, for the later to construct petrol station. According to the Plaintiff Mahamud Mohamed Duali (PW1) it was agreed for the Defendant to pay an up front amount of USD 180,000 and thereafter the Defendant could be paying rent after each three years. However, sixteen months after execution of a lease agreement and registration thereof (on 31/05/2021), on 22/09/2022 parties

mutually terminated the lease agreement as per the termination of long term lease agreement exhibit P4. The Plaintiff still maintained that he is entitled to payment of initial payment of USD 180,000/= being three years rent.

The Defendant Flora Obeto (DW1) is of the view that exhibit P4 means both parties are released from their obligations as of the termination date and that there is no clause which indicate that the contract will survive after termination, in a sense that the rights of the Plaintiff including payment of three years rent a sum of USD 180,000 was not surviving.

Issues framed at the pre trial conference; One, Whether there was a breach of payment of rent on the part of the Defendant; Two, whether the mutual termination of a lease agreement had any effect to the rights of the parties; Three, to what reliefs are parties entitled to.

For purpose of logical sequence I will start tackling issue number two. When PW1 was cross examined by Mr. Privaty Patiensi Rugambwa learned Counsel for Defendant, stated that in termination he explained that he have a claim against the Defendant. PW1 stated that when a contract is terminated, it means an agreement is no longer existing but money will be paid. DW1 on the other hand was of the view that termination (exhibit P4) means both parties are released from their obligation as from the termination date. DW1 stated that there is no any clause which indicate that the contract will survive

after termination, adding that rights of the Plaintiff including payment of a sum of USD 180,000 was not surviving.

It is true that in exhibit P4 is silent regarding to any clause in the contract or any right of the parties which will survive after termination. However, the said termination (exhibit P4) was silent also as to whether the accrued rights of parties are extinguished or abolished. To my view, the wording of exhibit P4, the termination did not affect any accrued right. This is because the wording there are clear that the effect date of termination will be from the date of registration of a termination of lease agreement.

More importantly, termination exhibit P4 was preceded by a notice of intention to terminate lease dated 08/08/2022 which was executed by both parties exhibit P3. The said exhibit P3, made it clear that any obligations under the lease accruing prior to the effect termination date will survive. For appreciation, I reproduce and bold the portion which is of interest to me,

*"FOR GOOD CONSIDERATION, Lessee and Lessor, HEREBY GIVE OUR NOTICE of our intention to terminate the lease between parties on the ground of mutual agreement to cancel the said lease effective on this 8th day of August 2022 **and all rights and obligations under the lease shall thereupon be***

***cancelled except only for any obligations under the lease
accruing prior to the effective termination”***

Therefore, the argument for the learned Counsel for Defendant that the mutually terminated lease agreement has effects to the rights and obligations of parties in that parties are revealed from their obligation, is legally unsound. As alluded by Mr. Respicious Ishengoma learned Counsel for the Plaintiff, of which I agree, that if at all the Defendant had not agreed with the Plaintiff with regard to rights accrued prior termination in exhibit P3 then would have categorically and specifically stated it in express terms in the termination (exhibit P4). Suffices to say exhibit P3 bind the Defendant regarding surviving rights and obligations under the lease agreement, accrued prior effective termination date, and of which are in tandem with the termination exhibit P4, which by implication take into board surviving rights and obligations under the lease agreement, which accrued prior termination. Therefore, issue number two is answered in the negative.

Issue number one, PW1 stated that after registration of the title deed the Defendant ought to pay him money but did not pay and after refused to pay, PW1 demanded or else asked to terminate, where the Defendant wrote a notice to terminate a lease agreement. DW1 stated that among the conditions of the lease agreement was initial three years payment of USD

180,000 upfront after registration. DW1 stated that commencement date was when a title deed is registered at Ardhi. DW1 stated that prolongation was due to delayed internal payment approval process due to Covid 19 pandemic where most approvals were not easily available, occurrence of management change resulted to financial difficulties the Company had suffered, approval involve different units, including group level approval due to heavily investment and lumpsum money involved, and after giving the plaintiff comfort that approval process was being finalized, the Plaintiff informed them that he secured a potential lucrative customer who is willing to effect payment immediately.

It is to be noted that the alleged Covid Pandemic and internal prolonged and bureaucratic approval process, was not pleaded in the written statement of defence, neither featured as among reasons for termination. Equally the alleged lucrative customer secured by the Plaintiff pleaded in the written statement of defence is not reflected anywhere be it in the notice exhibit P3 or termination exhibit P4. Therefore they are taken as a mere defence and an afterthought.

According to a lease agreement exhibit P2, clause 4.2 read together with clause 4.1, stipulate that a sum of USD 180,000 shall be payable in one lumpsum as an advance rental payment to the lessor (Plaintiff), from the

date of registration. Clause 1.1(n) define and interpret registration date to mean the date upon which the lease agreement is registered against the certificate of title by the Land Registry in Dar es Salaam. According to exhibit P4, depict the lease agreement was registered on 31/05/2021 under file Document No. DSM 0008032.

Therefore the argument of DW1 that exhibit P2 say payment will be made from registration or that they inserted in exhibit P2 specific word from commencement date and not on commencement date due to the nature of the lease agreement and internal procedures for approval of payment, or else that could not proceed and procure approval prior being certain whether registration at the Land Registry will be honoured or not. To my view are mere defence which have no place to be accommodated here. First and foremost DW1 conceded a fact that there is no clause which specifically provide that payment will be subject to procurement of internal approval. DW1 conceded a fact that the Plaintiff is not privy to the so called internal approval process. Therefore, the stipulation in the lease agreement takes precedent. According to clause 1.1(e) of exhibit P2, provide that commencement date mean the date upon which the lease shall have been registered against the certificate of title of the property. Herein, registration of a lease agreement was completed on 31/05/2021 as a foresaid. A notice

to terminate exhibit P3 was executed on 08/08/2022 and lease agreement was terminated on 22/09/2022 as per exhibit P4. Indeed the Defendant admitted that all along no payment whatsoever were made to the Plaintiff.

In the case of **Abualy Alibhai Azizi vs. Bhatia Brothers Ltd** (2000) TLR 288, cited by the learned Counsel of the Plaintiff, at page 289, it was held, I quote,

"The principle of sanctity of contract is consistently reluctant to admit excuses or nonperformance where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of public policy prohibiting enforcement"

Therefore, the Defendant is held to have been on breach of payment of rent on his part. The second issue is in affirmative.

Issues number three. Having adjudged the Defendant to have orchestrated the breach of payment, it follows automatically that the Plaintiff is entitled to a redress of a claimed sum USD 180,0000 equivalent to Tshs. 425,880,000/= which will attract interest at the court rate of 7% from the date of judgment to the date of full payment. A claim for general damages is refused, because no evidence was forthcoming from the Plaintiff as to how and why is entitled for the same.

A suit is granted to extent demonstrated above with costs.



E.B. LUVANDA
JUDGE
19/09/2023

Judgment delivered through virtual court attended by Mr. Respicius Ishengoma learned Counsel for the Plaintiff and Mr. Privaty Rugambwa learned Counsel for Defendant.



E.B. LUVANDA
JUDGE
19/09/2023