

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 72 OF 2021**

MSAE INVESTMENT CO. LIMITED PLAINTIFF

VERSUS

YONO AUCTION MART CO. LIMITED 1ST DEFENDANT

TANZANIA BUILDING AGENCY 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

Date of last Order: 29/09/2023

Date of Judgment: 23/10/2023

JUDGMENT

I. ARUFANI, J.

The plaintiff filed in this court the present suit to challenge the action of being evicted by the first and second defendants from land described as Plot No 2466/208, located at Pugu Road, Karaikoo Kamata Area, Ilala District in Dar es Salaam Region (hereinafter referred as the suit property). The plaintiff is praying for judgment and decree against the defendants as follows: -

(a) A declaration that the defendants trespassed to the plaintiff's yard and, destruction of properties and eviction of the plaintiff from the suit premises causing damages of Tshs. 876,350,000/= was illegal ab initio.

(b) That this honourable court may be pleased to order restoration of the applicant in its premises Plot No. 2466/208 located at Pugu Road, Kamata Area, Ilala Dar es Salaam, and its properties taken by Yono Auction Mart be returned to where they were immediately.

- (c) *Psychological torture for being denied to carry out its business peacefully and use her property as intended. Loss of revenue in the tune of Tshs. 450,000,000/= from March, 2017 to date.*
- (d) *Payment of specific damages to the tune of Tshs. 876,350,000/=*
- (e) *Punitive damages to be assessed by the court not less than Tshs. 500,000,000/=.*
- (f) *Interest of 29% per month on (b) and (c) above from the date the cause of action arose to the date of judgment.*
- (g) *Interest of 12% per month interest from the date of judgment to the date of final payment.*
- (h) *General damages to be assessed by the court*
- (i) *Costs of the suit and*
- (j) *Any other of further relief that this court may deem fit and just to grant.*

The defendants disputed the claim of the plaintiff and the second and third defendants alleged the plaintiff was evicted from the suit property after defaulting to pay land rent of the suit property which was leased to the plaintiff by the predecessor of the second defendant. The second and third defendants raised counter claim in their written statement of defence praying for judgment and decree against the plaintiff as follows: -

- (i) *An order for dismissal of the suit in its entirety.*
- (ii) *An order that the plaintiff to pay rent arrears at the tune of Tshs. 242,000,000/=.*

- (iii) *An order that the plaintiff to pay interest on the amount prayed in item (ii) above at the interest of 12% per annum from the date of default to the date of final payment.*
- (iv) *An order that the plaintiff to pay interest on the decretal amount at court rate calculated from the date of judgment to the date of final payment.*
- (v) *An order that the plaintiff to pay the defendants costs of and incidental to the suit and,*
- (vi) *Any other relief the honourable court may deem just and fit to grant.*

When the matter came for hearing the plaintiff was initially represented by Mr. Abraham Hamza Senguji, learned advocate but later on the plaintiff was represent by Mr. Wilbard E. Mtenga who is the Principal Officer of the plaintiff. On the side of the defendants, while the first defendant was represented by Mr. Samuel Shedrack Ntabaliba and Mr. Paulo Mtui, learned advocates, the second and third defendants were represented by a team of Mr. Galus lupogo, Mr. Thomas Mahushi, Mr. Farajani Mwalusamba, Ms. Edna Mwangulumba and Ms. Angelika Lubango, learned State Attorneys. The issue framed for determination in the matter are as follows:

1. Whether the plaintiff is the rightful owner of the suit property i.e Plot No. 2466/208 located at Pugu Road Kamata area.

The plaintiff is represented by Mr. Wilbard E. Mtenga who is the Principal Officer of the plaintiff. On the side of the defendants, while the first defendant was represented by Mr. Samuel Shedrack Ntabaliba and Mr. Paulo Mtui, learned advocates, the second and third defendants were represented by a team of Mr. Galus lupogo, Mr. Thomas Mahushi, Mr. Farajani Mwalusamba, Ms. Edna Mwangulumba and Ms. Angelika Lubango, learned State Attorneys.

2. *Whether there was lease agreement between the plaintiff and the second defendant over the suit property.*
3. *Whether eviction of the plaintiff from the suit property was lawful.*
4. *Whether the plaintiff suffered any damage.*
5. *To what reliefs are the parties entitled.*

In a bid to establish the plaintiff's claims, two witnesses namely **Wilbard E. Mtenga** and **Neema Wilbard** testified on the side of the plaintiff as **PW1** and **PW2** respectively and tendered twenty documentary exhibits in the case. On the other side the defendants brought to the court six witnesses who are **Scholastica Christian Kivela, Deogratus Hugo, Emmy Andrew Nelson, Charles Simando Makungu, Kajesa Minga** and **Fred Mangula** who testified as **DW1, DW2, DW3, DW4, DW5** and **DW6** respectively and tendered twenty-five documentary exhibits in the case.

Wilbard E. Mtenga, (PW1) told the court he is a business man dealing with transportation business from the year 1970. He said the plaintiff acquired the suit property since 1973. He said the plaintiff acquired the suit property after making a normal application for the same from the Regional Development Officer of Coast Region by that time. He said the plaintiff's application was granted and after being given letter of offer they paid the required fees. He said the suit

property was swamp and dump and they used about 200 lorries to fill soil on it.

PW1 said on 15th January, 2001 the plaintiff was given certificate of occupancy by the Ministry of Land and required to sign and return the same to the Ministry of Land for being signed and sealed. PW1 said after signing the certificate of occupancy he returned the same to the office of the Commissioner for Land (hereinafter may be referred in short as the Commissioner) for being signed and sealed but he was solicited to give bribe so that the certificate can be signed by the Commissioner. The stated certificate of occupancy was admitted in the case as exhibit P1.

PW1 said the stated situation resulted into filing criminal case at Kisumu RM'S court against Longino Banza and one Mwakilema who were at the office of the Commissioner and were convicted and sentenced to serve seven years imprisonment for soliciting bribe from PW1. The copy of the newspaper showing the mentioned land officers were convicted and sentenced to go to prison was admitted in the case as exhibit P2.

PW1 said to have also filed Misc. Civil Application No. 11 of 2002 in the High Court of Tanzania at Dar es Salaam seeking for leave to apply for prerogative order of compelling the Commissioner and the Registrar of Title (hereafter may be referred in short as the Registrar) to sign the certificate of occupancy which its ruling was admitted in the case as

exhibit P3. PW1 said he was also charged with several counts of forgery which is ruling was admitted in the case as by the Commissioner and Registrar in Criminal Case No 214 of 2002 filed at Kisumu RM'S court but he was acquitted after being found he was not guilty and the judgment of the stated case was admitted in the case as exhibit P4.

He said after determination of the stated cases the certificate of occupancy issued to the plaintiff was not signed and that caused him to file Misc. Civil Application No. 25 of 2007 in the High Court seeking for prerogative order of compelling the Commissioner and the Registrar to sign the certificate of occupancy and the application was granted. The copy of the ruling of the stated application was admitted in the case as exhibit P5. He said after determination of the stated application the Commissioner refused again to sign the certificate of occupancy issued to the plaintiff and he went to the State House to complain to the Secretary General. He said he was given a letter requiring the Commissioner and the Registrar to comply with the order of the court and the copy of the stated letter was admitted in the case as exhibit P6.

He said after the stated letter being written the Minister of Land sent Mr. Katambi to go to the land in dispute to identify the boundaries of the land and the Commissioner appointed three Land Surveyors to go to identify the boundaries of the land in dispute. The minutes of the meeting convened after identification of the boundaries of the land in

... boundaries of the land in dispute. The minutes of the dispute was admitted in the case as exhibit P7. He said after being informed the land in dispute was their property, they continued to pay land rent and property tax to the Government. The notices for requiring the plaintiff to pay land rent and 15 receipts for payment of land rent and property tax made by the plaintiff to the Government were admitted in the case as exhibit P8.

He went on saying that, later on he discovered the Government had issued a Notice which stated all land of National Transport Corporation together with the land of STAMICO and Tanzania Motors Services had been transferred to Tanzania Building Agency. The stated Government Notice was admitted in the case as exhibit P9. PW1 said the suit property was not among the land properties transferred to the second defendant. He tendered to the court the sketch map of the suit property he said he obtained when they were looking for the boundaries of the suit property and it was admitted in the case as exhibit 10.

PW1 said to have paid all rent for the land the plaintiff leased from NTC and said the defendants have no any claim against the plaintiff. He said the land the plaintiff leased from NTC was land known as "Unit G". He tendered to the court the lease agreement entered by the plaintiff and the NTC for the purpose of the plaintiff to lease the area described as "Unit G" and the lease agreement was admitted in the case as exhibit 11. He said the land the plaintiff leased from the NTC is a different land

... agreement was admitted in the case as exhibit P11 from the land in dispute. He said on 5th February, 2015 he handed over to the second defendant the land the plaintiff leased from the NTC and stated to have shown the second defendant the boundaries of the stated land. Handing over letter of the plaintiff showing the land leased to the plaintiff was handed over to the Executive Officers of the second defendant was admitted in the case as exhibit P12.

PW1 and **Neema Wilbard, (PW2)** told the court that, on 1st March, 2017 the officers from the office of the first defendant and other people who were being led by **Scolastica Kivela, (DW1)** went to their place of work at the suit property and forcefully evicted them from the suit property. PW1 said before being evicted from the suit property he saw demolition of some premises located at Kamata Area taking place. He said after seeing the stated exercise he filed Misc: Land Application No. 74 of 2017 in the court seeking for an order of maintenance of the status quo of their land. He said the stated order was grant and its drawn order was admitted in the case as exhibit P13. He said after getting the stated order he served the same to the second defendant, Commissioner, Registrar and affixed another copy on the fence of their land. PW1 went on saying that, the people from the Government went to their place of business for the purpose of evicting them from the land while they had not served them with any notice of evicting the plaintiff

... for the purpose of maintaining them from ...
from the suit property. PW1 and PW2 said that, although they showed
the said people the order of maintaining status quo of the suit property
issued by the court they disobeyed the same and evicted the plaintiff
from the suit the property. PW1 said at their office there were different
motor vehicles, materials for construction of petrol station, luggage and
parcels of their customers. He said they also took their four containers
which had motor vehicle tyres, lubricants for servicing the motor
vehicles, engines and gear boxes which were for servicing their motor
vehicles and various documents. He said other things taken from the
plaintiff were office tables, chairs and five air conditioners.

PW1 said the containers taken from the plaintiff are at the yard of
the first defendant located at Kunduchi Beach Area. He said after
knowing their properties are at the yard of the first defendant, they
have come to the court to seek for an order of being handed over their
properties which were unlawfully taken from the plaintiff. He tendered to
the court two scanned photographs of the containers he said were taken
from their place of business by the first defendant and were admitted in
the case as exhibit P14. He said they listed the goods taken from the
plaintiff together with their values and said the costs they incurred in
developing the land in dispute is Tshs. 10,039,301,500/= . He said due
to the loss of revenue the loss they suffered has now reached about
twelve billion shillings. He said for an order of being handed over

... He said they wrote a letter to the first and second defendants demanding to be handed over the properties taken from them but were not returned to them. The demand notice was admitted in the case exhibit P15. He said after the mentioned defendants failed to respond to their demand letter, they filed in the court an application for contempt of the court order against the officials of the defendants which was Misc. Civil Application No. 107 of 2017. The application was struck out for being preferred under wrong citation of the law and its ruling was admitted in the case as exhibit P16.

He went on saying that, as the certificate of occupancy issued in favour of the plaintiff was not signed by the Commissioner, they filed in the court Misc. Civil Application No. 652 of 2016 against the Commissioner and the Registrar to pray the court to compel them to sign the certificate of occupancy issued in favour of the plaintiff but the application was struck out. The ruling of the stated application was admitted in the case as exhibit P17. He said as the plaintiff was not satisfied with the decision of the court, they applied for extension of time to apply for review of the decision of the court through Misc. Civil Application No. 191 of 2021 and the application was granted. The ruling of the mentioned application was admitted in the case as exhibit P18.

PW1 said the plaintiff has filed an application for review of the decision of the court in the High Court of Tanzania at Dar es Salaam

Registry which is Civil Review No. 3 of 2022 and said it is still pending in the court. He tendered to the court summons issued in that case and it was admitted in the case as exhibit P19. He said they also filed a caveat to the Registrar in respect of the suit property. He said Lake Oil Limited conducted official search to the Ministry of Land in relation to the suit property as they wanted to buy the same and the stated official search was admitted in the case as exhibit P20.

PW1 said further that, there are two certificates of occupancy on the same land. He said while the first certificate was issued in 2001 in favour of the plaintiff, the second certificate was issued in 2017 in favour of the first defendant. He prayed the court to look into their pleadings and grant all what is prayed in their pleadings and in the demand letter they issued to the defendants.

When PW1 was cross examined by the counsel for the first defendant he said the containers taken from the plaintiff were blue in colour but they have no any special mark. He said they joined the first defendant in Misc. Civil Application No. 74 of 2017 as he was the agent of the second defendant. He said Scolastica Kivela is the one broke their office premises and beat their staffs. He said the first and second defendants were aware of the order to maintain the status quo as they served the second defendant with the order.

...with the order.

He said the plaintiff was a tenant of the NTC and later on the plaintiff became tenant of the second defendant on the area known as "unit G" which was adjacent to the suit property. He said they paid all the rent for the land leased to the plaintiff and said they handed over the stated leased land to the defendants. He said as the plaintiff had no any other lease agreement with the second defendant the second defendant cannot claim anything from the plaintiff. He said exhibit P9 shows it is only two plots of NTC which were handed to the second defendant and Plot No. 2466/208 is not one of them. He said he has not brought to the court the letter of applying to be granted ownership of the land in dispute and letter of offer issued to the plaintiff but they were granted certificate of occupancy which was not signed by the Commissioner and the Registrar. He said the certificate of occupancy issued to the plaintiff has never been revoked.

When he was cross examined by the counsel for the second and third defendants, he said all bill of lading and other documents showing the properties taken from them were in the containers taken by the first defendant. He said they convened a meeting with the people from the TBA and NTC and agreed the un-surveyed land was transferred to the TBA. He said as they have no any contract with the second defendant, he had no duty of bringing any evidence to show they paid rent to the second defendant. He said the plaintiff has not been served with any

... K... bringing any evidence to show they paid rent to the notice of requiring them to pay rent and vacate from the land leased to the plaintiff. He said the plaintiff vacated from the land leased to them in 2017.

He further stated that, their company was allocated the land in dispute in 1973 and started paying land rent from 1973 to 2016 and said proof of payment of the stated land rent is exhibit P8. He said during the meeting with the people from the Ministry of Land, the Secretary from the NTC said the sketch map which had been annexed to exhibit P7 was a hypothetical map and removed the same from the minutes of the meeting. He denied to have applied from the PSRC to buy the suit property. He said according to the sketch map issued in 2001, their neighbours to the suit property were Railway on the Northern side, left side is Plot No. 23264 which was the property of NTC, southern side there was a plot of Shoprite and the plot of the plaintiff.

He said the original sketch map of the area in dispute was made in 1964 and said the size of their land is 3,140 sqm. He said he had about 120 buses hence the plot given to the plaintiff was not sufficient enough to accommodate all buses that is why they leased another land from the NTC. He said the issue of ownership of the suit property was decided by Hon. Mutungi, PRM at Kisumu RMS Court who decided the case in favour of the plaintiff. He said they were using containers as their offices and the containers which were taken were their offices. He said they used to

... saw the suit property were using containers as their offices and
keep documents and computers in the containers and said even his
briefcase which had Tshs. 800,000/= was in the said containers.

Neema Wilbard who testified in the matter as **PW2** told the court she was working at the plaintiff's company as an Assistant Accountant at the time of the eviction of the plaintiff from the suit property. She said on the date of eviction which was 1st March, 2017 at about 10:00 AM she saw many youths who had carried big sticks (magongo) going into their offices and ordered them to get out of the office and started beating people. She said the stated youths were more than 70 and they told them they were not supposed to be there.

PW2 said when they asked them who sent them, they said they were sent by Scolastica Kivela who was coming from the first defendant. She said when they asked Scolastica Kivela, (DW1) where she got the authority of evicting the plaintiff from the suit property, she told them she had been directed by the high authority to evict them from the suit property. When they asked them where is the document directed them to do the stated work, they said they had no document. PW2 said as they had an order of maintenance of the status quo from the court they showed them the stated order but, DW1 refused to read the same and directed her youths to break their offices and took them out. She went on saying that, DW1 directed her youth to take everything out of their offices. She said among the properties which

were not taken were containers and a lorry. She said after being evicted from the suit premises they left the containers which were dark blue in colour and the lorry in the hands of the first defendant.

When PW2 was cross examined by the counsel for the first defendant she said that, there is nowhere written the containers taken by the first defendant were properties of the plaintiff. She said they took some properties and others were left at the suit property. She said they took some of the properties like documents, computers, some of the parcels of their customers and some of the furniture of their offices. She said the properties they left at the suit property were printers, air conditioners, some of the luggage of their customers which they failed to carry, spare parts of the buses and lorries. She said the mentioned properties were purchased by PW1 from China. She said when they were evicted from the suit property, they had three containers which they left to the first defendant.

When she was further cross examined by the counsel for the second and third defendants, she said PW1 is the Director of the plaintiff and he is her father. She said she don't know if the event of being evicted was reported to police station by PW1. She said their Chief Accountant was one Bernard who left from the office before the event of being evicted from the suit property. She said there were spare parts

which were being purchased from China as they used to receive them after being purchased.

In their defence **Scolastica Christian Kivela** and **Deogratius Hugo** testified as **DW1** and **DW2** respectively and told the court they are coming from the first defendant's company. While DW1 said she is the Director of the first defendant, DW2 said he is an Accountant of the first defendant. DW1 told the court the first defendant is an Auctioneer, Court Broker and Debt Collector, and DW2 said his duties is to supervise all accounts and operational activities of the company.

DW1 and DW2 said their company entered into an agreement with the second defendant of collecting their debts of rent from their tenants who had defaulted to pay rent and evict them from the premises they had leased to them. DW1 tendered to the court the copy of the agreement for collecting debts of the second defendant from their tenants dated 9th March, 2017 and it was admitted in the case as exhibit D1.

They said they know the plaintiff as she was one of the tenants of the second defendant and she was indebted for failure to pay rent for the premises she leased from the second defendant. DW2 said he issued the notice to the plaintiff of requiring them to pay the outstanding rent arrears of the second defendant and to vacate from the suit premises but the plaintiff refused to receive the notice. The copy of the notice

issued to the plaintiff by the first defendant was admitted in the case as exhibit D2.

DW1 said when they went to evict the plaintiff from the suit premises, they found the plaintiff had subleased the suit premises to another subtenant who was SMX and the said subtenant showed them the agreement of being subleased the suit premises and the receipt of paying rent to the plaintiff. DW1 said that, after informing SMX they were evicting tenants who had defaulted to pay rent to the second defendant, SMX agreed to vacate from the suit premises.

DW1 and DW2 said after the elapse of fourteen days, on 1st March, 2017 they evicted the plaintiff from the suit property. DW1 said there is no any order of maintaining the status quo shown to them by the plaintiff. She said when they were doing the said work, they were with the principal officer from the second defendant's office, officers from the local government office, police officers, journalists and reporters from various media.

DW1 said that, most of the tenants evicted from the premises they had leased premises from the second defendant, departed with their properties and said the plaintiff departed with their properties. DW1 and DW2 said the plaintiff abandoned their two containers at the suit premises and the second defendant told them to take them. DW1 and DW2 said they took the said containers to their yard at Bahari Beach but

later on they shifted them to their yard of Ununio as they are doing renovation of their yard of Bahari Beach after as the ocean water entered into their yard.

DW1 said that, after the plaintiff being evicted from the suit property SMX wrote a letter to them seeking to be leased the suit property and annexed her letter with the lease agreement they entered with the plaintiff and cheques for the rent they paid to the plaintiff. The letter written by the SMX to the first defendant and two cheques written to the plaintiff by SMX were admitted in the case as exhibit D3 collectively.

She said after receiving the stated application they forwarded the same to the second defendant through a letter which was admitted in the case as exhibit D4. She said after evicting the plaintiff from the suit premises the plaintiff sued them in the court but the suit was struck out. She tendered to the court the ruling of the court delivered in Misc. Civil Application No. 470 of 2017 and it was admitted in the case as exhibit D5. DW1 and DW2 said there was nothing in the containers they took from the plaintiff and they were empty containers.

When DW1 was cross examined by PW1 she said that, when they were evicting the plaintiff from the suit premises, they had valid and existing agreement with the second defendant which was continuing until 9th March, 2017. She said they renewed the said agreement on 10th

March, 2017. She said the law requires them to issue 14 days' notice of eviction and make publication at the place of event before eviction. She said the notice of evicting the plaintiff from the suit property was prepared by DW2 and after being served to the plaintiff, the plaintiff refused to receive the same. On his side DW2 said their last contract with the second defendant was renewed on 9th March, 2017 and it was supposed to continue until 2018. He said the containers they took from the suit premises were empty and he don't know if there is anything in the containers.

Emmy Andrew Nelson testified as **DW3** and told the court he is a Senior Mapping Surveyor and is working at the Ministry of Land. He told the court the suit property which is on Plot No. 2466/208 as approved by the Director of Mapping and Survey on 28th January, 1949 is found on sketch Plan No. D491/6026 of 1949 which its certified copy was admitted in the case as exhibit D7. He said by that time the area had not been surveyed and it was known as Dar es Salaam Motor Transport Corporation (DMTC). He said in 1973 the land in exhibit D7 was surveyed and given Plan No. D491/1 which was approved on 23rd March, 1973 but it was not given Plot Number. The stated survey Plan of 1973 was admitted in the case as exhibit D8. DW3 said the size of the stated land was 31810 square feet.

DW3 said in 2000 National Transport Corporation wrote a letter to the City Surveyor requesting the land to be given plot number and the said letter dated 22nd December, 2000 was admitted in the case as exhibit D9. He said the NTC was the owner of the land in dispute it was requesting to be given plot number so that they can apply for certificate of occupancy. He said after the City Director received the said letter, he wrote a letter to the Director of Mapping and Survey praying the plot to be given number.

The letter written to the Director of Mapping and Survey was admitted in the case as exhibit D10. The letter from the Director of Mapping and Survey replying the said letter was admitted in the case as exhibit D11. He said after the stated correspondences the sketch plan was amended and the survey Plan No. 491/1 was issued and it was admitted in the case as exhibit D12. He said after the stated amendment which was done on 9th February, 2001 the Plot was given Plot No. 2466/208 and allocated to the NTC.

When DW3 was cross examined by PW1 he said exhibit D7 shows there are two plots which are Plots Nos 2189/208 and 2190/208 but he does not know who was allocated the stated plots. He said exhibit D8 is titled Shell Petrol Station and it was surveyed in 1973 and given the stated name. He said the Plot in exhibits D8 and D12 is the same plot and the survey plan is the same.

Another witness called by the defendants is **Charles Simando Makungu** who testified as **DW4** and said from 2005 to 2012 he was the second defendant's Director of Real Estate. He said initially the land in dispute was owned by the NTC but later on it was transferred to the second defendant through a letter written to the second defendant by PSRC. The stated letter which was written on 29th October, 2001 was admitted in the case as exhibit D13. He said the plaintiff is mentioned in the lease agreement annexed in the letter admitted in the case as exhibit D13 and the stated lease agreement was admitted in the case as exhibit D14.

He said the third schedule in the lease agreement is the plan showing Area known as "unit G" which was leased to the plaintiff by the NTC. He said the lease agreement was accompanied with a certificate of incorporation of the plaintiff issued by the Registrar of Companies. He said thereafter they went to the suit property together with the people from the Treasury and said one of the properties handed to them was Plot No. 2466/208 which had been leased to the plaintiff.

He said there is a letter written by the plaintiff requesting to buy the land in dispute and said they advised the plaintiff to communicate with the second defendant who had been handed the land in dispute. He said all the land in "unit G" was handed to them. He said he believed

the plaintiff had a lease agreement with the NTC and said exhibits P11 and D14 are the lease agreements for the land leased to the plaintiff.

He said after being handed the properties of the NTC, the caretaker of the properties of the NTC namely Mwanambuu wrote a letter to the plaintiff informing them that, if they wanted to continue with tenancy in the suit property or otherwise, they were supposed to communicate with the Ministry of Work who had been handed the property of the NTC and the said letter was admitted in the case as exhibit D15. DW4 said from the date of the stated letter the plaintiff was required to communicate with the second defendant.

DW4 said that, among the landed properties of the NTC handed over to the second defendant at the Ex-Kamata Area was Plot No. 2466/208 and the handing over report was admitted in the case as exhibit D16. He said the Plot No. 2466/208 is a government property and is indicated in exhibit D16 and the handing over report recognized the plaintiff as the tenant. When he was cross examined by the plaintiff's Principal Officer, he said he was sure that the NTC was the owner of the suit property. He said Government Institutions were not given certificate of occupancy but it was in the record of the government that the suit property was allocated to the NTC.

He said he know exhibit P1 was issued by the Ministry of Land but he doesn't know if it has any problem but as there is case before the

court it must have problem. He said exhibit P9 is a government notice of transferring the properties of the NTC to the second defendant. He said to his understanding the suit property was not included in exhibit P9 because there was a dispute about its ownership. He said "unit G" referred in exhibit P11 leased to the plaintiff was un-surveyed land. He said exhibit P7 is showing the land was Shell Petrol Station and it is located at Pugu Road but it was un-surveyed land.

He said the survey of the stated land was conducted on 23rd March, 1973. He said in exhibit P10 there are four Plots of land numbered 2364/208, 2189/208, 2190/208 and 2466/208 which are now properties of the second defendant. He said the plaintiff was incorporated in 1990 and the certificate of occupancy which is exhibit P1 was issued in 2001. When he was cross examined by the counsel for the first defendant, he said all the area known as Ex-Kamata and also known as "unit G is the land of the second defendant. He said when the suit land was leased to the plaintiff had not been surveyed but now it is surveyed. He said the plaintiff was a tenant of the land in dispute after being leased by the NTC. He said he remember the first defendant was given contract of collecting debts by the second defendant. He said they decided to engage an agent of assisting them to collect their debts because they had so many works to do.

Another witness testified in the case on behalf of the defendants is **Kejesa Minga** who testified as **DW5** and told the court he is a Land Officer working in the office of the Commissioner for Land at Dar es Salaam. He said according to the record they have in their office, in 2000 they received an application from the plaintiff seeking for ownership of the suit property. He said the stated application was accompanied with the letter of offer appearing to have been issued in 1973 and the receipt for payment of fees for the stated letter of offer.

He said after receiving the stated application the office of the Commissioner prepared certificate of occupancy and wrote a letter to the plaintiff requiring them to go to the office of the Commissioner to sign the certificate of occupancy. He said when the office was proceeding to process the plaintiff's certificate of occupancy, they received a letter from the NTC seeking for long term right of occupancy over the suit property. The stated letter was admitted in the case as exhibit D17. He said after receiving exhibit D17 they notified NTC they had already another application from the plaintiff seeking to be granted right of occupancy over the same plot of land. He said after writing the stated letter the NTC wrote to the Commissioner seeking for the process of issuing certificate of occupancy to the plaintiff to be stopped. The letter from the NTC was admitted in the case as exhibit D18.

He said after receiving exhibit D18 the Commissioner initiated an investigation of the legality of the letter of offer issued to the plaintiff and the receipts for payment of land rent presented to the office of the Commissioner by the plaintiff. The letter written to the Ministry of Finance by the Ministry of Land requesting investigation of authenticity of the payment receipts presented to the Commissioner to be conducted was admitted in the case as exhibit D19. He said the Ministry of Finance replied the stated letter but it was admitted in the case for identification only as it was a photocopy.

He said after receiving the letter from the Ministry of Finance the Commissioner wrote another letter to the DCI seeking for investigation of the legality of the receipts and it was found the receipts were forged. The letter from the Commissioner to the DCI was admitted in the case as exhibit D20. He said after the investigation being conducted, Criminal Case No. 214 of 2004 was filed at Kisumu RM'S Court against PW1 and another but they were acquitted after being found were not guilty. He said after determination of the said case their office convened a meeting of seeing who was supposed to be granted ownership of the land in dispute.

He said in the course of doing investigation of the matter they discovered the letter of offer presented to their office by the plaintiff had no plot number and while the letter of offer was issued in 1973 but the

plaintiff was incorporated in 1990. He said that means when the letter of offer was issued the plaintiff was not in existence. He said the stated discoveries made them to find the plaintiff was not the owner of the suit property and the owner was the NTC. He went on saying that, the lease agreement given to them showed the plaintiff was leased the suit property by the NTC in 1999.

He said after discovering the documents taken to their office by the plaintiff were not genuine and authentic, they wrote a letter to the plaintiff and informed PW1 they cannot register his company as the owner of the land in dispute because of the above stated reasons. The letter written to the Director of the plaintiff by the Ministry of Land was admitted in the case as exhibit D21. He said after informing the plaintiff is not the owner of the suit property, they registered the second defendant as the owner of the suit property and prepared a certificate of occupancy which was issued to the second defendant.

When DW5 was cross examined by PW1 he said NTC inherited the land in dispute from the National Bus Service. He said the letter of offer presented to the office of the Commissioner had Land Office No. 191910 and it was issued in favour of the plaintiff. He said the draft of the certificate of occupancy prepared for the plaintiff was prepared basing on the documents taken to the office of the Commissioner by the plaintiff. He said after the certificate of occupancy issued to the plaintiff

being signed by PW1 it was returned to their office but it was discovered the certificate was unlawfully prepared.

He went on saying that, according to exhibit P17, the NTC applied to be allocated the land in dispute in 2001 and said before 2001 the suit property was being owned by the NTC but now it is the property of the second defendant. He said the second defendant was handed the said property by the PSRC and said the NTC which was the government corporation. He said they failed to finalize the process of issuing the certificate of occupancy in respect of the suit property after discovering the plaintiff had not acquire the same lawfully. He said he don't know why the demand notice for the land rent was addressed to the plaintiff instead of being addressed to the NTC.

When he was cross examined by the counsel for the first defendant, he said he don't know the land in dispute physically but he knows the same through the record available in their office. He said exhibit P1 is a document issued by their office but it has no value as it is still a draft which its process was not completed. He said the certificate of occupancy is prepared by the Municipal or City Director and sent to the Commissioner for approval and thereafter to the Registrar of Title for registration.

The last witness for the defendant was **Fred Mangula** who testified as **DW6** and said he is working at the second defendant agency

as the Acting Manager of Property Facilities Management. He said he know the suit property and said it is owned by the second defendant. He said the whole area in exhibit D12 and in exhibit D16 is Ex Kamata Area and the stated land was handed to the second defendant from the NTC except the Plot No. 2190/208 which is the plot of Tanzania Breweries limited. He said Plot No. 2466/208 has now been leased to Super Feo Company.

He said before the suit property being leased to the mentioned tenant there was another tenant who was the plaintiff. He said the land leased to the plaintiff as indicated in the layout found in the appendix contained in the lease agreement admitted in the case as exhibit D14 was known as "unit G" and it is indicated in the site layout as Plot No. 1 open and extension Plot No. 1. He said the suit property which is Plot No. 2466/208 is the area indicated as Plot No 1 in the layout. He said the suit property was given plot number in 2001.

DW6 said that, when the suit property was handed to the second defendant the plaintiff was in land arrears. He said there are other tenants who were handed to them with rent arrears and they have not paid their rent arrears. He said the plaintiff was in rent arrears of Tshs 21,600,000/= when the suit property was handed to the second defendant. He said after seeing the plaintiff was in rent arrears, they wrote a letter to the plaintiff demanding them to pay the debt of rent

which had not been paid. He said they wrote several letters to the plaintiff and the last notice was written when the arrear of the rent was about Tshs. 242,000,000/= . The demand letter written to the plaintiff by the second defendant was admitted in the case as exhibit D22.

DW6 said after writing demand letters to the plaintiff and failed to get any response they engaged an auctioneer and debt collector who was the first defendant to assist them to collect their debt but the plaintiff continued to refuse to pay the rent. He said while in the process of claiming rent from the plaintiff the government continued with the process of registering the suit property in the name of the second defendant and said up to now the second defendant is the owner of the suit property. The certificate of occupancy issued to the second defendant was admitted in the case as exhibit D23. He said the plaintiff is not the owner of the suit property and said the owner is the second defendant.

He said the plaintiff wrote a letter seeking to buy the suit property which was part of "unit G" leased to them which is saying is its property. He said the stated letter was presented to the PSRC and the said letter was admitted in the case as exhibit D24. DW6 said the PSRC refused the application of the plaintiff and the letter written by the PSRC to reply the letter of the plaintiff was admitted in the case as exhibit D25. He prayed

the court to order the plaintiff to pay their debt of rent which is Tshs. 242,000,000/= and the plaintiff's claims be dismissed.

When DW6 was cross examined by the plaintiff's Principal Officer he said exhibit D13 is the document showing the suit property was transferred to the second defendant. He said although exhibit D13 is not showing Plot No. 2466/208 was transferred to the second defendant but there are other documents like handing over report showing the suit property was transferred to the second defendant. He said the suit property was not mentioned in exhibit D13 because by that time it had not been given plot number. He said the suit property was surveyed for the first time in 1973 but it was not given plot number and it was named as Shell Petrol Station. He said exhibit P11 is not stating the plot was for Shell Petrol Station and said he don't know who was given the land in dispute after being surveyed in 1973.

He said there was surveyed and un-surveyed land and the un-surveyed land was part of the land leased to the plaintiff. He said the whole area of Ex Kamata with exception of the land of Tanzania Breweries Limited was transferred to the second defendant. He said the land transferred to the second defendant was Plot Nos. 2189/208, 2364/208, 2364/208 and Extension Plot No. 1 which is now Plot No. 2466/208.

He said the properties of the NTC were transferred to the second defendant in two ways. He said the first transfer was done through the Instrument of transfer and secondly was through a letter. He said all properties were transferred by way instrument with exception of the suit property which was transferred by way of letter as there was dispute over the suit property. He said the suit property was transferred to the second defendant by way of letter which is exhibit D13 in the case.

He said the lease agreement entered by the plaintiff and the NTC was for three years and the rent per month was Tshs. 1,200,000/= and per year was Tshs. 14,400,000/=. He said for three years the rent was Tshs. 43,200,000/=. He stated that, although the lease agreement expired but as the plaintiff continued to stay in the leased land it was taken the lease was renewed impliedly.

When DW6 was cross examined by the counsel for the first defendant he said the plaintiff was evicted from the suit property by the first defendant who is an auctioneer and he was removed from the suit property on 1st March, 2017. He said when the plaintiff was evicted from the suit property, the plaintiff took all of his properties except two containers which were taken by the first defendant. He said he was not present when the plaintiff was evicted from the suit property. He said he came to see the stop order in the court and it was not served to them. He concluded his evidence by saying plaintiff is not lawful owner of the

suit property and said the lawful owner is the second defendant and the plaintiff was just as tenant.

After the parties adduced their evidence the counsel for the parties prayed and allowed to file in the court their final submissions. I commend them for their industrial and illuminating submissions which will assist the court in determine the issues framed for determination in the present suit. To avoid making this judgment unnecessarily long I will not reproduce what is stated in their submissions but I will be referring to them in the course of determine the issues framed in the matter.

The court has found before going to the issues framed for determination in the matter, it is proper to state at this juncture that, as rightly stated in the submissions filed in the court by both sides it is a position of the law as provided under sections 110 and 111 of the Evidence Act, Cap 6 R.E 2002 that, the burden of proof in civil cases lies on the person alleges existence of a certain fact. The principle of the law laid in the above cited provisions of the law has been affirmed by our courts in number of cases which one of them is the case of **Godfrey Sayi V. Anna Siame** (as Legal Representative of the late **Mary Mndolwa**), Civil Appeal No. 114 of 2014, CAT at Mwanza (unreported) where it was stated that: -

"It is cherished principle of law that, generally, in civil cases, the burden of proof lies on the party who alleges anything in

his favour. We are fortified in our view by the provisions of sections 110 and 111 of the Law of Evidence Act [Cap 6 R.E. 2002] which among other things states: -

110. Whoever desires any court to give judgment as of any legal right or liability depending on existence of facts which he asserts must prove that those facts exist.

111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."

Together with the principle of the law stated hereinabove it is to the view of this court apposite to state here that, the standard of proof in civil cases as provided under section 3 (2) (b) of the Evidence Act and as stated in number of cases including the cases of **Narayan Ganesh Dastane V. Sucheta Narayan Dastane**, (1975) AIR (SC) 1534 cited in the submission of the counsel for the second and third defendants, **Jackson Sifael Mtares V. Director of Public Prosecutions**, Civil Appeal No. 180 of 2019, CAT at DSM and **Anthony M. Masanga V. Penina (Mama Mgesi) and Another**, Civil Appeal No. 118 of 2014, CAT at Mwanza (Both unreported) is on preponderance or balance of probability.

While being guided by the above stated principle of the law the court has found proper to start with the first issue which states *whether*

the plaintiff had the rightful ownership on the suit property i.e Plot No. 2466/208 located at Pugu Road, Kamata Area. The court has found while the plaintiff alleged is the rightful owner of the suit property, the second and third defendants rebutted the allegation of the plaintiff and avers the rightful owner of the suit property is the second defendant. Since the plaintiff is alleging is the rightful owner of the suit property and the second defendant is also alleging is the rightful owner of the suit property the court has found as stated in the case of **Hemedi Saidi V. Mohamed Mbilu**, [1984] TLR 113 the position of the law is that both parties cannot tie and the person whose evidence is heavier than that of the other is the one who must win.

The court has found in a bid to establish the plaintiff is the rightful owner of the suit property PW1 said the plaintiff acquired the suit property since 1973. PW1 said the plaintiff acquired the suit property after making formal application of the same from the Regional Development Officer for Coast Region by that time and the plaintiff was granted letter of offer. PW1 said after the plaintiff being granted letter of offer, they applied for certificate of occupancy and on 15th January, 2001 PW1 was required by the Commissioner to sign the draft of the certificate of occupancy and return the same to the Commissioner for being signed. PW1 said after signing the certificate of occupancy and return the same to the Commissioner for signing the same and further

steps, the Commissioner refused to sign the same. As said by PW1 the stated certificate of occupancy which is exhibit P1 in the case has never been signed by the Commissioner to date.

The court has found DW5 told the court that, while the Commissioner was in the process of signing exhibit P1 they received a letter from the NTC which is exhibit D17 in the case showing the suit property was in occupation of the NTC. DW5 said after receiving exhibit D17 they notified the NTC that they had received an application from the plaintiff for being granted right of occupancy over the suit property and they were in the process of signing certificate of occupancy which had already been prepared for the plaintiff.

DW5 said thereafter received another letter from the NTC which was admitted in the case as exhibit D18 objecting the signing and registering ownership of the suit property in the name of the plaintiff, the Commissioner stopped to sign exhibit P1. The court has found the evidence adduced in the case by both sides shows thereafter several cases which its decisions were admitted in the case as exhibits were instituted in courts basing on the claim of the plaintiff of ownership of the suit property. Now the plaintiff is before the court seeking for declaration that she is the rightful owner of the suit property.

The court has considered the evidence adduced in the matter by both sides in relation to the ownership of the plaintiff over the suit

property. The court has found that, although it is not disputed that the plaintiff applied for the land from the Regional Development Officer of Coast Region by that and given the letter of offer but as rightly argued by the counsel for the second and third defendants the stated documents were not produced in the court as evidence to support the evidence of PW1 that the plaintiff applied for the ownership of the suit property and granted letter of offer over the suit property.

The court has also found that, although the plaintiff was issued with the certificate of occupancy admitted in the case as exhibit P1 for the purpose of signing the same and returning it to the Commissioner for signature and further steps, but as rightly argued by the counsel for the second and third defendants, PW1 did not tell the court how the stated draft of the certificate of occupancy was returned to the plaintiff and managed to bring it to the court and tendered the same in the case as an exhibit.

The court has also found that, although DW5 said the application for certificate of occupancy made to the Commissioner by the plaintiff was accompanied by the letter of offer issued to the plaintiff but as exhibit P1 has not been signed by the Commissioner for Land then as provided under section 29 (3) of the Land Act, Cap 113 R.E 2019 it cannot be said it has established the plaintiff is the rightful owner of the

land in dispute. For clarity purpose the cited provision of the law states as follows: -

"A certificate of occupancy shall be deemed to be dully and validly executed if it is signed by the commissioner and sealed with the official seal and purports to be signed and sealed by the President and further proof of such execution shall not be required for the purpose of registration under the Land Registration Act, Cap 334."

[Emphasis added]

From the wording of the above quoted provision of the law it cannot be said exhibit P1 which was not dully signed by the Commissioner and sealed with the official seal it has validly granted the plaintiff rightful ownership to the land in dispute. To the contrary the court has found the evidence given in the case by DW3 and DW5 shows the history of how the second defendant became owner of the suit property from the year 1949 which was before 1973 when PW1 said the plaintiff acquired the suit property.

The court has found DW3 said the suit land was recognized for the first time in the sketch map with Plan No. D491/6026 of 1949 which was admitted in the case as exhibit D7. He said the suit property was the property of Dar es Salaam Motor Transport Company Limited which PW1 said it was an Oversees Motor Transport Company Limited. DW3 said by that time the land was un-surveyed and said it was surveyed in 1973

and given Plan No. D491/1 which was approved by the Director of Mapping and Survey on 23rd March, 1973 but it was not given plot number. DW5 said in 2000 the NTC wrote a letter to the City Surveyor requesting the Plot to be given plot number so that the NTC can apply for the certificate of occupancy. DW3 said the Plan No. D491/1 approved in 1973 was amended on 9th February, 2001 and given Plot No. 2466/208 which was allocated to the NTC.

The court has found the affidavit annexed in annexure D18 shows the land in dispute was vested to the NTC after the National Bus Service Ltd who was the previous owner of the mentioned landed property being dissolved in 1991. The court has also found the National Bus Service Limited acquired the land in dispute from Dar es Salaam Motor Transport Company Limited, the original owner of the suit premises. The evidence of DW3 and DW5 stated hereinabove gives a clear chain of how the second defendant acquired the suit property from the original owner.

The above stated evidence caused the court to find it has raised doubt to the ownership of the plaintiff to the suit property because while PW1 said the plaintiff acquired the same since 1973 but the evidence adduced by DW3 and DW5 shows the suit property was in the ownership of the predecessors of the second defendant from 1947.

Another issue raised doubt to the ownership of the plaintiff to the suit property as said by DW3, DW5 and DW6 and argued in the submission of the counsel for the second and third defendants is the fact that, while PW1 said the plaintiff acquired the suit property in 1973 but the copy of the certificate of incorporation of the plaintiff annexed in exhibit D14 shows the plaintiff was incorporated in 1990. That means by 1973 the plaintiff was not in existence hence the plaintiff would have not been granted land before being incorporated.

The stated position of the matter led the court to the view that, the evidence of DW3, DW4, DW5 and DW6 and various documentary exhibits admitted in the case as evidence gives more plausible explanation that the plaintiff entered into the land in dispute after being leased the same by the NTC and later on the suit property was transferred to the second defendant. The stated view of this court is getting support from exhibits P11 and D14 which shows on 27th April, 1999 the plaintiff entered into lease agreement with NTC for the plaintiff to lease the landed property of the NTC known as "Unit G" and it is stated the suit property is part of the stated landed property.

The court has found that, although PW1 and the counsel for the plaintiff stated in his closing submission that exhibit P9 which is the Instrument of Transfer of the assets of the NTC to the second defendant is not showing the suit property is one of the properties transferred to

the second defendant. The counsel for the plaintiff submitted further that there is no evidence marshalled by the defendants to show why the suit property was not listed in exhibit P9 if not that it was the property of the plaintiff and not the property of the NTC.

The court has found it is not true that there is no evidence marshalled by the defendants to prove why the suit property was not listed in the stated instrument. The court has found DW4 and DW5 stated clearly in his evidence that the suit property was not mentioned in the stated instrument because by that time when the instrument was issued on 2nd December, 2011 there was a dispute over the suit property which was supposed to be resolved first. The evidence of DW4 is also supported by Exhibit D16 which states clearly at its first paragraph that the dispute which was over the suit property caused the suit property to be not among the assets handed to the second defendant through the stated instrument. That moves the court to find there is sufficient evidence marshalled in the case by DW4 and exhibit D16 which shows clearly why the suit property was not listed in exhibit P9.

The court has found the counsel for the plaintiff stated further that the certificate of occupancy granted to the plaintiff has never been revoked by his Excellency President of the United Republic of Tanzania. The court has been of the view that, as the certificate of occupancy issued to the plaintiff was not signed by the Commissioner and sealed

with the official seal to perfect the same, it cannot be said there is a certificate of occupancy which would have been revoked by his Excellency President of the United Republic of Tanzania.

As for the argument by the counsel for the plaintiff that the plaintiff was the first to occupy the suit property and he has been in occupation for 17 years has been found by the court is rebutted by the history of the suit property given by DW3 and DW5 which shows the predecessors of the second defendant are the one who have been in occupation of the suit premises for longer period of time than the plaintiff as they started occupying the suit property from the year 1949 while the plaintiff alleged to have started using the suit property from 1973. Therefore, the position of the law stated in the case of **Enock Kalibwani V. Ayub Ramadhani & 3 Others** cited in the submission of the counsel for the plaintiff is not relevant in the present case.

The court has found PW1 said in his evidence and the counsel for the plaintiff stated in his final submission that, the plaintiff is a rightful owner of the suit property as he has been paying land rent and property tax from 1973 onward and find exhibit P8 is very clear that the plaintiff has been demanded to pay various land and property tax in respect of the suit property. However, as stated in the cases of **Hamisa Athuman** (As Administratrix of the Estate of the late **Halima Athuman**) **V. Halima Mohamed** (As Administratrix of the Estate of the late **Tasina**

Kimela) Land Appeal No. 28 of 2019, HC at Tanga and **The Registered Trustees of the Al-Duwil Masjid Madrasatul & Three Others V. Commissioner for Lands & Two Others**, Land Case No. 370 of 2016, HC at DSM (Both unreported) payment of land rent is not a proof that payee of land rent is the rightful owner of a land in dispute.

The court has found that, although PW1 said the plaintiff reclaimed the suit property by filling about two hundred lorries of sand but that is not enough to establish the plaintiff is the lawful owner of the suit property. The stated view is getting further support from the case of **Maigu E. M. Magenda V. Arbogast Maugo Magenda**, Civil Appeal No.218 of 2017, CAT at Mwanza (unreported) where the Court of Appeal stated that: -

"We do not think continuous use of land as an invitee or by building a permanent house on another person's land or even paying land rent to his own name would amount to assumption of ownership of the disputed plot of land by the appellant."

Since the plaintiff has never been issued with valid certificate of occupancy over the suit property which is dully signed by the Commissioner and registered in the name of the plaintiff, and to the contrary the certificate of occupancy over the suit property was issued in the name of the second defendant as evidenced by the certificate of occupancy admitted in the case as exhibit D23, it is the finding of this court that, the owner of the suit property is the second defendant and

not the appellant. The court has come to the stated view after seeing the position of the law as provided under section 2 of the Land Registration Act, Cap 334 R.E 2019 owner in relation to any estate or interest, means the person for the time being in whose name that estate or interest is registered. The court has found it was also stated by the Court of Appeal in the case of **Amina Maulid Ambali & 2 Others vs Ramadhani Juma**, Civil Appeal No. 35 of 2019, CAT at MWANZA (unreported) that: -

"In our considered view, when two persons have competing interest in a landed property, the person with a certificate of title will always be taken to be a lawful owner unless it is proved that the certificate was not lawful obtained"

The court has also considered the various copies of the decisions of cases produced to the court by PW1 which includes the decisions admitted in the case as exhibits P2, P4 and P5 which the counsel for the plaintiff argued they have established the plaintiff is a rightful owner of the land in dispute but find none of them shows the plaintiff was declared rightful owner of the suit property. The court has found that, although the plaintiff's application for compelling the Commissioner to sign the certificate of occupancy was granted as appearing in exhibit P5 but that cannot be used to say the plaintiff is the rightful owner of the suit property as the certificate of occupancy prepared for the plaintiff was never signed by the Commissioner and sealed by official seal as

required by the law so as to make the plaintiff rightful owner of the suit property.

The court has found the question as to why the Commissioner did not comply with the order given by the court in exhibit P5 cannot be answered by relying solely on the evidence adduced in the case by PW1 and other witnesses testified in the case. That is because it is not only that the Commissioner was not joined in the case to state why the draft of the certificate of occupancy prepared for the plaintiff was not signed and issued to the plaintiff but also the decision given in exhibit P5 did not declare the plaintiff is the rightful owner of the suit property. It is because of the above stated reasons the court has found the plaintiff has not managed to prove to the standard required by the law that she is the rightful owner of the suit property. Consequently, the first issue is answered in negative.

Coming to the second issue the court has found it is states *Whether there was lease agreement between the plaintiff and the second defendant over the suit property.* The court has found PW1 said the plaintiff leased a landed property from the NTC and the lease agreement entered by the plaintiff and the NTC was admitted in the case as exhibit P11. The mentioned lease agreement shows the plaintiff leased from the NTC the land known as "Unit G" at Ex Kamata building along Msimbazi Street/ Nyerere Road Dar es Salaam for a term of 36 months

commencing from 1st August, 1999 and ending on 31st July, 2002 at a monthly rent of Tshs. 1,200,000/= . PW1 said the land leased from the NTC is different from the suit property and said the suit property was un-surveyed land while the land leased to the plaintiff was a surveyed land.

The court has gone through exhibit P11 which is a lease agreement entered by the plaintiff and NTC and find that, although it is stated therein that the details and more particulars of the land leased to the plaintiff are given in the first schedule and the site layout of the leased premises contained in the lease agreement, but the stated first schedule is not annexed in exhibit P11. However, the court has gone through exhibit D14 which is also the copy of lease agreement entered by the plaintiff and the NTC tendered in the case by DW4 and find it contains the first schedule mentioned on both exhibits P11 and D14. The court has found the site layout plan shows the area known as "unit G". After looking into the site layout contained in exhibit D14 and the sketch map tendered to the court as exhibit P10 the court has found it comprised the land which was later on surveyed and given Plot No. 2466/208 which is the suit property in the case at hand.

The above finding of the court is supported by the evidence of DW3, DW4 and DW5 who said the suit property though was given plot number in 2001 but it was part of "unit G". The court has found that, it

is true that the minutes of the meeting of identifying boundaries of Plot No. 2466/208 conducted on 16th May, 2007 and admitted in the case as part of exhibit P7 shows one J. A Lyimo who was the lawyer of the NTC stated in the said minutes that the land in dispute was not part of the land leased to the plaintiff by the NTC and said the suit property is the property of the plaintiff.

To the view of this court the stated evidence would have been material evidence in determine the question of why the Commissioner failed or refused to abide to the resolution made in the stated meeting and decided to issue the certificate of occupancy to the second defendant instead of the plaintiff. Since as alluded earlier in this judgment that the Commissioner was not joined in the suit to enable the said question to be determined, the court has found it cannot be said what was stated in exhibit P7 has managed to establish the suit property was not part of the land leased to the plaintiff. As there is no clear evidence given by the plaintiff to show the premises leased to them by the NTC was different from the suit property the court has found the plaintiff has not managed to establish the suit property was not part of the land leased to the plaintiff by the NTC.

The court has also found that, although the lease agreement was entered between the NTC and the plaintiff but after the NTC being dissolved its assets and liabilities which includes the lease agreements

entered by the NTC and various tenants were transferred to the second defendant via exhibit D16 which is a handing over report. The court has found clause 3 of exhibit D16 read together with appendix 5 of exhibit D16 shows the tenants of the NTC who were handed over to the second defendant includes the plaintiff. The stated evidence caused the court to come to the finding that there was lease agreement between the plaintiff and the second defendant over the suit property.

The court has found the counsel for the plaintiff challenged exhibit D16 by arguing it was not dully stamped as required by section 47 (1) of the Stamp Duty Act, Cap 189, R.E 2019. The court has found that, although the Principal Officer of the plaintiff challenged admissibility of the stated exhibit at the time of being admitted in the case but the objection was not based on none payment of stamp duty provided under the above cited provision of the law.

The court has been of the view that, as the stated objection was not raised during the trial of the case and it has been raised in the final submission filed in the court by the counsel for the plaintiff, then as stated in the case of **Gabinus Singano V. St. Timoth Pre & Primary School**, High court Labour Revision No. 8 of 2019, (unreported) it cannot be entertained because the other parties will be denied chance of being heard in respect of the stated objection. It is because of the above stated reason the court has found the available evidence has

managed to establish to the standard required by the law that the second issue is supposed to be answered in affirmative that there was lease agreement between the plaintiff and the second defendant in the suit property.

With regards to the third issue, it requires the court to determine *whether the eviction of the plaintiff from the suit property was lawful*. The court has found that, after finding the land in dispute was part of the landed property leased to the plaintiff by the NTC and after seeing the evidence from PW1, PW2, DW1, DW3 and DW4 shows there is no dispute that the plaintiff was evicted from the suit property on 1st March, 2017, the task of the court is to determine whether the eviction of the plaintiff from the suit property was lawful. The court has found DW1, DW2, DW4 and DW6 said the plaintiff was evicted from the suit property because she defaulted to pay rent for the premises leased from the NTC and until when the plaintiff was evicted from the suit property, the outstanding rent arrears was Tshs. 242,000,000/=.

The court has found PW1 said the eviction was unlawful because the first defendant evicted the plaintiff from the suit property without serving the plaintiff with a notice of fourteen days before the date of eviction and the plaintiff was evicted from the suit premises while there was an order to maintain status quo of the suit property issued by the court which was admitted in the case as exhibit P13. The court has

found on their side DW1 and DW2 said they were not aware of the order of the court requiring the status quo to be maintained and said the plaintiff was served with fourteen days' notice admitted in the case as exhibit D2 but refused to receive the same.

The court has found while DW1 and DW2 said they were not aware of the order to maintain the status quo issued by the court which is exhibit P13 but PW1 said the stated order was served to the second defendant after being issued. PW1 and PW2 said that, after DW1 and her companion arrived at the suit premises for the purpose of evicting the plaintiff from the suit property, they showed her exhibit P13 but she disobeyed the same and continued to evict the plaintiff from the suit property. The court has found that, although it is true that the first defendant was an agent of the second defendant and if the second defendant was served with the stated order of the court, they were required to notify the first defendant who was their agent about the existence of the order of maintaining status quo of the suit premises but there is no material evidence adduced in the case to establish the stated order was served to the second defendant.

The court has come to the stated view after seeing that, although exhibit P13 shows it bears the rubber stamp of the second defendant showing it was stamped on 27th February, 2007 and the plaintiff was evicted from the suit property on 1st March, 2007 but to the view of this

court the stated rubber stamp alone is not sufficient evidence to prove the stated order was served to the second defendant as stated by PW1. The court has been of the view that further evidence to prove the second defendant was really served with the stated order of the court and DW1 was shown the stated order and disobeyed the same ought to be adduced in the case. That is because the stated order was issued in the absence of the second defendant and other respondents involved in the said matter.

The court has found that, although DW1 and DW2 said the plaintiff was served with fourteen days' notice admitted in the case as exhibit P13 and refused to receive the same but there is also no material evidence adduced in the case to prove exhibit P13 was served to the plaintiff and the plaintiff refused to receive the same. The court has come to the stated finding after seeing the words written on the said exhibit by DW2 that the plaintiff refused to receive the stated notice is not sufficient evidence to prove the plaintiff was served with the stated notice and refused to receive the same. To the view of this court further evidence was required to prove the alleged notice was really served to the plaintiff and the plaintiff refused to receive the same.

Although there is no proof that the plaintiff was served with the stated notice of fourteen days but there is evidence showing the plaintiff was in outstanding rent arrears as shown in exhibit D16. The evidence

available shows that after expiration of the lease agreement on 31st July, 2002 the plaintiff continued to occupy the suit premises without paying rent. That being the position of the matter the court has found the second defendant had a right of evicting the plaintiff from the suit property without even serving the plaintiff with the stated notice of fourteen days stated by PW1 was not served to the plaintiff. The court has come to the stated finding after seeing section 82 (1) of the Land Act, Cap 113 R.E 2019 states as follows: -

*"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].

The court has found as the plaintiff continued to occupy the suit premises after the lease period has expired then under the wording of the above quoted provision of the law the plaintiff was required to continue to pay rent to the second defendant. Since PW1 did not dispute the fact that after expiration of the lease period the plaintiff did not pay any further rent to the lessor who was the NTC and her successor who is the second defendant, then as stated in the case of **Mikumi Hospital Dar Ltd V. Costa George Shinyanga** (The Administrator of the late **Mwami Theresa Ntare**) & Another, Land Case No. 71 of 2022, HC

Land Div. at DSM (unreported) the plaintiff became trespasser who was not entitled the notice of being evicted from the suit property.

The above stated position of the law caused the court to find that, the evidence of PW1 and the argument in the final submission of the counsel for the plaintiff that eviction of the plaintiff from the suit property was unlawful as the first defendant contract with the second defendant to evict the plaintiff from the suit property was entered on 9th March, 2007 which was after the plaintiff being evicted from the suit premises on 1st March, 2007 is devoid of merit. The court has come to the stated finding after seeing DW1, DW4 and DW6 said the mentioned agreement was signed on the mentioned date to renew the previous contract which was in existence.

The court has also been of the view that, even if it will be taken there was no written contract between the stated parties at the time of evicting the plaintiff from the suit property but as the first and second defendants are in agreement that there was a contract between them for the first defendant to do the work of evicting all of the defendant's tenants who were in rent arrears from the premises they had leased, it cannot be said the eviction of the plaintiff from the suit property conducted by the first defendant was unlawful.

In the light of the position of the law stated in the above cited case the court has found that, as the plaintiff was staying in the suit premises

without paying rent, something which turned her into a trespasser to the suit property, the court has found there is no way it can be said eviction of the plaintiff from the suit property was unlawful. Consequently, the third issue is answered in affirmative that, the eviction of the plaintiff from the suit property was lawful.

Turning to the fourth issue, the court has found it is required to determine *whether the plaintiff suffered any damage because of the stated eviction*. The court has found it is averred at paragraphs 6 and 21 of the amended plaint that, the plaintiff suffered damages of Tshs. 876, 350,000/= arising from the properties of the plaintiff which were destructed and taken by the first defendant in the exercise of evicting plaintiff from the suit property. The court has found the break down of the stated damages as per paragraph 21 of the amended plaint includes the properties which the plaintiffs alleged were destructed and others were taken by the officials from the first and second defendants together with the damages caused to the name of the plaintiff.

The court has found as the foregoing stated damages is claimed as specific damages the law as stated in number of cases including the case of **Future General Agencies V. African Inland Church Tanzania** [1994] TLR 192 the claim of specific damages like the one the plaintiff is claiming in the present case is required to be strictly pleaded and proved. The court has also found even other damages

claimed by the plaintiff like general damages are not grantable if there is no material evidence to justify grant of the same. That can be seen in the case of **Anthony Ngoo & Another V. Kitindi Kimaro**, Civil Appeal No. 25 of 2014, CAT at Arusha (unreported) where it was that: -

"The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award".

That being the position of the law the court has found that, although the damages the plaintiff is claiming in the matter are pleaded in the amended plaint but the evidence adduced to prove the stated damages was not sufficient enough to prove the plaintiff suffered the damages pleaded in the amended plaint. The court has come to the stated view after seeing that although it is averred in the amended plaint that the value of the properties destroyed or taken by the first defendant is the one pleaded in the amended plaint but there is no clear evidence adduced to establish all the listed properties were really destroyed or taken by the first defendant.

The court has come to the above finding after seeing that, although it is pleaded in the amended plaint that the claimed specific damage is arising from the properties destroyed and others taken by the first defendant but it was not stated which properties were destroyed and which were taken by the first defendant which its total value is the one

claimed by the plaintiff as a specific damage. The court has found PW2 said in her evidence that, during the exercise of evicting the plaintiff from the suit property they took some of the properties removed from their offices by the first defendant and left other properties at the suit premises.

However, the court has found it was not put clear in the amended plaint and in the evidence adduced in the court by PW1 and PW2 that, the properties said by PW2 they took after the plaintiff being evicted from the suit property were not among the properties alleged were left at the suit property and taken by the first defendant so that can be claimed from the defendants as a specific damage. Therefore, the court has found the evidence adduced in the case by the plaintiff's witnesses who under section 110 (1) and (2) of the Evidence Act had a duty to prove the plaintiff suffered the claimed damages has not managed to prove the plaintiff suffered the claimed damages.

The court has also found that, even if it would have been found the available evidence managed to prove the plaintiff suffered the alleged damages but the position of the law stated in the case of **Princess Nadia (1998) Ltd** (supra) and **Lawrence Magesa T/A Jopen Pharmacy V. Fatuma Omary & Another**, Civil Appeal No. 333 of 2019, CAT at DSM (unreported) cited in the final submission of the second and third defendants shows when the Court of Appeal was

dealing with issue of claim of compensation for the plaintiff who was found was in occupation of the suit premises unlawfully it stated in the latter case that: -

"We once again agree with the learned advocate for the respondent that, since it was proved that the appellant was a trespasser, she had no right to benefit from her wrongful act. At worst, the appellant assumed the risk arising from her unlawful occupation in the premises. Just as she was not entitled to any notice before eviction, she had no right to claim any compensation from the forceful eviction."

However, although the above finding is leading the court to the finding that the plaintiff is not entitled to the claimed damages but the court has found as DW1 and DW2 conceded they took some of the plaintiff's properties like the containers which they said are at their yard of Ununio, the court has found the plaintiff is entitled to get back the containers and other properties taken by the first defendant which are in their custody as there is no justifiable reason for denying the plaintiff right of getting back her properties which in the custody of the first defendant. In the premises the court has found the fourth issue is supposed to be answered partly in negative and partly in affirmative to the extent stated hereinabove.

Coming to the last issue of the reliefs the parties are entitled, the court has found the second defendants raised in their joint written

statement of defence a counter claim, seeking for among other reliefs an order for payment of rent arrears to be paid by the plaintiff to the second defendant at the tune of Tshs. 242,000,000/= plus interest and costs of the suit. The court has found as it has already been found in the preceding issues that the plaintiff was in occupation of the suit property from when the lease agreement expired and she has not paid any rent until when she was evicted from the suit property there is nothing which can make the court to refuse to grant the claimed outstanding rent arrears.

In the final result the court has found the plaintiff has not managed to prove his claims against the defendants to the standard required by the law save for the claim of restitution of the containers and any other properties of the plaintiff which are in the custody of the first defendant. As for the claims of rent arrears sought in the counter claim raised in the written statement of defence of the second and third defendants the court has found it has been proved to the standard required by the law. The court has found the rest of the reliefs claimed in the counter claim raised by the second and third defendants against the plaintiff have not been proved. Consequently, the court has found the reliefs the parties are entitled in the present case are supposed to be as follows:

1. The plaintiff's suit against the defendants is dismissed for being devoid of merit save for the prayer of restitution of the

properties taken from the plaintiff and are in the custody of the first defendant which the court is ordering the first defendant to restore them to the plaintiff.

2. The plaintiff is ordered to pay the second defendant the outstanding rent arrears claimed in the counter claim at the tune of Tshs. 242,000,000/=.
3. The stated outstanding rent arrears will carry the court interest rate of 7% from the date of judgment until when it will be paid in full and,
4. Costs to follow the event.

It is so ordered.

Dated at Dar es Salaam this 23rd day of October, 2023




I. Arufani
JUDGE
23/10/2023

Court:

Judgment delivered today 23 day of October, 2023 in the presence of Mr. Wilbard E. Mtenga, Principal Officer of the plaintiff and in the presence of the team of Mr. Thomas Mahushi, Mr. Raphael Mtalima and Mr. Anael Mbise, learned State Attorneys for the defendants. Right of appeal to the Court of Appeal is fully explained.




I. Arufani
JUDGE
23/10/2023