

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

LAND APPEAL CASE NO.215 OF 2023

(Appeal from the judgment and decree of the District Land and Housing Tribunal for Temeke District at Temeke dated 27.4.2023 in Maombi Na. 145 ya 2019 delivered by Hon. P.I Chinyele)

MISHED CHUNILAL KOTAK APPELLANT

VERSUS

LUCAS PIUS MALLYA RESPONDENT

28/11&14/12/2023

JUDGMENT

A. MSAFIRI, J.

At the District Land and Housing Tribunal for Temeke (herein DLHT) the appellant filed Land Application No. 145 of 2019, praying for among other reliefs, the following orders; A declaration that the respondent has breached lease agreement; An order for respondent to return rental fee balance amounting to USD 1,650.00 and payment of general damages to the tune of TZS 2,000,000/= as damages for breach of lease agreement which compelled the Applicant to lease another fit premises.

The brief background that lead to the present appeal as per the records of the trial Tribunal is that the respondent was a tenant of the appellant. The respondent entered into lease agreement with the appellant on 12th March, 2019 for leasing a godown/warehouse in the

Accts -

suit premises. The respondent paid an advance rent fees but failed to use the premises due to leakage. The appellant was notified about the leakage but failed to rectify the problem. The respondent sued the appellant at the DLHT, whereby the appellant disputed all the claims and filed a counter claim against the respondent claiming \$3300 as an outstanding rent since 01/01/2019 until when the respondent will handle over the suit premises to him.

Having deliberated over the matter, the DLHT found that both appellant and the respondent failed to prove their claim and proceeded to dismiss the matter with no order for costs. Aggrieved by the decision, the appellant brought this appeal on the following grounds: -

- 1. The trial tribunal erred in law and fact by dismissing the appellant's counter claim without costs on the assumption that the leased godown was handed over by the respondent to the appellant on 26.3.2019 contrary to the evidences on record. Nor did the tribunal assign reasons to justify its dismissal order.*
- 2. The trial tribunal erred in law and fact by holding that neither party breached the lease agreement while per Exh M – 5 dated 22.1.2019 the respondent admitted the breach of contract and that from July 2018 to December, 2018 and thereafter to the date of judgment the respondent was in rent arrears for the lease agreement dated 12.3.2018 and he was still in possession of the leased godown without paying rent, as such he was with effect from (w.e.f) 1.1.2019 in breach of the subsequent implied lease agreement.*
- 3. That the trial tribunal erred in law and fact by holding that from January 2019 to December 2019 and thereafter there existed no lease agreement contrary to the evidences on record and the purpose for which Application No. 145 of*

Adls.

2019 and Misc. Application No. 141 of 2019 were filed on 14.6.2019 and 25.6.2019 respectively.

- 4. The trial Tribunal erred in law and fact by holding that between the parties it existed a gentlemen agreement after the purported handing over of the godown on 26.3.2019 while there was no evidence to that effect, and that holding was contrary to the purposes for which the two (2) cases were subsequently filed by the respondent on 14.6.2019 and 25.6.2019 respectively.*
- 5. The trial tribunal erred in law and fact by holding that from January, 2019 to the date of judgment the respondent was not in rent arrears contrary to the evidences on the trial tribunal record.*
- 6. The trial chairperson erred in law and fact by not assigning reasons for her taking over the case from the predecessor chairman.*

Hearing proceeded by way of written submissions, where the appellant was represented by Mr. Francis Mgare, learned advocate and the respondent was represented by Ms. Salha Mlilima. Due to the reason that will be advanced later, I will start with the 6th ground of appeal.

In support of the 6th ground of appeal, Mr. Mgare submitted that, as per the records of the DLHT, Hon. Chinyele (Chairperson) took over the case on 8.10.2020 from Hon. Mnzava (Chairperson), who framed issues. While taking over the case, Hon. Chinyele did not assign, record or communicated to the parties the reason for taking over a partly handled case by her predecessor per Order 18 Rule 15(1) of the Civil Procedure Code, CAP 33 R.E 2019. He stated that, failure of which vitiates the DLHT decision. To bolster his argument, he cited the case of *Allb*.

Inter Consult Limited vs Mrs. Nora Kassanga and Another,
(2019) TLR 363.

In reply thereof, the counsel for the respondent submitted that Order 18 Rule 15(1) of the Civil Procedure Code quoted by the counsel for the appellant do not exist in the Civil Procedure Code, Cap 33 R.E 2019. He urged the appellant to quote the applicable law which he is relying on. Otherwise, he stated that the proceedings of the case proceeded justly and there was no injustice that was felt or seen by the DLHT. He averred that, the parties had also not yet started hearing of the case and did not raise a concern over the reason for change.

I have gone through the submissions rival by both parties and the proceedings of the DLHT subject of this ground of appeal and found that, the matter was before Hon. Mnzava, Chairperson since it commenced until on 19th February, 2019, after framing of issues. From there, on 6th April, 2020, hearing commenced and Hon. Chinyele took over the matter until judgment.

I understand that, the laws regulating proceedings of DLHT are silent on the change of one Chairperson after another on the proceedings of the matter. Due to such circumstances, Section 51(2) of the Land Disputes Courts Act allows Civil Procedure Code to take recourse where there is a lacuna in the Regulations.

Order XVIII Rule 10(1) and (2) of the CPC provides thus:-

Alls.

"Where a judge or magistrate is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum has been taken down or made by him or under his direction under the said rules and may proceed with the suit under which his successor left with."

The above cited provision of the law has been interpreted by this Court and the Court of Appeal on a number of cases. In the case of **Tryphone Elias @ Ryphone Elias & Another vs Majariwa Daudi Mayeya**, Civil Appeal No. 186 of 2017 CAT (Unreported), it was stated thus:-

*"There are numerous cases in which the court interpreted this provision as requiring the giving of reasons for takeover by another magistrate or judge, among which are those of **Ms. Georges Centre Ltd V. The Attorney General & another**, Civil Appeal No. 29 of 2016 CAT and **Kajoka Masanga V. The Attorney General and Another**, Civil Appeal No. 153 of 2016 ... The provision cited above imposes upon a successor judge or magistrate an obligation to put on record why he/she has taken up a case that is partly heard by another".*

From the above cited authorities, the presiding judicial officer is required to finalize the matter. But where it happens for whatever reasons that the presiding judicial officer has failed to determine the

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matter to the end, then the successor is required to give reason(s) for taking over the matter.

The rationale has been explained in the case of ***Ms. Georges Centre Ltd vs. The Attorney General & Another***, Civil Appeal No. 29 of 2016 CAT and ***Kajoka Masanga vs. The Attorney General and Another***, (*supra*), where it was held thus:-

*"... There are number of reasons why it is important that a trial started by one judicial officer be completed by the same judicial officer unless it is not practicable to do so. For one thing, as suggested by Mr. Maro, the one who sees and hears the witness is the best position to assess the witness's credibility. Credibility of witness which has to be assessed is very crucial in the determination of any case before a court of law. **Furthermore, integrity of judicial proceedings hinges transparency. Where there is no transparency justice may be compromised.**"*[emphasis added]

I have noted that, the predecessor Chairperson ended at the stage of framing issues and the successor Chairperson commenced with hearing of the case. However, since recording of reasons for taking over the trial of a suit by a judicial officer is important for not only on assessing the witnesses' credibility, but also for promoting accountability and transparency on the part of the successor, failure of which amounts to procedural irregularity which goes to the very foundation of the case.

Alb.

In the circumstances, I am of the settled view that, failure by the successor Chairperson to assign reasons for the reassignment made her to lack jurisdiction to take over the trial of the suit and therefore, the entire proceedings as well as the judgment and decree are nullity.

In the premises, the proceedings of the case from where Hon. Chinyele took over the matter is hereby nullified and its subsequent judgment and decree is also quashed. The case file of the trial Tribunal to be remitted to the trial Tribunal for re – hearing of the matter from where Hon. Mnzava, Chairperson ended. The re – hearing of the matter to be conducted before another Chairperson with competent jurisdiction in accordance with the law.

In the final analysis, I find merits in the 6th ground of appeal. The fact that the 6th ground suffices to dispose of the appeal, I find no reason to proceed canvassing the other grounds for doing so will be meaningful for academic reason only. In the circumstances, I allow the appeal on ground No. 6 with no order as to the costs.

It is ordered.



A. MSAFIRI

JUDGE

14/12/2023