

IN THE HIGH COURT OF ZANZIBAR

AT TUNGUU

CIVIL CASE No. 47 OF 2011

SALMA ABDALLA ABEID

(T/a Pavilion Coffee Shop)..... PLAINTIFF

VERSUS

- 1. ZANZIBAR MUNICIPAL COUNCIL**
- 2. ZANZIBAR CRICKET ASSOCIATION**
- 3. NASSOR ALI MWINYI**
- 4. SULEIMAN HAJI**

DEFENDANTS

JUDGMENT

15th August & 26th September, 2023

A. I. S. Suwedi, J

The dispute started after the plaintiff was of the view that the tenancy agreement between her and the 2nd defendant was breached. According to the plaint, the plaintiff entered into 10 years lease contract with the 2nd defendant for rent of the Mnazi Mmoja Cricket Pavilion to carry out restaurant business for the consideration of TZS 70,000/- per month payable per annum. The lease was approved by the Ministry of Information, Culture and Sports (as it then was) and Baraza la Michezo

Zanzibar. Having obtained the property, the plaintiff conducted major repairs and was allowed not to pay rent for year due to renovations done, but the 2nd defendant on the inducement by the 3rd and 4th defendants under the misrepresentation that the Second Vice President had ordered the plaintiff lease to be determined, had determined the lease before its term. It has been asserted further that the 2nd and 3rd defendants continued to harass the plaintiff and the staffs by putting locks and announcement that the lease ceased and that the 1st defendant broke and removed "makuti" fence. The act caused damages to the plaintiff and so this suit filed by the plaintiff, **Salma Abdalla Abeid** against the above named defendants claiming for an order of specific performance of the lease contract, an order for nullification of a new lease agreement to the 3rd defendant or any other person being represented by him due to fraud and illegalities, an order stoppage of trespass, an order of damages for malfeasance of a public officer to be assessed by the Court, an order of general damages for trespass on the property of not less than TZS 30,000,000/-, an order of general damages for financially loss, mental and psychologically torture and harassment to the plaintiff of not less than TZS 50,000,000/-, an order of mandatory injunction to restrain the defendants from interfering with the lease and coffee shop operations, an order of the

Court that defendants acts to interfere with plaintiff lease is illegal and contrary to the law, an order of mandatory injunction to restrain the Municipal Council from interfering with the lease and restaurant operations, costs and any other relief as the Court deem appropriate.

All defendants denied the allegation and they pray for the dismissal of the suit. Besides, the 2nd, 3rd and 4th defendants lodged a counter claim and prayed for the judgment to be given for the 2nd defendant for mesne profits at TZS 588,000/-, an order for costs of the suit of TZS 80,000,000/-, interest at 8% p.a. on the counter claim from the date of the judgment until full payment and any other relief as may be just. The counter claim also denied by the plaintiff and she prayed for dismissal order.

The matter passed through many hands of Judges and then it stuck somewhere until reached my table. Having assigned with it, efforts were made to find parties and it became difficult to find the 4th defendant despite the service made to him and the announcement made via Zanzibar Leo Newspaper dated 08/08/2021. Hence, the hearing proceeded in his absence under Order XI, Rule 12 of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar.

On the day the framing of issues scheduled, the 3rd defendant also did not appear without any notice. Henceforth, the Court discharged him from the Coram under Order XI, Rule 12 (supra) and after long discussion with the parties remained, the following issues for determination were framed:

1. Whether there was a lease agreement or not?
2. What was the state of the leased area and whether there was any improvement done?
3. Whether the plaintiff had leased the premises to another person?
4. Whether the improvements done was demolished and removed by the 1st and 4th defendants?
5. Whether there was any abuse of office by the 4th defendant?
6. What are the reliefs parties are entitled to?

Presenting her case, the plaintiff, **Salma Abdalla Abeid** testified alone through the service of the learned counsel Abdulkhaliq M. Aley and her evidence was that she entered into 10 years contract with 2nd defendant from 1st day of November, 2009 or 2010 for the purpose of restaurant business at Mnazi Mmoja (at the corner on the Mnazi Mmoja road to Haile Selassie School) for the consideration was TZS 70,000/- per

month. She was shown the agreement and she identified as the one concluded with the 2nd defendant though to my observation some of the features stated were not included within the agreement shown.

The plaintiff testified further that the leased premises was not in good condition and so she repaired it at TZS 15,000,000/-. She bought restaurant equipment's at USD 3,000. Then she started business but shortly and suddenly the place was locked and she failed to know who exactly locked the area. The "makuti" fence made was broken by the 1st defendant for the reason that the area fenced belongs to them and so she decided to let the business off. It is her evidence further that the secretary to the 2nd defendant wrote to her informing that the contract was ended and the area leased to the 3rd defendant.

She cemented her evidence by saying that she sued the 1st defendant for thrashing the fence; she also said to have joined the 2nd defendant as he was the one who entered into contract, the 3rd defendant was the one given a new contract and the 4th was working within the Second Vice President's Office and he was the person informing her that she has no right over the area and she finally prayed for the Court to give her rights.

While cross examined, the plaintiff said that she surrounding of the leased premise is also part of the premise that is why she fenced the area and she denied that the area is an open space. She also denied to have leased the area to another person but it was the 2nd defendant who breached the agreement.

Having closed her case, the case continued to the defence side whereby the 1st defendant through Ms Salama Rama, learned Senior State Attorney closed their case without giving any evidence. Then the case jumped to the 3rd defendant after being returned to the Coram of the case to an order given on 04/10/2022 following the prayer made by the learned counsel Hassan Kijogoo and he was only witness on his side. His evidence was taken through the legal assistance of the learned Counsel Rosemary Nyandwi that he knows the case at hand as he leased the cricket building. He entered into contract with the Government on 21/07/2011 for consideration of TZS 100,000/- per month and has already paid TZS 1,200,000/-. Later came the plaintiff and claimed the area to belong to her as she rented earlier. After being shown his agreement for identification, he prayed for the suit to be dismissed.

The 2nd defendant under the representation of its secretary supplied one witness as like other parties. His witness, **Ali Rajab Juma** testified online due to his health condition and he stated that he was an acting secretary of the 2nd defendant when the incident happened. He had once rented the area at Mnazi Mmoja to the plaintiff in 2009 for TZS 700,000/-. The contract ended following the breach committed by the plaintiff and the 2nd defendant rented the area to the 3rd defendant for the same amount and the situation was communicated to the plaintiff via letter.

While cross examined by counsel for the plaintiff, he stated that the plaintiff rented the area to another person without notice to the 2nd defendant but he failed to remember the name of the person so rented the area.

Without further ado, I am starting to observe the 1st issue that whether there was a lease agreement or not. Reading the pleading, parties have not objected the lease but they all disputed on the breach done. Hence, I decided to start with this issue so as to observe the lease itself with its conditions stipulated so as to be in a position to determine the whether there was the breach of terms or not. The plaintiff who claimed to have entered into a lease agreement failed to satisfy this Court that there

was a valid lease which the defendants breached. From her evidence, she entered into an agreement with the 2nd defendant on 1st day of November, 2009 or 2010 and upon knowing that the Lease Agreement is important to the determination of this case, she attached it to the plaint as annexure “**SAA – 1**”. However, the same was not tendered to form part of the plaintiff’s evidence.

The Court as machinery of justice is restricted to consider an exhibit which was not included as part of the evidence. Please see the case of **Ismail Rashid v. Mariam Msati**, Civil Appeal No. 75 of 2015 (unreported) and so my hands were tied to consider attachment “**SAA – 1**”. Failure to have this document, I failed to find out if there was a Lease Agreement and that the terms were breached. Therefore, I see plaintiff as having failed to prove her complaint.

Under my considered opinion Lease Agreement is the source of this dispute and that all other issues framed depends on the Lease Agreement which have been missed. On this basis, I see no reason to proceed with other issues framed.

However, on the other hand as said earlier that the 2nd, 3rd and the 4th defendant lodged a counter claim requesting for an order of payment

form the plaintiff. The first one is that the 2nd defendant for mesne profits at TZS 588,000/-. Again, the 2nd defendant failed to prove this amount as profit. In his evidence did not say anything about the claim and how that profit achieved. The evidence of 2nd defendant did not show the contract and how the plaintiff breached that contract. The 2nd defendant witness just said that the plaintiff rented the area to another person whom he failed to remember even by single name.

Additionally, the 2nd, 3rd and 4th defendant claimed for an order to be paid costs of the suit of TZS 80,000,000/- and interest of 8%. Again, no proof of the claim was given and for that my stand point is that the 2nd, 3rd and 4th defendants also failed to prove the counter claim to worth the payment order.

Therefore, from the reason given, the main claim and the counter claim are both dismissed. Each party should bear its own costs.

DATED at TUNGUU ZANZIBAR this 26th day of September, 2023



A. I. S. Suwedi

JUDGE