IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

LAND CASE NO. 32 OF 2016

SEMU MBISE @SEMU ELIAS MBISE
T/A ASILI RESORT ..... PLAINTIFF

VERSUS

ADAM MBISE @ ADAM NDETAULWA MBISE .....DEFENDANT

JUDGMENT

MAIGE, J

The plaintiff has instituted the above suit against the defendant for the following reliefs. First, declaratory judgment that the defendant is in breach of the lease agreement in respect to a two housed land at plot number 5, corridor II Area within the City of Arusha with CT No. 25073 ("the demised premises"). Two, a declaratory judgment that the plaintiff is the lawful tenant in **demised premises** for the reminder of the duration of the lease. Three, an order for perpetual injunction restraining the defendant and/ or his agents from interfering with the plaintiff's possession and use of the **demised premises**. Four, payment of **TZS 13,193,310,000** being special damages for a breach of the lease

agreement. Five, general damages. Six, an order excluding from the lease agreement the total duration spent in prosecution of this suit.

In the conduct of this matter, the plaintiff was represented by D'Souza, Mfinanga and Mrutu, learned advocates. The defendant appeared in person and subsequently through his attorney Erick Mbise. At the end of the trial, parties filed their close submissions. They have been very useful to my judgment. The issues framed for determination were two. **First**, whether the defendant breached the lease agreement; **Two**, to what reliefs are the parties entitled to.

The facts giving rise to the suit are as follows. On 23rd day of December 2009, the parties herein executed a lease agreement wherein the defendant rented the **demised premises** to the plaintiff for a primary term of ten years from the date thereof renewable upon mutual agreement. The **demised premises** was to be used for hotel business upon renovation by the plaintiff to fit the purpose. It was express in exhibit **P-1** that; the rental fees for the **demised premises** would be **TZS 12,000,000/=** per year. That, the rent for the first year of the contract was payable in full on the date of the execution of the lease agreement. For the subsequent years of the lease, the plaintiff was to pay a cash of **TZS 6,000,000** in respect thereof and withhold the difference of **TZS 6,000,000** to cover the costs of renovation. The maximum authorized costs for renovation was a maximum of **TZS 60,000,000/=** Further agreed was the fact that, before commencing renovation, the plaintiff would submit to the defendant for approval, a drawing and bill of quantity.

It is not in dispute that subsequent to the execution of exhibit **P-1**, parties executed various addenda purporting to clarify the amount of rents paid and extend the initial term of the agreement. These addenda were executed on 10th January 2011, December, 2011, 22nd January 2013, 22nd May 2013, 7th September 2031 , 3rd March 2014, 4th August 2014 and 28th May 2015. They were exhibited as **P-3, P-4**, **P-5**, **P-6**, **P-8, P9**, **P-10**, **P-11** and **P13,** respectively.

At this juncture, it is important to observe that; before the execution of exhibit **P-13**, the status of the lease agreement was such that the plaintiff had paid rent until 2020 and that, the initial period of the lease had been extended up to 2032. For the reason that shall be apparent as I go along, I find it unnecessary to review the terms of each and every addendum save that exhibit **P8** provided for an approval of a drawing which reflects the renovated building currently in use for restraint and bar businesses. It occupies one of the two houses in the **demised premises**. The drawing was exhibited as **P-9**.

Besides the contractual documents revealed herein above, the plaintiff relied on the oral testimony of four witnesses to establish his case. There were various pieces documentary evidence exhibited with a view to substantiating the amount of rent paid to the defendant either directly or through his close relatives as well as payment for land rents and incidental costs. Exhibit **P14** establishes payment of

the balance of **TZS 4,682,000/=** for the rent of the initial period of 10 years as per exhibit **P13**. Exhibit **P15** is a diary containing statements of rental payments acknowledged to have been received by the defendant. Other payments of rent are established by petty cash vouchers collectively exhibited as **P-16**. In essence, the two exhibits just referred, establish the payments of rent confirmed in exhibit **P13**.

Exhibits **P-17, P-18, P-19** and **P-20** constitute petty vouchers and acknowledgment notes for payments subsequent to execution of exhibit **P13** and the payment in exhibit **P-14.** Exhibit **P-21** are receipts for land rent payments while exhibit **P22** is a building permit. Exhibit **P23** is a valuation report purporting to establish the value of the renovation made in the building reflected in exhibit **P-9**.

In his oral testimony, **PW-1** blames the defendant for tress passing unto the main house on 7.5.2016. He claims to have incurred damages in terms of loss of business at the tune of **TZS 250,000,000/=** per year from the date of trespass to the date of the expiry of lease in **2032.** He also claims **TZS 457,3010** being the costs involved in the renovation as per exhibit **P-23**. There was also a claim in evidence of **TZS 18,000,000** as value of the lost generator.

In his evidence on cross examination, **PW-1** said that he did the valuation in exhibit **P-23** after the trespass in question. He denied to have breached the terms of exhibit **P-1** as to renovation.

He died the claim that the computation of the paid up rents reflected in the addenda was incorrect.

There were other three witnesses whom were produced to support the plaintiff's case. These were **Bernard Buhoma** (PW-2), **Godwin Ndelaulo Mbise** (PW-3) and **Richard Afred Mbise** (PW-4). **PW-2** was an advocate who prepared the agreements in exhibits **P1**, **P3,P4,P6,P8, P9** and **P10**. His evidence confirmed the proposition that at the request of both parties, he prepared at different times, the said agreements and caused the parties and their witnesses to sign thereunto. On cross examination, he insisted that the agreements were prepared at the instance of both parties.

PW-3 is indubitably the defendant's brother. He claimed to have witnessed the execution of exhibits **P-1**, **P-3** and **P-9**. On cross examination, he said that whatever money he received from the plaintiff, was at the instruction of the defendant. Like **PW-3**, **PW-4** is also a brother to the defendant. He witnessed the execution of **P-1** and **P-3**. On cross examination, he confirmed that, the defendant was in good condition when he was executing the agreements.

On his part, the defendant called three witnesses including himself who testified as **DW-3**. In his testimony in chief, he admitted to have executed exhibit **P-1**. He equally admitted to have taken possession of part of the **demised premises**. He however denied to have breached the lease contract. He blamed the plaintiff for a breach of contract in not in renovating the main house.

On cross examination by Desouza, the advocate for the plaintiff, he admitted that his wife, children and brothers happened to collect money from the plaintiff at his instruction. He said further that he was not satisfied with the renovation.

Erick Adam Mbise, the son and attorney of the defendant, testified as **DW-2**. He said that the addenda were prepared by the advocate for the plaintiff who did not protect the interest of the defendant. He said that, while under exhibit **P5,** the plaintiff was to deal with the defendant and his wife only, he committed a breach of contract when he dealt with some relatives. He testified further that, the plaintiff breached the terms of exhibit **P-1** in that, he made construction in one of the houses without the drawing thereof being approved by the defendant. He denied the claim that the main house had been renovated. He told the Court that when they took possession of part of the **demised premises**, they found it in dilapidated condition. He denied the assertion that the plaintiff has suffered any loss.

On cross examination by advocate Mfinananga, he admitted possession of part of the **demised premises**. He said, the generator at the main house was installed by the defendant. He admitted that **PW3** and **PW4** are his paternal uncles. He said, the balance of the rental amount due and payable to the defendant was **TZS 60,000,000** minus **TZS43,000,0000/=.** He admitted that the

statement as to the amount of rent paid in exhibit **P13** is correct. He acknowledged his signature in exhibit **P-5.**

DW-1 (Ermes Adam Mbise) is the wife of the defendant. While admitting execution of exhibit **P-1** and the subsequent addenda by the defendant, she blames the plaintiff for not involving her in the execution of the same. She claims further in evidence that, the rental fee was inadequate. She condemns the plaintiff for deducting **TZS 6,000,000** per year for renovation which he did not make. She also blames the plaintiff for effecting renovations which were not approved by the defendant. She says, at the meeting before the DC though the dispute was resolved, there was an agreement of there being a second meeting. It was not done because of the refusal by the plaintiff, she further testifies. She criticizes in evidence the computation of the amount of rent paid as reflected in the addenda. In her personal computation which was demonstrated in Court, there was a difference of **TZS 16,000,000/=.** In accordance with her computation, the correct figure of the amount paid should have been **TZS 26,850,000/=,** she concludes. Her computation dated 15.06.2016 was received as **D-1**.

On cross examination by the counsel for the plaintiff, she told the Court that the defendant had, before occupying part of the **demised premises,** informed the plaintiff to that effect. She equally admitted that there was no court order allowing the defendant to take possession of the **demised premises.** She admitted to have received some money from the plaintiff as part of the rent. She

further admitted that the defendant executed exhibit **P-1** and all subsequent addenda.

In their closing submissions in respect to the first issue, the counsel for the plaintiffs submitted, with all forces that; the occupation of part of the **demised premises** by the defendant was in breach of the implied covenant under section 88(1) of the Land Act, Cap. 113 RE 2002, to the effect that; so long as the tenant pays rent and observes and performs the covenants and conditions contained or implied in the lease, he shall have a right of peaceably and quietly possession of the leased land during the term thereof. He referred further the Court to the commentary of the learned authors William W.J. and Wells M.M. (Miss) in their **HILL AND REDMANS, LAW OF LANDLORD AND TENANT; 10th Edition, Butterworth's & Co. London at page 157** where they remarked as follows:-

> *"The covenant for quite enjoyment is an assurance against interruption in possession in the thing demised. It is an understanding that the Tenant shall have the property unfettered by the assertion of any right which interferes with its ordinary and lawful enjoyment"*

More so, he placed reliance on the authority in **DHARAS & SONS VS. ELYS LTD, 1963, EA** where it was held that a person who lets premises impliedly undertakes to give vacant possession of the same to the tenant. He submitted, in conclusion that, by an action of tress pass under the main house and continuous occupation

of the same, the defendant has committed a breach of the lease agreement which is continuing.

On the second issue, the counsel invited the Court to grant the reliefs in items "A", "B" and "E" of the prayers clause for the reason of the breach and continuous breach of the contract by the defendant. On special damages for breach of the implied covenant, the counsel sought an inspiration from the commentary in **HILL AND REDMANS, LAW OF LANDLORD AND TENAN**, *(supra)* at page 293 thereof where it is stated as hereunder:-

> *The damages in an action for breach of covenant for quiet enjoyment are normally measured by the loss resulting from the breach. If the lessee is evicted owing to the invalidity of the lease, he can recover the value of the term, and the pecuniary loss he has suffered by the action, and any other such some recovered against him in the action as mesne profits. Similarly, if he has been compelled to leave, the demised premises, he can recover the expense of removal, since this loss which naturally flows from the breach of covenant. Where, however, a highhanded outrage has been committed punitive damage may be awarded.*

On the claim for general damages, the counsel placed reliance on the authority in **Uganda Commercial Bank vs. Deo Kigozi (2002), EA 293,** which judicially considered what is general damages. They proceeded by referring the Court to the claim

itemized in paragraph 17 and 18 of the plaint. Quite unusually, the counsel did not refer the Court to any piece of evidence on the record to substantiate the claim. Instead, they referred the Court to the defense testimony on cross examination. With respect, a factual claim in a plaint is provable by evidence from the prosecution on record. It cannot be proved by mere implication from the defense evidence.

It was further submitted for the plaintiff that, the claim for special damages at the tune of **TZS 7,036, 543, 250/=** was proved by the oral evidence of **PW-1**. Further submitted was the fact that, the claim of **TZS 457,301,000** was proved by the documentary evidence in exhibit **P-23**. In his view, the lease agreement would last in 2032.

Remarking on the quantum of rend paid as of the date of the institution of the suit, the counsel, relying on the evidence in exhibits **P13** and **14**, submitted that it was an amount equivalent to rent of ten years plus the amount paid subsequent to the execution of exhibit **P13** which would cover a further period of one year. He blames the defendant for breaching the lease agreement by trespassing unto one of the **demised premises.** On what was the primary term of the lease, the opinion of the learned counsel was such that it was 22 years from the date when the lease became operational. They placed reliance on the evidence in the various addenda on the record.

On his part, the defendant submitted that it was the plaintiff who was in breach of the lease agreement for not observing the

condition of the agreement as to renovation of both the two houses constituting the **demised premises**. He faulted the plaintiff to, in breach of the lease agreement, renovate one of the houses on the **demised premises** without the drawing thereof being approved by the defendant. He condemned the plaintiff for renovating only one house while he was deducting rent to cover renovation of both two houses. He submitted that, the occupation by the defendant of the main house was not in breach of contract because it was after the plaintiff had failed to renovate the **demised premises**. He finally claims for a total of **TZS 7,957,188,000/=** being damages arising from the breach of lease and the difference between the rental fees due and payable to the defendant and the amount that has been so far paid. He claims further for declaration that the plaintiff is in breach of the lease agreement and for an eviction order against him.

Having exposed the cases from both sides, let me consider the merit or otherwise of the claim. From the pleadings and evidence, it is apparent that; the existence of the lease agreement and the subsequent addendums is not in dispute. The issue is whether the defendant breached the terms and conditions of the agreement in occupying one of the houses constituting the **demised premises**.

It is common ground that in accordance with exhibit **P-1**, the primary term of the lease was 10 years renewable upon agreement between the parties. The annual rent was **12,000,000/=**. In the first year of the contract, it was payable in advance upon execution of the contract. In the subsequent years, the plaintiff would pay

6,000,000/= in cash and the balance of **TZS 6,000,000/** would be withheld to off set the costs of renovation. It was the obligation of the plaintiff, according to clause 4 (b) of exhibit **P-1**, to renovate the two houses on the **demised premises** with the condition that the costs of renovation should not exceed **TZS 60,000,000/=.** It was express in item (i) of paragraph (b) of clause 4 that, before effecting the renovation, the plaintiff would submit to the defendant a drawing for approval and a bill of quantities.

In this matter, the defendant is blamed to have breached the fundamental term of the contract by trespassing unto part of the **demised premises** and thereby denying the plaintiff his contractual right of peaceful occupation and use of the **demised premises**. On his part, the defendant, while admitting to have taken possession of part of the **demised premises**, it is his claim that he did so after failure of the plaintiff to perform the contract. He contends that, while under the contract, the plaintiff was to renovate both the two houses, until 2016 when he took possession part of the **demised premises**, the main house had not been renovated and was in a very poor condition.

From the facts of the case, the issue seems to be clear and straightforward. As I said, the annual rental fees was **TZS 12,000,000/=.** With the exception of the first year of the contract which was to be paid in full, in the subsequent years of the contract, the defendant would only be paid half of them. The remaining half would be deducted to set off the costs of renovation. The plaintiff

claims to have paid as of the date of the filing of this suit, **TZS 66,000,000/=** being rent for the initial period of 10 years.

In his evidence through **DW-1**, the defendant in the first place, claims that the said figure is incorrect. Without spending much time, I do not think that this claim is tenable. The defendant admits both in pleading and evidence to have executed exhibit **P-13** after reconciliation of his differences with the plaintiff in the office of the DC. It is interesting that both **DW-1** and **DW-2** were among the persons who witnessed the execution of the same. They have not denied such fact in evidence.

Express in exhibit **P-13** is the fact that until the date of the execution of the same, there was only a balance deficit of **TZS 4,682,000/=** in the rental fees for the initial ten years. The defendant does not deny in evidence to have received the said balance as per **exhibit P 14**. The agreement in exhibit **P13** being reduced in writing and duly signed by the parties, the defendant is estopped from adducing any oral evidence inconsistent with such evidence. This is in terms of section 101 of the Evidence Act which provides that; if there be a contract which has been reduced to writing, verbal evidence will not be accepted so as to add to or subtract from or in any manner to vary or qualify the written contract. In the circumstance therefore, I take the written evidence in exhibit **P13** and **P-14** to be the correct reflection of what the plaintiff had paid in respect to the lease agreement in exhibit **P-1** as of the date of the execution of the same.

The defendant does not deny to have taken possession of one of the demised houses. His contention is that he did so after the plaintiff had failed to perform the contract. I do not think that the defendant could do so without breaching the terms of the lease agreement. As I said, the lease agreement covered both the two houses. The defendant gave vacant possession of the **demised premises** to the defendant in accordance with the contract. The defendant did not, before taking vacant possession, serve the plaintiff with any notice of avoidance of the contract for the reason of repudiatory breach of contract. It would thus be implied that the occupation of one of the demised houses by the defendant was done while the contract was still existing. On that, I would agree with the plaintiff that, the conduct by the defendant amounted to a breach of contract.

The above aside, I am also bound to determine the alleged justification by the defendant for the action. He alleges that the plaintiff failed to perform his contractual obligation by not renovating both the two houses. It is irrefutable that, until on the date of the alleged trespass, the main house had not been renovated. I have had an opportunity to visit the said house for inspection in the presence of both parties. I established that far from not being renovated, it was in dilapidated condition so to speak. The outer doors and windows did not have frames and top covers. In accordance with exhibit **P-1**, before renovation, the plaintiff was required to submit for approval drawing and bill of quantity to establish the costs. It was

not. The condition in the respective clause has never been altered in the subsequent addendums.

I have only noticed that in accordance with exhibit **P-8**, there was an amendment of the structural renovation of one of the houses as per the drawing in exhibit **P-9** which appears to be confirmed by the defendant. This seems to reflect the building structure that this Court viewed at the *locus in quo*. Neither in pleading nor in evidence has the plaintiff shown any drawing in respect of the main house. As I said, my inspection of the *locus in quo* established of there no any renovation. Instead, as correctly claimed for the defendant, the main house was in dilapidated condition.

The occupation of the house by the defendant was on 27th May 2016. It was hardly six years from the date of the operation of the lease. In accordance with the testimony of **PW-1** and the documentary evidence in exhibit **P-13** and **P-14**, the sum **TZS 66,000,000/=** paid for the initial period of ten years was inclusive of **TZS 6,000,000/=** per year deducted to off set the costs for renovation in the subsequent 9 years of the initial term of the contract. Exhibit **P-1** does not define the period within which the renovation of the two houses should start. Neither exhibit **P-13** which was executed five years after the execution of exhibit **P-1**. Until in May 2016 when the defendant took possession of the main house, it is common ground, renovation into the main house had not even started. Neither had the plaintiff submitted any drawing and bill of quantities in respect thereof.

The plaintiff generally claims in evidence that he was planning to complete the renovation of the main house in phase two at the end of 2016. The claim is not reflected in any of the addendums. Neither was it specifically pleaded. In the absence of a drawing to that effect and considering the time that had elapsed from the date of the operation of the contract, I do not think that the plaintiff would be said to have established, on the balance of probability that, he was capable of perfoming such a contractual obligation.

In my opinion, where a contract is silent on the time within which a particular contractual duty has to be performed, it is a matter of common sense that, the same is to be done within a reasonable time. What is a reasonable time is always a matter of fact. In the circumstance of this case where the plaintiff was deducting every year an amount for renovation, six years which is more than a half of the initial term of the contract would in no way be taken to be a reasonable. Regard being heard also on the fact that, the plaintiff does not both in pleadings and evidence demonstrate any preparatory step taken to effect renovation in respect to the house the defendant is in occupation. It is on that account that, I agree with the defendant that, to the extent of the main house, the plaintiff did not observe and perform the covenants and conditions contained in exhibit **P-1** within the meaning of section 88(1) (a) of the Land Act, Cap. 113, R.E. 2002. My answer to the first issue therefore is that, both parties were in breach of the tenancy agreement.

Let me pass to the last issue as to relief. I understand that the defendant has not raised any counter claim. Ordinarily, he would not be entitled to any relief other than a consequential relief under Order 7 Rule 7 of the Civil Procedure Code Act. Before I dwell on the issue, there are some sub issues which arose in the course of the evidence. One such issue is what is the primary term of the lease agreement? The plaintiff and his counsel have urged the Court to hold that it is 22 years from the date of the operation of the lease agreement. They have placed reliance on the addendums in exhibits **P-3**, **P-6** and exhibit **P-10**. On his part, the defendant denied of there being extension of the primary lease agreement in exhibit **P-1**. Again, this issue cannot consume the precious time of this Court. The answer can be gathered from clause 12 and 13 of exhibit **P-13** which provide as follows:-

> *" 12. Makubaliano haya yamefanyika kwa maridhiano ya pande zote mbili, na baada ya mkataba wa awali wa miaka kumi (10) kumalizika, ambao utamalizika tarehe 1 mwezi mei 2020, pande zote mbili zitakaa na kupanga kodi mpya, muda wa mkataba na mengineyo"*
>
> *" 13. Makubaliano haya yamefanyika kwa ridhaa ya pande zote mbili na wamekubaliana kusibiri mpaka tarehe tajwa hapo juu kipengele (12) ili waweze kuridhiana upya na hapatakuwa na utofauti kati ya mwenye nyumba na mpangaji"*

My understanding of the above clauses is that, exhibit **P13** superseded all the previous addendums as regard what is the primary

term of the lease agreement. It resumed the initial period of 10 years from the date of the operation of the lease agreement provided for in exhibit **P-1**. It however stated the desire of the parties to have the agreement renewed upon mutual agreement as to the amount of rent and the term of the contract. In my opinion therefore, the primary term of the lease agreement is 10 years from May 2010 renewable upon mutual agreement between the parties.

Turning back to the relief; the plaintiff has prayed, in the first place, for declaration that the defendant is in breach of contract. I have held in relation to issue number one that, both parties were in breach of the lease agreement.

In the second place, I have been called upon to declare that the plaintiff is the lawful tenant of the **demised premises**. As I said above, the **demised premises** with its two houses was rented for hotel business on condition that the plaintiff should renovate both the two houses. To date, he has only renovated one of them and the main house had until on the date of occupation by the defendant, not been renovated. The additional drawing in exhibit **P-9** was in relation to one of the houses only. The plaintiff had by then not submitted to the defendant any drawing and bill of quantity for approval. In the premises, it can be inferred that the plaintiff had failed to renovate the main house. In his pleading and evidence, the plaintiff has shown to be unwilling to give vacant possession of the main house for the reason of the failure of the plaintiff to perform his contractual obligation. On that account therefore, it cannot be said

that the plaintiff has proved to be a lawful tenant in both the two houses. The right by a tenant to enjoy possession of the demised premises, according to section 80 (1) (a) of the Land Act, is subject to observance and performance of the covenants and conditions contained or implied in the lease agreement. On that account therefore, I will declare the plaintiff the lawful owner of the **demised premises** to the extent of the renovated house and its surrounding that which he is in occupation and not the fenced house which is now in occupation by the defendant. The defendant is therefore restrained perpetually from interfering with the plaintiff's right to possess and use the renovated house reflected in exhibit **P-9** and its surrounding in so long as the lease agreement is still intact.

The plaintiff also claims for **TZS 13,193, 310, 000/=** being special damages as pleaded in paragraphs **17,18,19,20 and 21** of the plaint. Though the same was claimed as special damages, it was not proved in evidence as pleaded. The valuation report in exhibit **P-23** sought to establish the value of the renovated house as per exhibit **P-9**. It was an alternative relief in the event that the lease agreement will be treated terminated. By the reason of my declaration that the plaintiff is the lawful tenant in the renovated house and for the reason of the plaintiff's failure to discharge his contractual obligation as afore stated, the claim is rendered irrelevant. In any event, the effect of the report is not in evidence and the author of the report was, for undisclosed reason, not called to testify on it. For those reasons, I do not think that it is

appropriate in the circumstance to determine if the evidence in the said exhibit is capable of establishing the value of the renovation.

The plaintiff cannot be entitled to loss of earning because at all material time he has been in use of the renovated house. The claim that he incurred loss as a result of the interference by the defendant was not substantiated to say the least. He cannot claim for loss of earning in respect of the main house because until on the date of the so called trespass he had not made any renovation as to turn the said house part of his business. As I said, he had not submitted even a building plan for approval by the defendant.

The claim as to loss of building materials and other movables was not proved. The type, quantities and value of the lost building materials is not in evidence. No receipts were tendered to establish the purchase of the said building materials. Equally so for the generator and other movables.

I have also been asked to exclude the period the plaintiff has been litigating in court. For the reason of my finding on the observance of the covenants as to renovation of the main house, I will not grant it.

How about the money paid subsequent to exhibit **P-14**? From the unquestionable documentary evidence in exhibit **P-17,P18** and **P-19** collectively, it is obvious that beyond 2020, the plaintiff has paid a total of **TZS 6,340,000/=.** This would signify the intention of the parties to have the lease agreement renewed after the expiry of the primary term. I therefore, declare that the plaintiff has, besides

the rent of the initial contractual period of ten years, paid to the defendant the sum of **TZS 6,340,000/=** which shall be a balance carried forward for the rent of the first year of the renewed term of the lease. In pursuance of clause 12 of exhibit **P-13** , I order that, after the expiry of the primary term of the lease, parties should meet to agree on the terms of the renewed contract. In the circumstance, the rental fee, unless it extends to the main house, should not, for the first five years of the contract, be more than the current rent of **TZS 12,000,000** per year. In the event of non-renewal of the lease, the same shall be reimbursed to the plaintiff.

Before I wind up, there is another element which for the interest of justice must be addressed. The rental fees was **TZS 12, 000,000** per year. It covered both the two houses. Out of them, **TZS 6,000,000** per year would be deducted to cover the costs of renovation. If we divide by two, the rental fee for each of the houses would be **TZS 6,000,000** and the cost of renovation deducted from each would be **TZS 3,000,000** per year. Therefore, from May 2011 to May 2016, the plaintiff had deducted for the renovation of the main house, the sum of **TZS 15,000,000/=.** This was without consideration. In the same way, from 2016 when the defendant unlawfully occupied one of the houses, the plaintiff has paid, in respect of the said house, the sum of **TZS 12,000,000/=.** If that one is deducted, the difference would be **TZS 3,000,000/=.** For the interest of justice, I will order the plaintiff to pay the defendant the said difference before the expiry of the initial term of the contract

unlawfully occupied one of the houses, the plaintiff has paid, in respect of the said house, the sum of **TZS 12,000,000/=.** If that one is deducted, the difference would be **TZS 3,000,000/=.** For the interest of justice, I will order the plaintiff to pay the defendant the said difference before the expiry of the initial term of the contract in terms of order 7 rule 7 of the **CPC** as a relief which is merely consequential.

In final analysis therefore, the suit succeeds to the extent as afore stated. In the circumstance, I will not give an order as to costs.

It is so ordered.

Right to appeal duly explained.

I.MAIGE
JUDGE
09/04/2019

DATE; 09/04/2019

Coram: Hon. Maige J,

For the Plaintiff: D'Souza and Mfinanga, learned advocates

For the Defendant: Present in person

B/S Mariam

Court: Judgment delivered.

HIGH COURT OF TANZANIA

I.MAIGE
JUDGE
09/04/2019