IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 346 OF 2023

(Originating from Application No. 515/2015

Kinondoni District Land and Housing Tribunal)

MIAMIA GLOBAL LIMITED.....APPELLANT

VERSUS

SAAD SALEH JUMA.....RESPONDENT

JUDGMENT

24th to 28th November, 2023

E.B. LUVANDA, J

The Appellant named above is unhappy with the decision of the Tribunal ruled in favour of the Respondent above mentioned as the lawful owner of a house No. 575 located at Kimweri Msasani Mikoroshini, and adjudged the Appellant to pay arrears of rent Tshs 9,505,000/= and other amount due up to 30/03/2020, also ordered the Appellant to continue paying rent to the Respondent.

In the amended memorandum of appeal, the Appellant grounded that One; the trial Chairman erred in facts and law by awarding Tshs 9,505,000 to the Respondent as arrears of rent without regard that, there was no binding contract between the Appellant and Respondent; Two, the trial Chairman erred

in facts and law by allowing the Respondent's claim without to ascertain that if the Respondent had justification to claim house rent from the house No. 513 and 575 in which Bi. Amina S. Shahdad is a legal owner; Three, the Chairman erred in fact and law by awarding arrears of house rent without Respondent prove claimed debt; Four the Chairman erred in fact and law by declaring the Respondent is the lawful owner without regard that, there was no dispute on ownership of land and no issue framed on regard of ownership of land; Five, the Chairman erred in law by admitting exhibit P1, P2, P3 and P6 which is contrary to the law on regard of tendering and admitting documentary evidence.

Mr. Abdul B. Kunambi learned Counsel for Appellant submitted in the record there is nowhere the Appellant acknowledged to have a lease agreement with the Respondent. He submitted that exhibit P1 and P6 does not show who signed on behalf of the Company and there is no common seal of the Company. He cited sections 39(2) and 181 of the Companies Act, Cap 212 for a proposition that a company is bound by the act done by its director secretary. He submitted that since exhibit P1 and P6 does not show who signed on behalf of the Company, argued the Appellant is a legal person is not bound buy these contracts and therefore there is no binding contract against the Appellant.

In reply, Mr. Mohamed Tibanyendera learned Counsel for Respondent submitted that, the Appellant never raised such objections during trial, arguing it will

benefit the Appellant to raise such legal technicalities at this stage for reason that is equivalent to circumvent the decree of the court (sic, tribunal). He submitted that the lease agreement were not denied by the Appellant, instead exhibit P1 and P6 were confirmed by the Appellant through the pleadings and witnesses of the Appellant (DW1 and DW2).

Om my part, this ground is without substance. According to the records, when lease agreements exhibit P1 and P6 were tendered, there were admitted without any objection or reservation whatsoever from the Appellant. Bringing and raising an argument of lack of common seal at this stage is not only an after thought but a misplaced idea. The rule is clear that you cannot take an objection at the appellate stage on admission of a document for an argument which was not formerly raised during the trial. Therefore ground number one is dismissed.

Ground number two, the learned Counsel for Appellant submitted that lease agreements exhibit P1 and P6 which was the basis of the decision of the Tribunal, clearly show that the legal owner of house No. 513 and 575 situated at Kimweri Msasani is Bi Amina Shahdad. He submitted that in exhibit P1 and P6, nowhere explain that the Respondent is the lawful owner of house No. 513 and 575, rather stipulate the Respondent is a mere supervisor of the suit house. He submitted that no evidence show the legal owner Bi Amina Shahdad sold

the suit house to the Respondent or sale agreement showing that all right and obligation over suit house automatically shifted to the Respondent and the Appellant was obliged to pay rent to the Respondent. He submitted that the Tribunal was wrong to allow Respondent's claim without ascertaining if the Respondent has justification to claim house rent from the Appellant.

In reply the learned Counsel for Respondent submitted that ownership of land was not an issue before the Tribunal. He submitted that the issue was on rent arrears not paid to the Respondent. He submitted that the said rent was denied by the Appellant without any justifiable cause. He submitted that exhibits P1 and P6 were executed and signed by the Appellant on one side and the Respondent on the other. He submitted that the Respondent was entrusted with powers to supervise the rental collections of the suit property.

This ground is without substance. As alluded by the learned Counsel for Respondent the question of who is the legal owner of the suit house was not an issue at the Tribunal. Rather the issue was on rent arrears. According to exhibit P1 and P6, the lease agreement were executed between the Appellant (tenant) and Respondent (landlord). Exhibit P1 and P6 depict that the Respondent was collecting rent from the Appellant. Therefore, the Appellant was under obligation to honor the terms of the tenancy agreement. As such the

issue of house ownership had nothing to do with the Appellant obligation of paying rent to the Respondent.

Therefore the second ground is dismissed.

Ground number three, the learned Counsel for Appellant submitted that exhibit P3, P4, P5, P7, P9, P10 and P11 does not prove the claim of Tshs 9,505,000/= because are merely letters addressed to the Appellant. He submitted that nowhere the Appellant acknowledged the debt of house rent from the Respondent.

He submitted that no evidence which the Respondent tendered to support his claim against the Appellant, arguing the Respondent failed to establish his case against the Appellant.

In reply, the learned Counsel for Respondent submitted that the Appellant was duty bound to prove that rent was properly paid to the land lord in respect of the office premises as confirmed by DW1. He submitted that having signed lease agreement with the Respondent, the Appellant was duty bound to continue paying rent to the same person with whom the lease was executed.

On her defence, the Appellant did not dispel a fact that she is a tenant thereat and that she is in occupancy of the rented premises. When Thomas Kiango Ndossi (DW1) was asked by the wise assessor, said that he used to pay rent to the Respondent, but the lease agreement had come to an end. When he was

cross examined by the learned Counsel for Respondent, DW1 said he don't have any proof of payment of rent.

Above all, there is a document depicting break down of rent arrears which was reconciled and executed between the land lord and tenant on 09/08/2019 (exhibit P10), showing amount of rent due up to 29/12/2019 to be Tshs 7,915,000/=. When exhibit P10 was tendered, it was admitted without being objected and no reservation made, neither cross examined by the learned Counsel for Appellant.

Therefore the argument by the learned Counsel that there is no evidence tendered by the Respondent to prove a claim of arrears of rent, or that exhibit P10 is a mere letter, or that nowhere the Appellant acknowledged a debt of rent, is an illusion idea.

Ground four, the learned Counsel for Appellant submitted that in the dispute between the Appellant and Respondent in the lower Tribunal, there was no any issue framed regarding of ownership, arguing the Chairman was wrong to declare the Respondent is the lawful owner and was wrong to act contrary to the issue framed.

In reply, the learned Counsel for Respondent submitted that it was prudent for the Tribunal to determine the issue of ownership which was highly contested by the Appellant stressing a house belong to Bi Amina Shahdad and after her

demise, one Khamis Salehe Juma (DW2) was entitled to collect rent as elder brother. He submitted that deciding the dispute between parties in this appeal without addressing the issue of ownership would jeopardize justice.

It is true that the question of ownership was not among issues framed for adjudication at the Tribunal. It is true also that inview of the facts pleaded and evidence presented, the question of ownership and payment of rent were so interwoven, in a sense that the issue as to whether the Appellant is indebted rent arrears, could not be determined conclusively without stretching to establish as to whom the Appellant was under obligation or liable to pay rent. However, to my respective view, the question of ownership could be better and of course still save the purposed if could had been deliberated by way of an obiter dictum, that is as an incidential or consequential to and not as a substantive issue or relief. To my view, the Tribunal having established the Respondent as the lawful owner of the suit premises at page 15 paragraph one of the judgment, it ought to have ended there. Therefore, it was wrong for the Tribunal to overstretch and make a specific pronouncement on the issue of ownership at the verdict and in the decree. Therefore, the Tribunal is faulted in that respect, that is to say only to the extent of overstretching.

Ground number five, the learned Counsel for Appellant submitted that, exhibit P1 and P6 when tendered was photocopy, and no reason was assigned why the

Respondent did not tender the original. She submitted that despite objection, the Tribunal admitted. He submitted that admission of exhibit P1 and P6 was contrary to section 67 of the Evidence Act, Cap 6 R.E. 2019. Cited the case of **Christina Thomas vs. Joyce Justo Shimba,** PC Civil Appeal No. 84/2010, HC Mwanza. He submitted that exhibit P8 is a text message from mobile which is electronic evidence. He submitted that exhibit P1, P6, and P8 were wrongly admitted by the Tribunal, argued they are entitled to be expunged from the record.

In reply, the learned Counsel for Respondent submitted that all secondary evidence admitted by the Tribunal were confirmed to be not in dispute by the Appellant. He submitted that the Appellant also sought to rely on the same exhibits as part of her defence. Regarding exhibit P8, the learned Counsel cited section 64A of a Cap 6 (supra) and 18 of the Electronic Transactions Act, Cap 442, for a proposition that no evidence shall be rejected on its admissibility on reasons that it is electronic evidence.

It is true that exhibit P1 and P6 are secondary evidence. However, at the time of tendering, no objection was raised to the effects that it is a copy. Therefore, raising it an appeal stage is an afterthought. Above all, on defence, the Appellant resorted to rely on the same when building a line of his defence.

Regarding exhibit P8, the learned Counsel for Appellant, merely said it is electronic evidence, no further arguments were made.

In other words, it sound like the learned Counsel was portraying that text message from mobile phone are inadmissible by merely being electronic evidence. If the learned Counsel is all what he meant, then the argument of the learned Counsel for Respondent who submitted that no evidence shall be rejected on its admissibility on reasons that it is electronic evidence, reign. For brevity, section 64A(1) of Cap (supra), provide

"In any proceedings, electronic evidence shall be admissible"

Therefore if the learned Counsel for the Appellant had any reservation regarding the manner that particular electronic evidence was admitted, he ought to align his argument along with section 64A(2) of Cap 6 (supra) read together with section 18 of Cap 442. As much there was no argument forth coming as to how exhibit P8 flawed the above law, there is nothing to be entertained.

Generally the appeal is without merit whatsoever.

The appeal is dismissed with costs.

THE HIGH COURT OF TANZANIA
LAND DIVISION

E. B. LUVANDA
JUDGE
28/11/2023

Judgment delivered in the presence of Mr. Abdul B. Kunambi learned Counsel (joined via virtual court) and Mr. Thomas Brash holding brief for Mr. Mohamed Tibanyendera learned Counsel.

E. B. LUVANDA
JUDGE
28/11/2023