

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

MISC LAND APPLICATION NO. 576 OF 2023

(Arising from Land Case No. 269 of 2023)

PRINCE AFRICA LIMITED.....APPLICANT

VERSUS

JEJE INDUSTRIES LIMITED.....RESPONDENT

RULING

27/10/2023 to 16/11/2023

E.B. LUVANDA, J

The Applicant named above is seeking for leave to present a written statement of defence and appear to defend the claim in Land Case No. 269/2023. In the affidavit in support of the application, the deponent asserted that the claim of rent arrears is unrealistic and excessive, she averred that the Respondent is claiming for payment of general damages, punitive damages, which are assessed at the discretion of the court, also claim interests at rate of 9% from the date of judgment and 10% from the date of the suit, arguing unless the Applicant is given permission to defend this claim, the Applicant stand to suffer should the judgment be entered summarily on the basis of the claims by the Respondent.

In the counter affidavit, the Respondent did not respond to the above concerns, instead invented evasive and general denial.

Mr. Robert Rutahilwa learned Counsel for Applicant submitted that before the Applicant can be condemned to general damages, punitive damages, interest at the commercial rate of 90% and 10% the Applicant has to be afforded the right to be heard and defend such claims. He cited the case of **Narasisa Enterprise Company Limited & Three Others vs. Diamond Trust Bank Tanzania Limited**, Misc Commercial Cause No. 202/2015 HC Commercial Division at Dar es Salaam.

In reply Mr. Deogratias William Ringia & Mr. Moses V. Mvungi learned Advocates for the Respondent submitted that the Respondent considered and prompted to reclaim for general damages and punitive damages for reason that the Applicant failed to fulfill its obligation under the lease agreement. Regarding interest rate of 10% for commercial rate from the date of suit and 9% from the date of decree, argued is provided for under order XX rule 21 (1) of Civil Procedure Code, Cap 33 R.E. 2019, arguing both the damages and interest are within the court's discretion to either grant or refuse, without being by either party to the suit.

In the case of **Narasisa Enterprises** (supra) at page 5, this Court propounded that,

".....in application of this nature, the court is not required to involve itself in lengthy arguments but, rather, to look upon the affidavit filed in support of the application to see whether the deposed facts have demonstrated a triable issue fit to go to trial. The applicant is only required to show a fair and reasonable defence"

Arguably, punitive and general damages, pleaded by the Respondent in the suit fall under the domain of court discretion, including interest at the court rate at the percentage of 9% which range from 7% to 12% interms of Order XX rule 21(1) Cap 33(supra).

Herein the substantive claim of the Respondent is for vacant possession of the suit premises on Plot No. 129/130 Vingunguti Area, Dar. es Salaam and payment of arrears of rent a sum of Tshs 1,131,633,538.40. However the Respondent pleaded interest at the commercial rate of 10% and court rate of 9% along general damages and punitive damages.

According to Order XXXV rule 1(f) Cap 33 (supra) a claim for damages in summary suit for recovery of possession of immovable property is available under the claim for unlawful occupation. Herein, there is no avernment to the effect that the Applicants are unlawful occupant. Again a claim for punitive damages cannot proceed under summary procedure.

In view of the above, I rule that the Applicant have demonstrated and disclosed facts sufficient to support the application.

Therefore the applicant is granted leave to present a written statement of defence and appear to defend the suit.

The application is granted. No order for costs.



E. B. LUVANDA
JUDGE
17/11/2023

Ruling delivered in absence of Mr. Robert Rutailwa learned Counsel for Applicant and Mr. Moses Mvungi learned Counsel for Respondent.



E. B. LUVANDA
JUDGE
17/11/2023