THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

LAND APPEAL NO 306 of 2023

(Arising from Application No. 460 of 2021 of the Kinondoni District Land and Housing Tribunal at Mwananyamala)

SAID HUSSEIN ..... 1ST APPELLANT

SAUMU OMARY ..... 2ND APPELLANT

VERSUS

IMANI KIRIANI ..... RESPONDENT

Date of last Order: 30/11/2023
Date of Judgment: 20/12/2023

JUDGMENT

I. ARUFANI, J

The appellants named hereinabove being aggrieved by the judgment and decree of Kinondoni District Land and Housing Tribunal delivered in Land Application No. 460 of 2021 dated 26th day of June 2023, appealed to this court against the whole decision of the tribunal basing on the following grounds: -

1. *That the tribunal chairman erred both in law and facts when determined a case by ignoring and without considering the weight of evidences tendered by the appellants.*
2. *That the tribunal chairman erred both in law and fact when determined a case by deciding the case relying on his own assumption on the stipulation of the contract.*

3. *That the trial tribunal Chairman erred in law and fact by determining a case knowing it is of commercial or business nature and not emanating from land.*
4. *That the trial tribunal Chairman erred in law and fact when determined a case which it has no jurisdiction.*
5. *That the trial tribunal Chairman erred in law and fact by determining the case in favour of the respondent who knowingly misled the court when testifying.*
6. *That the trial tribunal Chairman erred in law and fact by determining the case in favour of the respondent knowing him to be a trespasser under the law.*
7. *That the trial Chairman erred in law when pronounced a judgment in absence of 2nd appellant and respondent without giving them notice.*

The appellants and the respondent appeared in the court in persons and unrepresented. When the matter was called for hearing the appellants prayed the appeal be heard by way of written submissions and the respondent prayed the appeal to be heard orally. The court granted their prayers and allowed the appellants to argue their appeal by way of written submissions and the respondent to argue the appeal orally and all of them adhered to the schedule of present their submissions given by the court.

In their joint written submission, the appellants abandoned grounds number 3, 4 and 7 and argued the rest of the grounds of appeal together. The appellants argued in their written submission that, the judgment of

the tribunal shows at its page 4 that, the respondent testified she entered into an agreement with the first appellant to lease the business premises of the appellants located at Nyaishozi Tegeta within Kinondoni Municipality in Dar es Salaam Region for doing business of pharmacy and cosmetics. The judgment of the tribunal shows further that the parties agreed the respondent should have renovated the stated business premises and the renovation costs should be recovered from the rent which the respondent would have paid for leasing the business premises.

The respondent claimed to have spent Tshs. 1,278,500/= in renovation of the business premises and the stated costs were intended to be covered in the rent of two years and 3 months at a monthly rate of Tshs 50,000/= commencing from 1st January, 2018. The appellant stated it should be noted that the evidence of the respondent that the agreed monthly rent was Tshs. 50,000/= is not supported by any documentary evidence.

The appellants went on submitting that, the evidence presented by the appellants is different from the evidence adduced before the tribunal by the respondent. They submitted that the contract marked exhibit D1 stipulates that the parties entered into an agreement on 1/1/2018 with an expiration date of 31/12/2018. They stated they testified before the tribunal that they didn't receive any money from the respondent as rent

of leasing the business premises but they verbally agreed that renovation expenses would be covered by the rent which would have been to them by the respondent.

They stated that, after the initial contract expired, they agreed to extend the contract until 30/9/2019 which its rent was also supposed to cover renovation expenses incurred by the respondent. They argued that, as correctly recorded at page 5 of the judgment, following the stated scenario after 30/09/2019 the respondent started being trespasser to the appellants' business premises.

They submitted that the tribunal failed to properly analyse the evidence presented before it as can be observed at page six of the judgment of the tribunal where the tribunal used the phrase which states that, *"Mwombaji amedai kuwa gharama za ujenzi zingetumika kama kodi mpaka mwezi machi 2020. Hivyo yawezekana gharama hizo zilianza baada ya kodi ya Tshs. 740,000 kukoma hapo tarehe 30/12/2018. Kwa maana hiyo notisi imetolewa wakati kodi ilitokana na gharama za ujenzi haijaisha"*. They argued the stated phrase shows the tribunal based its judgment on assumption as it was not stated anywhere the stated amount of money was paid the appellants.

They cited in their submission the cases of **Mussa Mwaikunda V. R**, [2006] TLR 387, **Francis Mtawa V. Christina Raja Lipanduka &**

Two Others, Civil Appeal No. 15 of 2020, CAT at DSM, **R. V. Hezron Magari**, (1970) HCD no. 148 and **Leonard Mwanashoka V. The Republic**, Criminal Appeal No.226 of 2014 where it was emphasized that, failure to evaluate or an improper evaluation of evidence adduced in a case inevitably leads to a wrong and/or biased conclusion or inferences resulting in miscarriage of justice.

The appellants urged the court to draw attention to Rule 20 (1) (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2003 which mandates the tribunal to furnish reason for its decision. They argued that, pages 6 to 8 of the judgment of the tribunal shows the trial chairperson, did not adhere to the stated statutory requirements of providing adequate and substantive reason for its decision. They submitted that, as the foregoing cited provision of the law contain the word "shall" then as stated in the case of **Jeremiah Shemweta V. R**, [1985] TLR 228 compliance with the stated requirement of the law is mandatory. They based on the above stated submission to pray the court to allow the appeal with costs.

In her reply the respondent, stated in 2017 she applied for a frame of doing business of pharmacy and cosmetics from the second appellant and the second appellant told her she had no money for finishing to build the frame she wanted for her business. She said she was told by the

second appellant that, if she was ready, she can finish the remaining part of the business premises and the costs she would have incurred would have been deducted from the rent. The respondent said to have finished construction of the business frame by using her money and incurred the costs of Tshs. 1,278,500/=.

The respondent said after finishing construction of the business premises, on 23rd March, 2018 she started her business of pharmacy and cosmetics in the business premises on agreement of payment of rent of Tshs. 50,000/= per month. She said they agreed she would have continued to do business in the suit premises until when she would have recouped her costs of renovating the business premises.

The respondent said that, On June, 2018 while continuing with her business the second appellant followed her and started causing anarchy at her place of business and beat her. She said the second appellant said she don't want her to continue doing business in the suit premises and said the second appellant said she would have paid back her money she used for finishing construction of the suit premises.

The respondent went on saying that, on December, 2018 they went to police station where the appellants said that, they didn't have money to pay her and said the respondent should have continued with her business and pay the rent of Tshs. 60,000/= per month but the

respondent refused to sign the lease agreement of paying the rent of Tshs. 60,000/=. She said they were told by the policemen that the appellants should have waited the respondent until when she would have recouped her costs of renovation the suit premises which was two years and three months.

The respondent stated that, on 19th September, 2019 the appellant closed her business frame by welding its gate. The respondent said to have gone to Kunduchi Ward Tribunal which ordered the appellants to open the frame but the appellants refused and said she went to the tribunal where she won the case. The respondent stated that, the total loss she has incurred in her business because of the act of the appellants to close her business premises is Tshs. 7,800,000/=which she prayed the appellants be ordered to pay the same.

In his rejoinder the first appellant reiterated what is stated in their submission in chief and added that, what the respondent has said before the court is not true. He said the rent agreed in the lease agreement signed on 1st January 2018 was Tshs. 60,000/= and not Tshs. 50,000/=. He said the rent of one year commencing from 1st January, 2018 which its value was Tshs. 720,000/= was deducted from the cost of construction of the suit premises and the balance of cost of construction of Tshs

540,000 was supposed to be covered by rent of 1st January, 2019 to 30th, September, 2019.

The appellants said the respondent refused to sign the contract of Tshs. 60,000/= and on 2nd July, 2019 they served the respondent with a notice of requiring her to vacate from the suit premises as she had already recovered her costs of renovating the suit premises. The first appellant said that, as the respondent refused to sign the new contract and refused to vacate from the suit premises, they closed the frame by welding the same for safety purpose as the respondent left the gate of the business premises unclosed. The appellants prayed the court to set aside the decision of the tribunal and order the respondent to go to take her properties from the suit premises and be paid their costs.

After according the rival submissions made to the court by both sides the required consideration the court has found it is undisputed fact that, the appellants entered into an agreement with the respondent that the respondent should have renovated the business premises of the appellants at her own costs and after finishing construction of the stated business premises, the respondent would have done business in the premises until when the respondent should have recouped her costs of renovating the suit premise. It is also undisputed fact that the respondent

incurred costs of Tshs. 1,278,500/= in the work of renovating the business premises.

The fact in dispute which is supposed to be determined in the present appeal is what was agreed by the parties would have been a monthly rent and whether the act of the appellants to lock the business premises by welding the gate was justifiable so as to say the chairman of the tribunal erred in the decision the appellants are challenging in the appeal at hand and allow the same as prayed by the appellant or dismiss the same as prayed by the respondent.

To determine the above stated questions the court is required to re-evaluate the evidence adduced before the tribunal by the parties and see whether the decision made by the chairman of the tribunal was right. The duty of this court which is sitting as the first appellate court to do the stated work was made clear in the case of **Japan International Corporation Agency (JICA) V. Khaki Complex Limited**, Civil Appeal No. 107 of 2004, (unreported) where the Court of Appeal stated that, the first appellate court has a duty of re-evaluating the evidence of the trial court or tribunal and come up with its own independent findings.

While being guided by the position of the law stated in the above cited case the court has found that, while the appellants argued the agreed monthly rent to be charged from the respondent was Tshs.

60,000/=, the respondent said the agreed monthly rent was Tshs. 50,000/=. The court has found that the appellants produced at the tribunal the lease agreement which was admitted in the case as exhibit D1 and it shows the agreed monthly rent was Tshs. 60,000/= commencing from 1st January, 2018 to 30th December, 2018.

The court has found the appellants also produced at the tribunal the notice of terminating the lease agreement with the respondent dated 2nd July, 2019 which was admitted in the matter as exhibit D2. The stated notice of terminating the lease agreement between the appellants and the respondent states the rent for the suit premises was Tshs. 60,000/= and informed the respondent the end of the lease agreement which commenced from 1st January, 2018 would have been on 30th September, 2019 when the respondent would have recouped in full the costs of renovating the suit premises. The record of the tribunal shows the appellants closed the suit premises on 19th October, 2019.

The court has found that, although the respondent stated the agreed rent per month was Tshs. 50,000/= and the period which would have enabled her to recoup her costs of renovating the suit premises would come to an end on March, 2020 but she didn't adduce any evidence to support her testimony that the agreed monthly rent was the one she said in her testimony and not the one said by the first appellant. The court

has found the respondent stated the lease agreement showing the agreed monthly rent was Tshs. 50,000/= and not Tshs. 60,000/= stated by the appellants is in the business premises locked by the first appellant.

The court has found the position of the law as provided under section 110 (1) of the Evidence Act, Cap 6 R.E 2019 requires whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. That being the position of the law the court has found that, as the respondent was the one desired the tribunal to find the agreed rent was Tshs. 50,000/= and not Tshs. 60,000/= per month she was duty bound to prove the rent was the one she alleged and not any other rent by producing before the tribunal the evidence which would have supported her evidence.

The court has found that, although the respondent testified the lease agreement showing the agreed monthly rent was Tshs. 50,000/= and not Tshs. 60,000/= stated by the first appellant is in the business premises locked by the first appellant but she did not say she has ever required the first appellant to open the business premises to enable her to take the stated lease agreement out of the locked business premises and the appellants refused to open the business premises. She didn't even bother to pray the tribunal or this court to order the appellants to unlock

the business premises and hand over to her or bring to the tribunal or this court the alleged lease agreement.

To the contrary the court has found the evidence of the first appellant and that of Farhan Ally Farhan who testified (SU3) and said he was the ten-cell leader of the area where the business premises is located said when the respondent was required to take her properties from the suit premises, she refused to take her properties. The court has found under the stated circumstances of the matter it cannot be said the respondent managed to discharge the duty of proving her allegation provided in the above cited provision of the law. Consequently, the court has found the evidence adduced before the tribunal by the appellants managed to established the parties' agreed monthly rent was Tshs. 60,000/= stated by the appellants and not Tshs. 50,000/= alleged by the respondent.

Having found the parties' agreed monthly rent was Tshs. 60,000/= and as the costs of renovating the business premises was Tshs. 1,278,500/=, the court has found counting from 1st January, 2018 when the parties lease agreement commenced, it will be found the period for the respondent to recoup the costs she had incurred in renovating the business premises would have come to an end on 30th September, 2019 and not on March, 2020 alleged by the respondent. The court has

considered the finding of the chairman of the tribunal that the respondent had paid Tshs. 740,000/= as the annual rent to the appellants is not supported by any evidence adduced before the tribunal as the annual rent as stated in exhibit D1 was Tshs. 720,000/= and Tshs.740,000/=. It is also not stated anywhere in the evidence adduced before the tribunal that the respondent paid the stated sum of the appellant in cash.

Having found the duration of the lease agreement entered by the parties was supposed to come to an end on 30th September, 2019 and not March, 2020 the next question to determine here is whether the appellants had justification of locking the suit premises and locked the properties of the respondent in the suit premises after expiration of the period of the respondent leasing the business premises.

The court has found that, the first appellant said in his evidence that after expiration of the period of the lease agreement he told the respondent to take her properties out of the business premises but the respondent refused. He stated further that, as the respondent had closed only the glass door of the business premises and left the gate of the business premises unlocked, he decided to lock the gate of the business premises by welding the same for safety purposes. The testimony of the first appellant that he told the respondent to take her properties out of the business premises and she refused was supported by the evidence of

SU3 who said the respondent was told to take her properties out of the business premises but she refused to take the same.

The court has found that, although the first appellant and SU3 said the first appellant locked the business premises for safety purpose after seeing the respondent had left the gate of the business premises unlocked but the court has failed to see justification of the appellants to lock the business premises by welding the gate while the goods of the respondent were inside the business premises. The court has found that, as the appellants and the respondent were no longer in good terms because the appellants were requiring the respondent to vacate from the business premises and the respondent was refusing to vacate from the business premises voluntarily it cannot be said the act of the first appellant to lock the business premises by welding its get was justifiable.

It is the view of this court that, if the appellants did not want the respondent to continue doing business in the business premises and they wanted her to vacate from the business premises after expiration of the lease period, they were required to follow the available legal procedures of seeking for a remedy of evicting the respondent from the business premises from the available legal machinery and not by locking the business premises by welding its gate while the goods of the respondent were inside the business premises.

Among the legal procedures which might have been followed by the appellants to seek for a relief which would have fulfilled their wishes includes the procedure provided under sections 107 and 108 of the Land Act, Cap 113 R.E 2019. The cited provisions of the law empower the District Court to terminate lease agreement and grant any relief sought by the parties after taking into consideration the factors provided under the cited provision of the law. Since the appellants did not follow the required legal procedures of going to the legal machinery to seek for the relief of terminating their relationship with the respondent the court has found the act of the appellants to lock the gate of the business premises by welding the same without seeking for order of doing so from the required legal machinery was unjustifiable.

Although the court has found the act of the appellants to lock the respondent's business premises by welding its gate was unjustifiable but the court has found there is a need of having a look on justification of the reliefs granted to the respondent by the tribunal. The court has found that, as the period of the respondent to lease the business premises had already expired, then as stated at ground six of the appeal and as stated in the case of **Lawrance Magesa t/a Jopen Pharmacy V. Fatuma Omary**, Civil Appeal No. 333 of 2019 CAT at DSM (unreported) cited in

the judgment of the tribunal the respondent was supposed to be taken she was a trespasser to the suit premises.

If the respondent was a trespasser to the business premises by virtue of continuing to be in the business premises while the lease period had already expired and she had not signed any other new agreement authorizing her to remain in the business premises the court has found 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. After finding the respondent was a trespasser to the business premises then as stated in the case of **Lawrance Magesa t/a Jopen Pharmacy** (supra) she had no right to benefit from her wrongful act. At worst, she assumed the risk arising from being in unlawful occupation of the business premises of the appellants.

While being guided by the position of the law stated in the above cited cases, the court has found the respondent was awarded compensation of seven million shillings being the value of the goods locked in the business premises and three million shillings being general damages for loss of business for the period the business premises was closed. The court has found apart from a bear assertion by the respondent that the value of the goods locked in the business premises was seven

million shillings, there is no any evidence adduced before the tribunal to prove the respondent had goods in the business premises worthing the claimed sum of money.

Since the granted relief of seven million shillings was sought as a specific damage then as stated in the case of **Future General Agencies V. African Inland Church Tanzania** [1994] TLR 192 it was required to be strictly proved. The court has found it cannot be said the stated specific damages was proved while it is not stated anywhere in the record of the tribunal what goods were locked in the business premises and what was the value of the alleged goods. To the view of this court a bear saying that the goods worth the stated value of money were locked in the business premises without any evidence to support the stated assertion was not sufficient enough to establish the respondent was entitled to be awarded the stated specific damages.

The court has also found that, even the relief of general damages awarded to the appellant was supported to be supported by some material evidence adduced at the tribunal to establish that, for the period the business premises was closed the respondent suffered the general damages awarded to her. The stated view of this court is getting support from the case of **Anthony Ngoo & Another V. Kitindi Kimaro,** Civil Appeal No. 25 of 2014, CAT at Arusha (unreported) where it was that: -

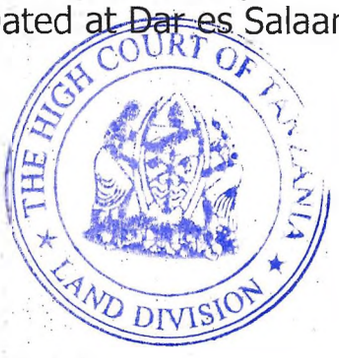
"The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award".

The above stated position of the law moved the court to come to the finding that, there was no sufficient evidence adduced before the tribunal to justify grant of the specific and general damages granted to the respondent by the chairman of the tribunal. The court has found that, although the act of the appellant to lock the business premises by welding its get was not justifiable but also there was no sufficient evidence to establish the respondent was entitled to be awarded the specific and general damages awarded to her by the tribunal. In the premises the court has found the chairman of the tribunal erred in deciding the dispute between the parties against the weight of evidence adduced before the tribunal by the parties.

Consequently, the appeal of the appellants is partly allowed to the extent of altering the judgment and decree of the tribunal by setting aside the specific and general damages awarded to the respondent and the costs awarded to the respondent. In alternative the court is confirming the finding of the chairman of the tribunal that the act of the appellants to lock the respondent's business premises was unjustifiable and unlawful and it is ordering the appellants to unlock the business premises and allow

the respondent to take all of her belongings with immediate effect. Each party to bear his or her own. It is so ordered.

Dated at Dar es Salaam this 20th day of December, 2023



I. Arufani
Judge
20/12/2023

Court:

Judgment delivered today 20 day of December, 2023 in the presence of both parties in persons. Right of appeal to the Court of Appeal is fully explained.

I. Arufani
Judge
20/12/2023