

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

CIVIL CASE No 129 OF 2019

BETWEEN

EXIM BANK TANZANIA LIMITED.....PLAINTIFF

VERSUS

1. EL NASR EXPORT & IMPORT CO LIMITED.....1st DEFENDANT
2. BAY INVESTMENTS LIMITED.....2nd DEFENDANT
3. ONYX VILLA LIMITED.....3rd DEFENDANT
4. LAKE HOLDINGS LIMITED.....4th DEFENDANT
5. BAY INVESTMENT LIMITED.....5th DEFENDANT

JUDGMENT

MRUMA, J

This is an interpleader suit. The Plaintiff **Exim Bank Tanzania Limited** instituted this suit for among other orders a declaration order on who is the rightful recipient of rent arrears of United States Dollars Six Hundred Forty Thousand (USD 640, 000.00) are due and payable by the Plaintiff's bank on account of a landed property known as Plot No 747/39 along

Samora Avenue in Dar Es Salaam city rented to her through agents purported to be of the first Defendant.

The Plaintiff stated in her plaint that she has no any interest in the subject matter of the suit against any of the Defendants jointly or severally save for an order by way of an interpleader suit for rightful recipient of the outstanding rent amounting to USD 640,000.00 (Say United States Dollars Six Hundred Forty Thousand) only, rightful deductions and costs of the suit. According to the Plaintiff she has been a bona-fide tenant in a landed property known as Plot No. 747/39 along Samora Avenue in Dar Es Salaam City for more than twenty (20) years. She further contended that the premises were rented to her through an agent of the first Defendant since 1995 and it turned to be her first head office for her banking operations. The Plaintiff states further that since then she had been dealing with various lawyers and agents pretending to represent the first Defendant in executing the lease agreements and that some of the lawyers received rental payments purportedly under the instructions of the first Defendant until 2012 when part of the outstanding rent arrears were returned to the Plaintiff by the first Defendant lawyer/agent which raised suspicion on the whereabouts of the first Defendant and its legal existence in Tanzania.

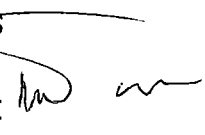
The Plaintiff averred that she has been receiving claims from different lawyers/ agents claiming to represent the first Defendant and requiring rent arrears to be paid to them. She mentioned some of the lawyers/agents who presented themselves as agents of the first Defendant as M/S Bomani & Co Advocates, Mustafa Chandoo & Co Advocates, Mr Mohammed Ibrahim Manyanga and his Double M Law Chambers. It is the Plaintiff's statement that series of claims from different persons forced her to make an inquiry on the legal existence and compliance of the first Defendant in Tanzania. Furthermore the Plaintiff states that she has been receiving claims from different companies for payment of rent arrears as damages resulting from various investments agreements they allege to have had entered into with the first Defendant

but which they claim to have not been honoured by the said first Defendant. She mentioned the companies claiming to have signed

Property Development Agreements with the first Defendant and which the said first defendant didn't honour as the second Defendant **Bay Investment Limited**, the third Defendant **ONYX Villa Limited** and the fourth Defendant **Lake Holdings Limited**.

On the basis of the above disclosed facts, the Plaintiff believes that she rightfully and properly moved this court to require the Defendants to bring

the true facts of this matter to the attention and determination of this court so as to ensure that she doesn't suffer any future liabilities to any of the Defendants. It is the request of the Plaintiff therefore that in the interest of justice all defendants should be invited to plead their respective cases with regards to the outstanding rent arrears taking into account that existence of the first Defendant is questionable, specifically with regards to the first Defendant, the Plaintiff invites her to adduce evidence as to its existence and the alleged property development agreements with the rest of the Defendants.

Upon being served with the Plaint each of the five Defendants filed its written statement of defence pleading against each other. The first Defendant denied allegations that its existence and legal status is questionable. It stated that it is a company duly registered under the laws of Egypt and that it is wholly owned by the Government of Egypt but  having a branch registered in the United Republic of Tanzania under the laws of Tanzania. It admitted that from 1995 to 2010 it entered into several lease agreements with the Plaintiff with respect to its property on Plot No 747/39 along Samora Avenue within the Dar Es Salaam City. However, it denied to have had instructed any lawyer to receive rental payments on her behalf and that in the lease agreements it entered with

the Plaintiff there was no provisions or clause to the effect that an agent or lawyer would receive rent on its behalf. The first Defendant stated further that between 1995 and 2013 the Plaintiff used to pay the said rent by way of money transfer through its bank accounts in Egypt and that from 2013 to the time the suit was instituted it had not received any rent from her. It is the statement of the first Defendant that it fails to understand why the Plaintiff had paid rental charges to third parties instead of paying the same to it as the rightful landlord and owner of the premises and contrary to the lease agreements.

The first Defendant also denied to have signed any investment agreements with the 2nd 3rd or 4th Defendant and stated that it had at no point in time signed an agreement which entitled any person, company or entity to receive any part of the rental charges or fees from any of its property in Dar Es Salaam including the property on Plot No 747/39 situated at Samora Avenue Dar Es Salaam.

Regarding the 5th Defendant, the 1st Defendant denied to have had neither signed a compromise of suit agreement with the said Defendant in Land Case No 39 of 2018 nor had she ever instructed any person to sign for her or represent her in the said proceedings and that she had never ever instructed any person to sale or relinquish to any person or company any

of her properties in Tanzania. She stated further that she was not aware of the said case and that she didn't instruct any advocate to represent her in court and therefore not aware of what transpired in Land Case No 39 of 2018. She denied to have had colluded with the 4th and 5th Defendants to obtain rent illegally as alleged by the Plaintiff and stated that being the owner of the property in dispute and the land lord of the Plaintiff since 1995 she doesn't have to collude with any person to get rental charges which is her right.

The first Defendant stated further that the revocation of powers of attorney given to advocate Mohammed Manyanga was done legally with genuine reasons having abused and exceeded his powers. She reiterated that being the lawful owner of the property on Plot No 747/39 she is entitled to all outstanding rents which amounted to United State Dollars Six Hundred and Forty Thousand (i.e. 640,000.00) only. The first Defendant admitted to have had entered into an investment agreement with the fifth Defendant and stated that the same doesn't give her any entitlement to the rents. She prayed this court to declare her as the rightful recipient of the disputed rent arrears amounting to United State Dollars Six Hundred Forty Thousand (Say 640,000/=) only and an order against the Plaintiff to pay the same to her and a declaration that she is

the rightful owner of Plot No 747/39 situated along Samora Avenue Dar Es Salaam.

On her party, the second Defendant **Bay Investments Limited** filed her written statement of defence denying the allegations contained in the plaint. She stated that despite the fact that the name of the fifth Defendant **Bay Investment Limited** is substantially akin to her own name **Bay Investments Limited**, but the same (i.e. fifth Defendant) was unknown to her. She stated further that she had unexecuted Tripartite Agreement which she termed as a Memorandum of Understanding with the 1st Defendant in respect of the suit plot. She said that in August 2014 one Bomani and Co Advocates prepared a Joint Venture Agreement for the 1st and 2nd Defendants, however despite the fact that she signed her part but the first Defendant didn't sign it. The second Defendant concluded that she neither claims any rent from the Plaintiff nor claims any interest in respect of the suit plot.

In her Written Statement of Defence the third defendant **Onyx Villa Limited** asserts ownership of the property located at Plot No 747/39 Samora Avenue within Dar Es Salaam City by virtue of a Joint Venture Agreement purportedly executed between her and the first Defendant which is dated 27th September 2011. It is further statement of third

Defendant that as the said agreement was with a foreign government, it was duly noted by the Embassy of the United Republic of Tanzania in Cairo, Egypt and was registered with the registry of Documents under Folio No V89328 Serial No 5225/16 dated 23rd June 2016. The third Defendant stated that pursuant to the said Joint Venture Agreement she had planned too to erect 21 storey commercial properties on the plot to be shared out and occupied in accordance with the terms of the agreement.

It is further statement of the third Defendant that under the Joint Venture Agreement, she was to be allocated one and a half (1 ½) of the proposed new building with a separate sub-title and in consideration of the arrangement the parties executed a Sale or Transfer Agreement dated 18th January 2012, Transfer of Right of Occupancy (i.e. Land Form No 35 dated 18th January 2012, Notification of a Disposition (Land Form No 29) and a Request for Approval of Disposition (Land Form No 30).

Furthermore, the third Defendant stated that in the performance of its obligations she paid the sum of **USD 150,000.00** to honourable Mark D. Bomani who was holding powers of Attorney donated by the first Defendant to defray the costs of transfer of the title over the suit property and for obtaining the requisite building permit and registration with

Tanzania Investment Centre. It is further stated that in pursuit of the objective to develop the suit property in accordance with the objective of the Agreement the third Defendant expended further amounts as follows:-

1. USD 70,000.00 to Architects for concepts and design;
2. USD 65,000.00 to Engineers
3. SSD 40,000.00 for Survey;
4. USD 32,000.00 Legal fees.

The third Defendant stated that despite investing in time and financial resources to achieve the objectives of the Agreement, these efforts were not always reciprocated as a result she felt it necessary to express her dissatisfaction with the slow pace of performing obligations under the Agreement on the part of the first Defendant. With the fear that other parties may attempt to deal with the property to her detriment, the third Defendant filed two caveats with the Registrar of Lands. She concluded her statement by pleading with this court to find that she had fulfilled the need for proving title to the suit property and therefore the right to paid and collect the accrued rents.

Like the first to third Defendants, the fourth Defendant **Lake Holdings Limited** presented her pleadings by filing a written statement of defence contending that it is eligible to receive the undisputed rental arrears

amounting to USD 600,000.00 as part of refund of purchase price following this court's order in Miscellaneous Land Application No 260 of 2019.

It is the statement of the fourth Defendant that it entered into a Memorandum of Understanding with the first Defendant through its then representative Mark Bomani of Bomani & Co Advocates for the purchase of the subject property at a consideration of United State Dollars Two Million Nine Hundred Thousand only (USD 2,900,000). The fourth Defendant stated further that upon signing of the said Memorandum of Understanding the fourth Defendant through its sister company namely Gulf Concrete & Cement Products Limited paid a total of United State Dollars ~~Seven~~ Hundred Forty Thousand (i.e. USD 740,000.00) to Bomani & Company Advocates being an advance payment for the purchase of the property and issued a bank guarantee dated 19th June 2013 from Bank of Africa for the remaining balance of the purchase price. Further to that it is the statement of the fourth Defendant that despite payment of the advance and issuing bank guarantee for the purchase price the first Defendant didn't surrender the original title for transfer purposes. According to the 4th Defendant this necessitated institution of Land Case No 31 of 2015 against the first Defendant EI NASR EXPORT & IMPORT CO

LTD and one Mark Bomani Esq seeking among other orders an order for transfer of Plot No 747/39 Samora Avenue in the ownership of the 1st Defendant by operation of law. The fourth Defendant states that Land Case No 31 of 2015 was terminated on 17th June 2015 before his Lordship **Kibela J** (as he then was) on admissions by the first Defendant of the fourth Defendant's claims and a decree to that effect was passed. Further to that the 4th Defendant states that she filed Miscellaneous Land Application No 260 of 2019 against the first and second Defendants objecting a scheduled sale of the property the subject of these proceedings in execution of a decree in Land Case No 39 of 2018 on the ground that she was interested in the ownership of the said land. Following her objection proceeding the first and second Defendant sought for a joint meeting with her which meeting was convened on 14th May 2019 and it was agreed that fourth Defendant be refunded her purchase price paid in order to purchase the plot subject of these proceedings. She contended that the first and second Defendant did not manage to honour the terms and conditions of the said agreement because the rental income which they relied on to enable them to pay the agreed amount had not been paid by the Plaintiff. It is therefore her prayer that the fourth Defendant **Lake Holdings Limited** is the rightful recipient of the rents payable by the Plaintiff.

Like the rest of the Defendants, the fifth Defendant filed her pleadings by way of written statement of defence admitting some of the facts pleaded by the Plaintiff and denying others. She denied the allegations that she colluded with the 1st and 4th Defendants to defraud the property on Plot No. 747/39 which is the subject of this suit.

By way of counter-claim, the fifth Defendant (i.e. the Plaintiff in the Counter-claim) **Bay Investment Limited** claimed a total sum of United State Dollars Eight Hundred and Fifty Thousand (USD 850,000.00) only being rent arrears due on the property on Plot No 747/39 along Samora Avenue previously leased by El Nasr Export & Import (i.e. the second Defendant) to Exim Bank Tanzania Limited (i.e. the first Defendant in the counter claim). She stated that sometimes in the year 2018 she successfully instituted Land Case No 39 of 2018 against the first Defendant el Nasr Export & Import Limited herein (i.e. the 2nd Defendant in the counter-claim). It is further statement of the fifth Defendant that the first Defendant admitted all her claims in that suit as a result of which judgment on admission and an ensued decree were entered in her favour. In the execution of the said decree, the 1st Defendant sought for and she (the 5th Defendant) agreed to the adjustment of the said decree. It is further statement of the 5th Defendant that in the said adjusted decree

the 1st Defendant agreed to surrender the Title Deed of Plot No 747/39 with Certificate of Title No 687 Samora Avenue within Ilala Municipality to the 5th Defendant and render all required assistance needed in effecting transfer of ownership from the first Defendant (i.e. the second Defendant in counter claim) to the 5th Defendant (i.e. the Plaintiff in Counter- Claim). Furthermore the fifth Defendant stated that in the said adjusted decree she is entitled to all rental arrears from the Plaintiff in respect of the property on Plot No 747/39 with Certificate of Title No 687 Samora Avenue Ilala Municipality to the tune of United State Dollars 16,000.00 per month since the year 2012 to September 2015 and to the date of payment of the said rental charges. She stated that the 1st Defendant has refused and/or neglected to pay the same without giving reasons. She said that the Plaintiff has been in occupation of the suit premises for the past six years without payment of rent (September 2019 to December 2019 and arrears for the period of 2012 to September 2015 and make the grand total of USD Eight Hundred and Fifty Thousand (USD 850,000.00). In summary the 5th Defendant (i.e. the Plaintiff in the Counter-Claim) is praying for the following orders against the Plaintiff in the main suit and the first Defendant therein:-

1. Payment by the 1st Defendant, Exim Bank Tanzania Limited (the Plaintiff in the original claim) to the 5th Defendant Bay Investment Limited (i.e. Plaintiff in counter-claim) rental arrears of United State Dollars Eight Hundred and Fifty Thousand (i.e. USD 850,000.00);
2. An order for eviction of Exim Bank Tanzania Limited the 1st Defendant in the counter claim (i.e. the Plaintiff in the original suit from the suit premises for breach of a lease agreement;
3. Payment of general damages to be assessed by the court;
4. Payment of compensation for loss of good will, cash flow and interest for non-payment of rent in time;
5. Costs of the suit and;
6. Any other relief this honourable court may deem fit to grant.

As the record would bear testimony, this matter has a chequered history.

It was instituted in this court sometimes in August 2019 and was first assigned for trial and determination to his Lordship **Mlyambina J.** His Lordship Mlyambina J, conducted all preliminaries and received evidence of two witnesses of the Plaintiff before he was transferred to another working station and the matter was re-assigned to me in August 2021. I presided over the matter up to the closure of the Defendant's case in October 2022 and for purposes of enabling me to follow the proceedings

which were done by his Lordship Mlyambina J, I directed the proceedings to be typed and I set the matter for mention on 23. 11. 2022. In setting the matter for mention, I was of the view that court may need to call additional evidence on two issues namely:-

1. Existence and legal status of the first Defendant's company El Nasr Import & Export Co Ltd vis-a'-vis its ownership of the property on Plot No 747/39 Samora Avenue in Ilala Municipality Within Dar Es Salaam City which is the subject matter of these proceedings and;
2. Relationship (If any) between the second Defendant **Bay Investments Limited** and the fifth Defendant **Bay Investment Limited** whose names are substantially akin save for the letter "s" in the second Defendant's name which is in the words investment.

However, after a carefully reading of the pleadings of the parties and the evidence on record I came to realize that the second Defendant **Bay Investments Limited** has pleaded to have no interest in the subject matter of these proceedings whatsoever, therefore inquiring its relationship with the fifth Defendant will add nothing towards settling the issues in dispute between the parties in this matter.

As regards to the existence, legal status and ownership of the property subject of these proceedings I noted that both in the pleadings and on

the evidence on record particularly that of **Wazir Masoud Mganga DW3**, Senior Assistant Registration Officer working under the Registrar of Titles at the Ministry of Lands, Housing and Settlements who stated undisputedly that as per records in the Ministry Title Deed for Plot No 747/39 (which was mistakenly referred to as Plot No 789 in his witness statement), was issued to the first Defendant **EL Nasr Import and Export Co Limited** and that according to the records in the Ministry the property is owned by the first Defendant El Nasr Import and Export Co Ltd, and also the undisputed evidence of **Omnia Omar Khateb (DW3)**, head of Legal Department of the first Defendant's company who stated that the first Defendant is the legal owner of the property in dispute and produced in evidence a certified copy of a Certificate of Title to Freehold Land under Title No 687 dated 26th day of January 1928 for Plot No 747/39 Crown grant in favour of the African Wharfage Co Ltd (Exhibit D2) which was transferred to El Nasr Export & Import Co on 11th August 1966 and the explanation given by DW3 to the effect that the said plot was given to the first Defendant's company as a sign of good relationship that existed between President Julius Nyerere of the United Republic of Tanzania and Gamal Abdul Nasr of Egypt and that even the structure which is currently in place was constructed by the first Defendant and that is why it resembles the structure of Egypt embassy, the registered owner

of the property on Plot No 747/39 under certificate of title No. 687 has been proved to be the first Defendant in the original suit El Nasr Export & Import Co Ltd.

On the existence of first Defendant I note that in the parties' pleadings and their respective evidence, the existence of the first Defendant is not seriously contested. These findings answer the first issue which asks who is the rightful owner of Plot No 749/39 Samora Avenue within Dar Es Salaam City. It is on those grounds that I decided not to call additional evidence to testify on none contested issues and proceeded to determine issues which are contested and particularly those which are within the ambit of an interpleader suit.

Now back to the issues framed by the court in this matter, at the final pre-trial conference court his Lordship **Miyambina J**, framed the following issues for determination:

1. Who is the rightful owner of a property on Plot No 747/39 located at Samora Avenue in Dar Es Salaam City;
2. What is the outstanding rent payable by the Plaintiff;
3. Who is the rightful payee/recipient of rent arrears;
4. To what reliefs are the parties entitled.

I have already resolved the first issue and hold that on the pleadings and available evidence the registered owner of Plot No 747/39 with Certificate of Title No 687 situated at Samora Avenue within Dar Es Salaam City is the first Defendant in the original suit El Nasr Export and Import Co Limited. Whether the same has been transferred to a third party or not cannot be within the scope of this interpleader suit.

The second issue is what is the outstanding rent which is payable by the Plaintiff. The Plaintiff tendered in evidence lease agreement (Exhibit P1) which indicates that for three years commencing from the first day of October 2010 the monthly rent was United States Dollars 10,800. 00 less withholding tax, for the first two years that is to say from 1st October 2010 to 30th September 2012 and for the third year that is from 1st October 2012 to 30th October 2013 the rent would increase by 5% per annum. On the other hand **Omnia Omar Khatib (DW2)** stated while under cross-examination by Stephen Mosha counsel for the 5th Defendant that by 30th June 2021 the rent due and payable was USD 16,000.00 and in his final submissions based on the rate of USD 129,000.00 per annum after an increment of 5% from 30th September 2013 as agreed by the parties, counsel for the first Defendant calculated the total rent payable as at 30th September 2023 to be United States Dollars 1,711 599.62. On the

evidence available I thus agree with the first Defendant's evidence and submissions that the rent payable by the Plaintiff by 30th September 2023 was United States Dollars 1,711,599.62.

The next issue is who is the rightful recipient of the rent arrears. As stated earlier, this is an interpleader suit. In law an interpleader suit is a suit in which the real dispute is between the Defendants only and the Defendants are required to interplead, that is to say they plead against each other instead of pleading against the Plaintiff as is in an ordinary suit. In an interpleader suit the real controversy or dispute is between the Defendants who interplead against each other. The Plaintiff is not really interested in the subject matter of the suit. The primary and the foremost object of an interpleader suit is to have the claims of rival Defendants adjudicated, for, in an interpleader suit there must be some debt or some money or other property in dispute between the Defendants only. The

Plaintiff in an interpleader suit must be impartial. No wonder at page 7 of her plaint the plaintiff stated clearly that she has no any interest in the subject matter against the Defendants severally and that she is seeking for an order by way of an interpleader suit for rightful payment of the outstanding rents. Section 63 of the Civil Procedure Code provides that-

"where two or more persons claim adversely to one another the same debt, some of money or other property, movable or immovable, from another person who claims no interest therein other than charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute the suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself"

Order XXX Rule 1 (a) (b) and (c) of the Civil Procedure Code [Cap

33 R.E. 2019], is founded on the above section and lays out the characteristic of an interpleader. Interpleader is, therefore a person who holds a debt sum of money or other property movable or immovable to which two or more persons lay claims adverse to one another, but doesn't himself claim any interest therein except costs and/or charges appurtenant to the property so held. The Interpleader should also be ready and willing to pay or deliver the property so held.

In the case at hand all Defendants except the second Defendants are claiming to be entitled to rents payable by the Plaintiff. I have already ruled that the second defendant has distanced herself from the claims in the suit. As for the third Defendant it has been submitted that the third

Defendant asserts ownership over the property by virtue of a Joint Venture Agreement allegedly executed between her and the first Defendant which was registered by the Registrar of Documents under folio N. V 89328 with serial No 5225/16 dated 23rd June 2016. It is further submitted that in the performance of its obligations under the said Joint Venture Agreement the third Defendant paid USD 150,000.00 to Hon. Mark Boman who held Powers of Attorney donated by the first Defendant. Further to that the third Defendant asserts that she spent;

1. USD 70,000.00 paid to Architects for concept design;
2. USD 65,000.00 paid to Engineers;
3. USD 40,000.00 paid to Surveyors and;
4. USD 32,000.00 paid as legal fees.

~~Based~~ on the assertions above, the third Defendant prays this court to declare her the rightful recipient of the accrued rents. To substantiate her claims the third Defendant called one witness Mr Stephen Hughe Holmes (DW3) who testified on the Joint Venture Agreement entered between the third and first Defendants. He told the court that pursuant to the terms of the Joint Venture Agreement (Exhibit D7), it was agreed that the property would be transferred to the third Defendant and that after the transfer all rents would be payable to her.

From the material facts before me these facts are irreconcilable with the claim by the third Defendant that she is entitled to the rents due and payable based on the Joint Venture Agreement (Exhibit D7). Admittedly no transfer of the property was concluded between her and the first Defendant and since payment of rents to her was upon completion of transfer, thus the Joint Venture Agreement cannot be the basis for claiming right over the rents due and payable over the property.

Secondly, even if we assume that under the Joint Venture Agreement (Exhibit D7), third Defendant was entitled to recover costs she incurred in its execution by deducting them from the rents due and payable by the Plaintiff, still there is no evidence whatsoever to establish the assertion that the amount claimed was spent. There is no proof that she paid USD 150,000.00 to Mark Bomani, USD 70,000.00 to an undisclosed Architect, USD 65,000.00 to an undisclosed engineer and USD 32,000.00 as legal fees. I thus hold that on the evidence available the third Defendant's claim over the rents due and payable by the Plaintiff have not been established as against other Defendants.

As regards to the 4th Defendant's claims of interest in the due and payable rents, it was submitted that sometimes in 2013 one Mark Bomani who was allegedly holding Power of Attorney donated by the first Defendant

approached the fourth Defendant with an offer of sale of the property the subject of this matter at the price of USD 2,900,000.00. After a thorough search the fourth Defendant satisfied herself that the property belonged to the first Defendant though it had a registered caveat. However, following Mr Bomani's undertaking to see that the caveat is withdrawn the 4th Defendant through her sister company **Gulf Concrete and Cement Products Limited** paid to Mr Mark Bomani a total sum of USD 740,000.00 and issued a bank guarantee of USD 2,000,000.00 for remaining balance from BOA Bank. It was the testimony of **Khaled Hassan Mohammed** (DW6) that Mark Bomani received a total USD 900,000.00 out of which USD 160,000.00 was to be paid to the third Defendant so that she could remove the caveat she had entered over so that transfer of ownership could be effected and the remaining balance was part of the purchase price of USD 2,900,000.00. The payments notwithstanding, the 4th Defendant and Mr Mark Boman didn't surrender the original Title Deed of the property to enable the 4th Defendant to commence transfer process as a result of which the fourth Defendant instituted Land Case No 31 of 2015 at the High court of Tanzania Land Division suing the first Defendant and Mark Bomani for specific performance of the Memorandum of Understanding in which case the Defendants admitted her claims and judgment on admission was entered

against them. It was fourth Defendant's assertion that Land court ordered Certificate of Title of the property for plot No 747/39 to be surrendered to the 4th Defendant so that transfer can be effected by operation of law but the Defendants didn't comply. It was further evidence of Advocate Fredrick Jonathan Usiku (DW7) that the fourth Defendant applied to the Land Registry for transfer of the property and the Registrar assessed registration fees and stamp duty at shillings 187,050,000.00 which were paid by the fourth Defendant's sister company Gulf Concrete and Cement Products Limited. It was further evidence for the fourth Defendant that on 9th May 2019 it noted that the property the subject of this suit was to be auctioned in execution of a decree in Land Case No 39 of 2018 between the fifth and first Defendants herein in Land Application No 260 of 2019 and it intervened and instituted objection proceedings in Miscellaneous Land Application No 260 of 2019 seeking to stop the auction. A joint meeting with the 4th Defendant was sought by the first and fifth Defendants and a Memorandum of Understanding (Exhibit P8) was signed between the first Defendant through its representative who held a power of attorney donated by the first defendant. It is on the basis of orders given by land court in Miscellaneous Land Application No 260 of 2019 that the 4th Defendant is claiming to be the rightful recipient of rents payable by the plaintiff.

I have reviewed the evidence adduced in support of the fourth Defendant's claims. From the testimony of **Khaled Hassan Mohammed (DW6)**, the money the fourth Defendant wants to recoup from the rent collected and payable by the plaintiff was paid to the late Mark Bomani by its sister company **Gulf Concrete and Cement Products Limited**. In law a sister company is a separate legal entity that shares the same owners (or parent) with another company. It is a legal person separate from the other company. Unlike a subsidiary company, a sister company operates independently and has its own management team and board of directors. In the present case nothing was produced in evidence to show not only that Gulf Concrete and Cement Products Limited is a sister company of the fourth Defendant but also that the alleged payments were so made on behalf of or for the fourth Defendant's company and that Gulf Concrete and Cement Products Limited gave mandate to the fourth Defendant to claim it on their behalf. Payment documents attached to the 4th Defendant's pleadings (which, however were not admitted in evidence) would simply suggest that on 10. 4. 2013 Gulf Concrete and Cement Products made some payments amounting to USD 740,000.00 to Bomani and Company Advocates.

It has been submitted that fourth Defendant's claims against the first Defendant also arises from exhibit P10 and D11 which are a Memorandum of Understanding (MOU) entered between them, the judgment and decree of the High Court Land Division in Land Case No 31 of 2015 (Exhibit D12), court orders in Miscellaneous Land Application No 260 of 2019 (Exhibit D14) and the Settlement Agreement (which forms part of exhibit D14).

Starting with the Memorandum of Understanding commonly known as MOU, the term Memorandum of Understanding is defined at page 1044 of **Black's Law Dictionary 10th Edition by Bryan A. Garner** as;

"A written detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement; a noncommittal writing preliminary to a contract....."

It is a letter of intent which is not meant to be binding. Because a Memorandum of Understanding is a mere intent which is not enforceable in law, ~~this court cannot construe the terms therefore as the terms of a contract.~~

On the Land Case No 31 of 2015, I do not have the advantage of the entire proceedings of the said case, but from the material facts before me albeit briefly the Plaintiff in that case was the present fourth Defendant

and the Defendants were the present first Defendant El Nasr Export & Import Company and One Mark Boman (who is not a party in these proceedings). In the said case the Plaintiff therein had sued the two Defendants for the following orders, that is to say;

1. Specific performance of the Memorandum of Understanding;
2. An order prohibiting sale of the property to another buyer than the Plaintiff;
3. An order prohibiting the Defendants to surrender the original Certificate of Title No 186020/12 to the Plaintiff in exchange of the payment of balance of United States Dollars 2,000,000.00 less mesne profit and Capital Gain Tax;
4. In the alternative to 3 above and in absence of the original Certificate of Title, an order for transfer of the said property by operation of law; and other reliefs.

In its verdict and following the Defendants own admissions, the High Court Land Division ordered that;

- (i) The Defendants should effect specific performance of the Memorandum of Understanding;
- (ii) The Defendants are prohibited to effect sale of the property in issue to another buyer other than the Plaintiff;

- (iii) That the Defendants should surrender the original Certificate of Title No 186020/12 to the Plaintiff in exchange for payment of the balance of United States Dollars Two Million (USD 2,000,000.00) and;
- (iv) In the alternative to (iii) above in the absence of the original Certificate of Title, the transfer of the said property be effected by operation of law

Apparently the Defendants (who were the judgment debtors), didn't comply with the court orders and upon realizing that the property in issue was to be auctioned in execution of a decree in another case namely Land Case No 39 of 2018 the fourth Defendant filed an objection proceeding seeking to stop the intended auction. It is the submissions of the counsel for the 4th Defendant that following the said objection proceedings the first and fifth Defendants sought an out of court settlement (Exhibit D1) with the 4th Defendant which was secured and filed in court on 15th May 2019 and was adopted by the court. This settlement is highly suspected by the Plaintiff. I do have the advantage of seeing the purported Settlement Agreement document. In that document it appears that the Applicant was the present fourth Defendant Lake Holdings Limited and the Respondents was El Nasr Export & Import Co Ltd, Bay Investment

Limited (the present first and fourth Defendant) respectively and one Joshua Mwaituka t/a Fosters Auctioneers & General Traders. In Article one of the said Settlement parties agreed that the settlement amount which will be payable to the Applicant in full and final settlement of her all claims against the first and second Respondent in respect of payment made towards purchase of Plot No 747/39 Samora Avenue Ilala Municipality, refund of registration fees on transfer, legal fees in the High court was United States Dollars 1,454,839.00.

Under clause 3 it was agreed that in consideration of the payment of the Settlement Amount by the first Respondent therein (i.e. Bay Investment Limited or fifth Defendant herein), the Applicant (i.e. Lake Holdings Ltd), the fourth Defendant herein shall release and discharge unconditionally the first and second Respondents i.e. the fifth and first Defendants herein from all claims whatsoever arising from related and or incidental to the Memorandum of Understanding signed on the 9th April 2013 for sale of Plot No 747/39 Samora Avenue Ilala Municipality.

As stated earlier a carefully analysis of the evidence in relation to the 4th Defendant's pleadings and claims shows that the basis of the fourth Defendant's claims is a Memorandum of Understanding (MOU) she purport to have entered with the first Defendant El Nasr Export & Import

Ltd. I have already explained what Memorandum of Understanding entails in law and what are its legal consequences but for avoidance of making findings which may be sub judice to the findings of this court (Kibela J as he then was) in Land Case No 31 of 2015 I will not discuss it more. Suffice to say that for purposes of the present interpleader suit the evidence adduced in support of the 4th Defendants claims indicates that the claimed money was paid to one Mark Boman by Gulf Concrete and Cement Products Ltd. Both Gulf Concrete and Cement Products Limited are not parties in the present proceedings and there is nothing to show that the said payments were paid for and in behalf of the fourth Defendant Lake Holdings Ltd. I have already ruled that a sister company is a distinct legal entity to its sister and each has a distinct legal personality, thus for the fourth Defendant company to be entitled to any payment made by Gulf Concrete and Cement Products Limited an alleged sister company, it ought to have had led evidence showing that the payments was made for or on her behalf. That evidence is wanting.

Secondly, the Settlement Agreement (Exhibit D1) itself which is another basis of the fourth Defendant claims, stipulates clearly that Lake Holdings Limited the Applicant therein who is the fourth Defendant herein shall be paid by the first Respondent therein Bay Investment Ltd who is the fifth

Defendant herein upon the fifth Defendant being paid by the first Defendant. It follows therefore that the claims founded on the Settlement Agreement are due and payable only upon the 5th being paid by the 1st Defendant. There is no mention that the amount due will be paid from the rents collected by the Plaintiff.

Finally on the fifth Defendant's claims which trace its genesis in a Joint Venture Agreement signed between her and the first Defendant El Nasr Export & Import Co Ltd in 2015. It is asserted the first Defendant breached the said Joint Venture agreement a breach which prompted the fifth Defendant to institute Land Case No 39 of 2018 against her. It has been stated in evidence that the first Defendant admitted liability and accordingly Judgment and decree on admission was entered against her.

Consequent to the said decree being passed the first and fifth Defendants ~~herein~~ who were the Judgment debtor and decree holder therein agreed to adjust the decree and filed an adjusted decree in court. I do have the advantage of seeing the entire proceedings in Execution Application No 2 of 2019 in which the adjusted decree was adopted and recorded as a decree of the court. The relevant part of said proceedings run as follows:

"Date 22. 5. 2019

Coram: A. Mohammed, J.

For Decree Holder: Mr Stephen Mosha Advocate

For Judgment Debtor: Mr Mohammed Manyanga Advocate

Court Clerk: Monica

Mr Stephen Mosha:

The matter was coming for mention. In principle the parties have agreed to adjust the decree and have filed and Adjustment of a Decree in Court on 21. 5. 2019. We pray your court to records and certifie the said Adjusted decree. That is all.

A. Mohammed

Judge

22. 5. 2019

Mr Mohamed Manyanga:

I humbly submit I agree that we have come for the adjustment of a decree agreement to be certified and registered by this court. The same was filed on 21/5/2019.

That is all.

Court:

Apparently both parties have agreed to the adjustment of a decree in Land Case No 39 of 2018 between the parties. An

adjustment of a decree Agreement has been duly filed in court
on 21/5/2019.

A. Mohamed

Judge

22. 5. 2019

ORDER;

Pursuant to the Adjustment of a Decree Agreement between the parties herein filed in court on 21. 5. 2019 executed on the same date under Order XXI Rule 2(2) of the Civil Procedure Code [Cap 33 R.E. 2020], this court records and certifies the decree adjusted on the terms and conditions stipulated therein. The said terms and conditions to form an order of this court.

A. Mohamed

Judge

22. 5. 2019"

One of the terms and conditions in the adjusted decree stated clearly under item 2 that;

3. That the Decree Holder shall further be entitled to **rent arrears** as part payment of total claimed amount from Exim Bank Limited in respect of the property on Plot No 747/39 with Certificate of Title No 687 at Samora Avenue-Ilala Municipality to the tune of USD 16,000/= (Read US Dollars Sixteen Thousand only).

On the other hand during cross-examination by the counsel for the fifth Defendant, **Omnia Omar Khateb (DW2)** conceded that there was a Joint Venture Agreement between the first and fifth Defendants and also she admitted that one Mohamed Manyanga an advocate of this court was holding power of attorney donated to him by her company (i.e. the first Defendant), to represent it in all legal matters. It was further statement of DW2 in cross-examination that they revoked the said powers of attorney given to advocate Mohamed Manyanga because he acted ultra-vires of the powers donated to him in signing the Joint Venture Agreement. When asked if the first Defendant lodged any appeal against the judgment and decree in Land Case No 39 of 2018, in which she was represented by Mr Mohamed Manyanga whom they blame to have had acted in ultra vires DW2 told the court that the first Defendant didn't appeal but had an intention of appealing.

From the pleadings and evidence analysed above, there can be no dispute that the first Defendant admits to have had given powers of attorney to Mohammed Manyanga who represented her in Land Case No 39 of 2018. There can also no dispute that in the said land case the fifth Defendant was adjudged to be entitled to rent arrears from the property on Plot No 747/39 with Certificate of Title No. 687 situated at Samora Avenue Ilala Dar Es Salaam. In paragraph 7 of the Plaintiff's amended plaint, the plaintiff seeks for an order by way of interpleader suit for rightful recipient of the outstanding rent collected from that same property. Thus in view the adjusted decree of the High Court Land Division in Land Case No 39 of 2018 which I take judicial note, the rightful recipient of the rent collected is the fifth Defendant Bay Investment Co Ltd. If the first Defendant has any complaint regarding the power of attorney she gave to Mohammed Manyanga, this court is not the right forum to entertain it.

As to the rent payable according to the adjusted decree, the settlement figure payable to the fifth Defendant was USD 3, 420,000.00 (Say Three Million and Four Hundred and Twenty Thousand Dollars.

The last issue is about reliefs to which the parties are entitled. As stated in the course of this judgment the court was called to determine who is the rightful recipient of the rent collected and from the evidence adduced

and in view of the adjusted decree of this Court Land Division in Land Case No 39 of 2018 I have ruled that the fifth Defendant is the rightful recipient thereof. The Plaintiff and fifth Defendant are entitled to costs she incurred in conducting the suit in this court as shall be taxed and taxes and/or statutory deductions due.

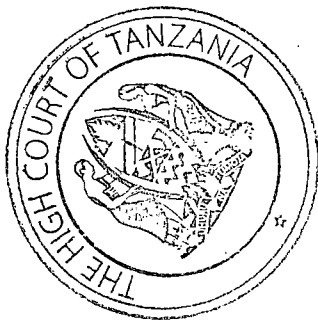
Order accordingly,


A.R. MRUMA,

JUDGE,

29. 2. 2024.

Delivered online from the High of Tanzania Morogoro Sub Registry
(Morogoro Integrated Judicial Centre) this 29th Day of February 2024.




A.R. MRUMA

JUDGE

29.2. 2024.