IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 245 OF 2023

(Arising from Judgment and Decree in Land Application No. 566 of 2018, Dated 12th May 2023, Hon. R. Mbilinyi, Chairperson)

CHIKU AHMAD HAMISI.....APPELLANT

VERSUS

FERDI CAMKAYA.....RESPONDENT

JUDGMENT

29th September, 2023 & 13th October, 2023

L. HEMED, J.

The centre of the dispute before the District Land and Housing Tribunal for Kinondoni at Mwananyamala (DLHT), was on breach of Lease Agreement in business premises situated on Plot No. 555, Kawe Beach, Kinondoni Municipality, Dar es Salaam. The appellant herein **CHIKU AHMAD HAMISI** sued the respondent herein **FERDI CAMKAYA** who was her landlord for unlawful eviction and confiscation of the business premises and equipment. The Appellant herein prayed to be declared lawful possessor of the disputed premises. She further claimed for damages of Tshs. 40,000,000/=; Refund

of US$ 10,000 as unspent rent; and payment of Tshs. 20,000,000/= as general damages.

The respondent herein **FERDI CAMKAYA** disputed the claims of the appellant and raised a counter claim demanding: -

1. For payment of the accrued outstanding rantals to the tune of USD 48,000.
2. Payment of unpaid and owing service charges to the tune of Tshs. 11,520,000/= and interest rate of 1%.
3. Payment of Tshs 500,000/= for replacement of the damaged door
4. General damages; among others.

Having deliberated over the matter, the trial tribunal found that the parties herein had a land lord – tenant relationship by virtue of the Lease Agreement executed between them. It was also found by the trial tribunal that the Appellant was the one in breach of the said Lease Agreement. The trial tribunal ended up dismissing the appellant's case and granted the counter claim of the respondent herein by ordering the appellant to pay the respondent USD 48,000 being rent arrears and Tshs 11,520,000/= for service charges. The appellant was aggrieved by the said decision, hence

this appeal on the following grounds: -

"1.0 That, the trial tribunal erred in law and fact in its holding that the Appellant is the one breached the lease agreement she entered with the respondent.

2.0 That, the trial tribunal erred both in law and fact in its holding that, the Respondent was justified to withhold the appellant's properties which were in the leased premises.

3.0. That, the trial tribunal erred in law and fact in its failure to property appraise the evidence tendered as resulted reached into wrong conclusion. (sic)

4.0 That, the trial tribunal erred in law and fact in its failure to give due regard to the Appellant's evidence.

5.0 That, the trial tribunal erred both in law and fact in its holding that, the respondent is entitled to the claims raised in the Counter claim against the Appellant basing on unfounded evidence.

6.0 That, the trial tribunal erred both in law and fact in admitting exhibit D2 which is relied in its decision. (sic)

7.0 That, the trial tribunal erred both in law and fact in its failure to order the Respondent to hand over the Appellant's bakery equipment he withhold todate. (sic)

8.0 That, the trial tribunal erred both in fact and in law in its failure to grant the Appellant the prayers set out in the application despite the strong evidence tendered."

The appellant is thus praying for this court to allow the appeal, quash and set aside the judgment and decree of the trial Tribunal and analyze the evidence on record for purpose of entering judgment in her favour.

In the course of determining the instant appeal, the appellant was duly represented by **Mr. Hamis Katundu,** learned advocate, while the respondent enjoyed the service of **Mr. Eliya Mwingira**, learned counsel. When the matter was called on 17th August, 2023, it was directed that hearing be by way of written submissions. The same were promptly filed as ordered by the court.

The 1st ground of appeal was such that, the trial Tribunal erred in law and fact by holding that the Appellant is the one who breached the lease agreement she entered with the Respondent. It was argued by the Appellant's advocate that the Appellant had been paying rent to the respondent as agreed and no point in time the Respondent ever demanded from the Appellant rent arrears.

He was of the view that the trial tribunal failed to analyze properly evidence on record which was to the effect that the respondent unlawful evicted the Appellant. He added that the trial Tribunal condemned her for not paying electricity, water, cleanliness and security bills on the reason that she did not produce receipts to prove payment. In his view, it was the duty of the Respondent to prove that such bills existed. He fortified his argument by the decision in **Barelia Karangirangi vs Asteria Nyahrabwa**, Civil Appeal No. 237 of 2017.

In reply, to the arguments in respect of the 1st ground of appeal, the learned counsel for the Respondent contended that evidence on record showed that the Appellant had signed a three years Lease Agreement but she paid rent of only one year, starting from February 2016 to February 2017. It was added that the Appellant never had evidence to prove that she paid rent of all three years.

In respect of the 1st ground of appeal, I have noted from the record of the trial Tribunal that one of the issues to be proved by both parties was on who between them had breached the lease agreement. The said issue was framed to cater for both, the original suit which was lodged by the appellant and the counter claim which was raised by the respondent herein, claiming

for among others, unpaid rent arrears and unpaid service charges. Both parties were duty bound to prove the allegation that the adverse party had breached the lease agreement. This is in view of section 110(1) of the Evidence Act, [Cap 6: R.E 2019] which provides thus: -

> *"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."*

It was not in dispute that the parties had entered into lease agreement for a term of three years form February 2016 up to February 2019 at a monthly rent of 2000 USD. Evidence revealed that the Appellant paid only 24,000 USD which was equal to the rent of one year form February 2017.

Evidence of the Appellant (SM2) was to the effect that she conducted her business peaceful since 2016 up October 2018 when the Respondent decided to close the business (suit) premises. This implied that the Appellant was in rent arrears by October 2018.

I have gone through the record of the trial Tribunal, there is no evidence adduced by the appellant to rebute that fact. In fact, the Appellant ought to have proved that she had paid all the requisite rent by tendering pay in slip or any other evidence of effecting payment. From the foregoing, it goes without saying that the Respondent managed to prove his claim that

the Appellant was in rent arrears and thus in breach of the lease agreement. The trial chairperson was thus justified to hold that the Appellant was in breach of lease Agreement. I thus find no merits in the 1st ground of appeal. It thus fails.

The Appellant argued the 2nd and 6th grounds of appeal together. In the said two grounds of appeal, the Appellant faults the decision of the trial Tribunal for holding that the Respondent was justified to withhold the Appellant's properties which were in the leased premises. The Appellant also blames the trial Tribunal for failure to order the Respondent to hand over the Appellant's bakery equipment withheld. It was insisted that the respondent be ordered to return the appellants properties.

In response thereto, the counsel for the respondent asserted that the fact that the Appellant had breached the agreement, she was in the premises as trespasser. He relied on the decision of the Court of Appeal in **Lawrence Magea T/A Jopen Pharmacy vs Fatuma and Another**, Civil Appeal No. 333 of 2019.

I have gone through evidence on record and found that there was no confiscation of the Appellant's properties. The said properties were removed from the suit premises in the presence of the chairman of the street council

and the police officer. It was done after the Appellant had failed to heed to the Eviction Notice which was issued to her. The said properties were removed from the suit premises and kept in another place for the Appellant to collect them. It appears that the Appellant refused to collect the same. It is thus firm view that the Appellant is estopped from blaming any one for her own wrong. I find no merits in ground 2 and 6 of the appeal.

With regard to ground 3 the Appellant faults the decision of the trial Tribunal for having failed to properly appraise evidence tendered reaching into a wrong conclusion. It was submitted by the Appellant that at page 9 of the judgment, the Tribunal seems to agree with the Respondent that the Appellant had changed the nature of her business from sole proprietor into limited company by the name of **NARAYU COMPANY LTD**. It was insisted by the Appellant's advocate that such assertion was not proved.

The counsel for the respondent argued in response thereto thus, the contractual relationship between the parties started earlier on 31st October, 2015 and late in the same year, the Appellant asked the Respondent for a grace period as they wanted to change the business name to **NARAYU COMPANY LIMITED.** He insisted that the relationship between the two started afresh on 15th February 2016 for the period of three years.

I have examined evidence on record and found that the Lease Agreement 'U1' was in the name of Narayu Company Ltd; and was signed by the Appellant.

I have ventured across the file of the trial Tribunal to find out if the Appellant disowned the signature, I could not find such evidence. It is my firm opinion that the Appellant recognized exhibit 'U1' and was aware of the same. Besides, the dispute was on breach of lease agreement. Two agreements, 'M1' and 'U1' were tendered and admitted into evidence. Both of them had similar terms and were signed by the Appellant and the Respondent herein. Therefore, even if we consider M1 as the genuine Lease Agreement, still the Appellant cannot escape from breach of agreement, as she did not pay rent pursuant to 'M1' or 'U1'. It is my firm view that the trial chairperson well appraised and analyzed evidence before her. I find no merits in the 3rd ground of appeal.

The 4th ground of Appeal was such that the trial tribunal erred both in law and fact in its holding that, the Respondent is entitled to the claims raised in the counter claim against the Appellant basing on unfounded evidence. The Appellant was of the view that during the hearing of the application and the said counter – claim, the Respondent testified against

Narayu Company Ltd who is no known to her.

In response thereto, the learned counsel for the respondent contended that in both lease agreement documents which were tendered by the Appellant and the Respondent have the same effect. They both reveal the truth that the Appellant was in breach of the Lease Agreement.

Having gone through the arguments of both parties, I was prompted to go through evidence which was adduced by both parties. I realized that the Appellant tendered the Lease Agreement which was admitted as exhibit as M1, while the respondent tendered another lease agreement which was admitted as exhibit U1. Both agreements had similar terms save for the names of the tenant. Exhibit M1 bear the name of Chiku Ahmad Hamis the tenant, while U1 had the name of Narayu Company Ltd and signed by the Appellant herein. I have noted that in making analysis of evidence, the trial Tribunal considered both exhibit M1 and U1 and found that the Appellant was in rent arrears. None payment of the agreed rent amounted to breach of lease Agreement (M1) in the premises, I find ground No. 4 to have no merits at all.

In the 5th ground of appeal the Appellant asserts that the trial Tribunal erred both in law and fact in admitting Exhibit D5 on which it relied in making

its decision. It was argued that section 66 of the Evidence Act, Cap 6 requires documents to be proved by primary evidence. In the opinion of the counsel, Exhibit U2 (D2) – Inventory of the Appellant's equipment was a photocopy and was tendered without compliance to the provision of section 67 and 68 of the Evidence Act (supra). He added that the person who attested it was not called to verify it.

Responding to it, the counsel for the respondent had the view that the respondent relied on secondary evidence following that there was no original document to rely on.

Let me start by pausing a question as to whether the provisions of the Evidence Act, Cap 6 strictly bind the District Land and Housing Tribunals. Section 51 (2) of the Land Disputes Courts Act, [Cap 216 RE 216] provides thus: -

> *"....The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code."*

Likewise, Reg. 10(1) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, of 2003, G.N. 174 of 2003, provides that: -

> *"The Tribunal may at the first hearing, receive documents*

which were not annexed to the pleadings without necessarily following the practice and procedure under the civil Procedure Code, 1966 or the Evidence Act, 1967 as regard documents."

I have referred to the above provisions because the Appellant insisted in her submissions that the trial Tribunal erred to admit and rely on secondary evidence (Exhibit U2). In her opinion, the trial Tribunal contravened section 66, 67 and 68 of the Evidence Act. As pointed out earlier, the rules of evidence which are found in the Evidence Act are not binding in the District Land and Housing Tribunals.

Beside, Exhibit "U2" was an inventory of equipments which were removed form the suit premises when the respondent was taking possession of his premises. I have also noted that before the trial Tribunal there was no dispute as to what was confiscated, the only issue to resolve concerning the equipments was on "whether the Respondent had illegally confiscated the said equipments.

"Endapo mjibu maombi amezuia mali za mleta maombi isivyo halali"

In the end, it was found that the Respondent did not confiscate them, he just stored them after the Appellant's refusal to collect them.

From the foregoing, I find ground 5 to have no merits on two reasons,

the first one is that, the Evidence Act does not bind the District Land and Housing Tribunals. Two, the number of equipments stored by the Respondent, was not at issue. The 5th ground of Appeal fails.

The Appellant did not argue on the 7th and 8th grounds of appeal. This implies that she opted to abandon them. The analysis of the 1st, 2nd, 3rd, 4th, 5th and 6th grounds of appeal could not find merits in them. It follows therefore, that the entire Appeal has failed. I hereby dismiss the entire appeal with costs. It is so ordered.

DATED at **DAR ES SALAAM** this 13th October, 2023.

L. HEMED
JUDGE