

TANZANIA / JUDGMENT

19880226 TZCA Dar es Salaam5

COURT
TZCADECIDED
26 February 1988

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

11111"/ IN THE COURT OF _LDPE~L OF TANZAHIA V

AT DAR ES SALAHM CIVIL APPEAL NO. 40 OF 19a")-- I .NY:A1=_ .ALI,___ C.J. ,. ~.AME.LJ ,A. -¥ID qMAR....L J .A, A ALI RASTIID Versus .ASMATID:IAN HAKIMKHANoto•o.....

RESPONDE?T (Appeal from the dootsion· of the High Cour.t-- of Tanzania at Dar es Sal~am)(L. Kyando J.) da.ted the 29th day of June, 1987 in Civil A:eP!:al No. 33 ot_.1986 This is a second ap:pe:i.l in a cpse origina.ting in the court of the Resident ~istr~,te at Kisutu in DAR es Salaam where the appellont, that is, Ali Rashid instituted a suit against the respondent Asm-,tkhan Hakimkba.n praying for an order_ directing the respondent to accept payment of rent and to be restrained from annoying the appeallnt, and for the costs of the suit and other reliefs as may a:ppe.,r just. The resl)ondent in his written st,9tement of defence counter-claimed for vacant possession of the suit premises and payment of mesne profits at the ra.te of abs. 700/= per month from Janu::i.ry 1980 to the d13.te of vacimt possession, with coats of the counter claim. The trial court 1 disinissed the suit with costs 1 gg_ve judgement in fPvour of the respondent a1ld ordered a.ppella.nt to va.cate by a given d.qte, and to pay arrears of rent. The appellant was aggrieved by the decision of the trial court and he appealed to / . the High Court at Dar es Sal"am, but the appeal w::1.s dismissed ,-1 ith costs. Thereafter, v" rioua fruitless efforts ·were m~de both in the trial court and in the High Court for stay of execution of the order evicting the appellant from the suit premises. The appellant w~s further aggrieved by the decision of the High Court, hence t'.Jis appeal to this court. Mr. Lakha, lec1.rned advoda.te, appeared for the appell8nt, whereas Mr. Lukw;;xo, of the Tanzania Leg~l Corporri.tion, appeared for the respondent. " In the course of the hea.ring of tbis ~f)peal~ Mr.;; Lakha. informed this court th-.1.t the order evicting his client was . !, • axecuted while this appeal was pending., and he prayed th<).t this court orders ... t, ~ ·restoration of possession of the premis~& to the appellant. ,.. ,. .. ': ', , .'"I! 2 From the proceedings both in this court and the two courts below, the following matters 2re not in disTJute between the parties. It is common ground that the appellant and the respondent were -t a, 1 m,,teria.l times ten8,nt and iandlord. respectively in respect of premises c:mstituted by n::~:t No. 152 which is p~rt of Plot No. 264 belonging to the Ismailia Building Development Ltd. along Alykhan RoP.d in Da.r es Sa.barn. It iscommon ground also that the respondent purch:::3ed this flat sometime in July 1975 from a. former la..!.lrd of the appelh.nt, that is, one Mrs. Sakerkhanu Bhatia. The rent payable for the suit premises w;;,s shs., 314/= per month.,

Furthermore, it is common ground that the suit premises were for residential purposes. By early 1980, serious misunderstandings arose between the parties culminating in the respondent's refusal to accept payment of rent and complaints regarding alterations made by the appellant to the suit premises, without the respondent's consent. It is common ground also that the appellant had built a garage which he used for the repair of motor vehicles at the suit premises. He had also built a wall enclosing the premises. All this was done without the consent of the respondent. By March 1980 the respondent, acting through his advocate, told him, Mr. H. A. Mucunda, that he required the appellant to vacate the premises. The appellant did not vacate the suit premises but responded by instituting this suit. That is as far as the matters that are not in dispute between the parties are concerned. We now turn to disputed matters. The appellant's contention is that the respondent is not entitled to an order of vacant possession under the Rent Restriction Act since he has neither given due notice to the appellant for vacant possession, nor offered alternative accommodation where the appellant could reside after vacating the suit premises. Furthermore, the appellant contends that even if it is found that the appellant had committed breaches of obligations under the tenancy by constructing the garage and surrounding wall, it is improper to order vacant possession, since other appropriate remedies are available to the respondent, such as rectification of the alleged breaches. The respondent on his part, contends that due notice for vacant possession was given and appropriate alternative accommodation was offered to the appellant, but the latter refused to see the premises in question •

- .../3 ... f>; ... ;; ~ 3 At the trial in the court of the Resident Magistrate, the following issues were framed by agreement of the parties.
- 1. Whether the defendant should be ordered to accept rent. 2., Whether the defendant should be restrained from annoying the plaintiff.
- 3. Whether the defendant is entitled to vacant possession of the suit premises as claimed in the counter claim.
- 4. Whether the defendant is entitled to mesne profits from 1st January 1980. •
- 5. What reliefs are the plaintiff entitled to? In this appeal, the arguments of the parties were centred on three main points, and these are:-
- 1. Whether the appellant was given due notice of vacant possession by the respondent;
- 2. Whether the appellant was offered suitable alternative accommodation by the respondent; and
- 3. Whether there was a main change of user of the suit premises resulting from the appellant's actions of building a garage and a wall, around the suit premises. We shall start with the third point first. It is obvious that this matter is governed by the Rent Restriction Act, 1962 before it was repealed and replaced by the Rent Restriction Act No. 17 of 1984. Under section 19 sub-section (1) paragraph (L), an order for eviction of a tenant may be sought upon the ground that "the tenant uses the premises mainly for business, trade or professional purposes without the consent of the landlord". We have asked

ourselves whether on the evidence which is common ground, it can be said that by building the garage and the enclosing wall the appellant -- changed the use of the flat to such an extent that he used the premises mainly as a garage for the repair of motor vehicles rather than for dwelling purposes. The evidence shows that the garage activities are carried out solely in the compound of the flat. The house or flat itself continues to be used for residential purposes. He is satisfied that on the evidence it can not be said that the appellant changed the use of the suit premises from that of being solely for dwelling purposes to that of being mainly for garage purposes. No order therefore for eviction can be justified on this ground. 44 ... With regard to the second point, we note that the question of alternative accommodation under the Rent Restriction Act, 1962 arises only under the provisions of section 19 sub-section (1) paragraph (E), that is, where the landlord seeks to regain possession of the premises for "occupation as a residence for himself or for his wife or children, or for any person bona fide residing, or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, or for occupation of the flat by a person who is entitled to the enjoyment of the premises under a will, or settlement....." Undoubtedly, in the present case according to the evidence, the respondent initially wanted vacant possession of the suit premises for use by himself and his family for residential purposes. Later, he changed emphasis and sought vacant possession on the ground that the appellant was in breach of duties or obligations under the tenancy, as a result of construction of the garage and the surrounding wall. Such a breach in our view constitutes a ground for seeking an eviction order under the provisions of section 19 sub-section (1) paragraph (a) as a case where "any rent lawfully due from the tenant has not been paid, or any obligation of the tenancy either under the agreement of tenancy or under this Act so far as this is consistent with the provisions of the Act has not been broken, or not formed". (relevant part underlined) There can be no doubt that the appellant, in building the garage and the surrounding wall, committed breaches of the tenancy agreement. Mr. Lakha, learned advocate for the appellant did not contend otherwise in this appeal. His argument is that such breach does not justify an order of eviction under the Rent Restriction Act, since it can be rectified by stopping the garage activities and pulling down the wall. With due respect to Mr. Lakha, we can find no provision under the Rent Restriction Act to support his submission. On the contrary, the provisions of section 19 sub-section (1) paragraph (a) appear clearly to allow a landlord to seek an eviction order upon such a breach. Whether the court hearing such a suit would grant the eviction order requested by the landlord would depend on the reasonableness of such an order as provided under section 19 sub-section .

- (2) of Rent Restriction Act, 1962 as amended" by Act No. 57 of 1966 by section 16 paragraph (b) where it stated that, 45

- 5 - "In any case arising under sub-section (1), no order for recovery of possession of premises shall be made unless the court is satisfied by or on behalf of the landlord, that having regard to all the circumstances of the case, it is reasonable to make such an order. •
- ... 11 We shall return to the question of reasonableness of the eviction order after considering the first point, above mentioned. The respondent relies on two documents to show that he gave due notice of eviction to the appellant. These documents were tendered at the trial as exhibits D1 and D3. Exhibit D1 is written by Mr. Muccadam, an advocate for the respondent, and was addressed to one Mr. Rashid Suleiman of P.O. Box 2421, Dar es Salaam and was dated 15th March, 1980. The letter clearly notified the said Rashid Suleiman to the effect that he had constructed a garage at the suit premises without the consent of the respondent, and notified him of the respondent's intention to take possession of the suit premises in a month's time from the date of receipt of the letter. Mr. Lakha has submitted that there is no evidence to show that exhibit D1 reached the appellant, since on the face of it, it was addressed to a wrong person and at a wrong address. We agree with the submission of Mr. Lakha and find that exhibit D1 can not be construed to be due notice given to the appellant. The second document, that is, exhibit D3 is a letter dated 31st March, 1980, addressed to M/S Rahim & Co., advocate for the appellant by Mr. Muccadam; advocate of the respondent. It notified Mr. Rahim advocate for the appellant, about the breaches committed by the appellant at the suit premises, and about another notice for vacant possession, previously served upon the appellant on the 15th March, 1980 which called upon appellant to quit the suit premises. Exhibit D3 was undoubtedly received by Mr. Rahim advocate for the appellant as evidenced by a letter written by Mr. Rahim to Mr. Muccadam dated 10th April, 1980 and tendered at the trial as exhibit D4. Exhibit D4 makes no reference to exhibit D3. It follows therefore that Mr. Rahim must have received exhibit D3, at the latest, on the day when he wrote exhibit D4, that is, on the 10th of April 1980. But does exhibit D3 constitute due notice sufficient to terminate the tenancy agreement? Exhibit D3 is a brief letter and its relevant portions may be reproduced here for purposes of clarity. It reads:- , , , /6 6 I ., "Thanking you for your letter HR/PR/124/80 of 27th March, 1980 enclosing your cheque No. A165639 of 24th March, 1980, My client has noticed that your client has carried out alteration work in my client's building without the knowledge consent or approval of my said client, and has in fact turned the compound of the ground floor end portion of the ground floor itself into a garage contrary to the tenancy agreement. The building is strictly for residential purposes and your client knows this fact all along. Under instructions from my client we have already on 15th March, 1980 served your client with a notice to quit. Since your client is clearly in breach of the tenancy agreement I return herewith your above cheque." Mr. Lakha has argued that exhibit D3 does not constitute notice sufficient to terminate the tenancy agreement because it does not give a month's notice expiring at the same time as the month-to-month tenancy. In his view, if exhibit D3 reached Mr. Muccadam on the 10th April, 1980, that is, the date when exhibit D4 was written by Mr. Muccadam, the notice expired on the 10th May 1980 when a new monthly tenancy had commenced to run. Exhibit D3 would therefore not qualify to terminate the May tenancy and was invalid and of no legal consequences. Mr.

.....

Research copy · Verify against the source

* cl.,... 8 11 motion supported by grounds upon which the application is made. The only two exceptions concerns, applications made in the course of hearing, or applications made by letter with the consent of the parties. The present application does not fall in any of the two exceptions. It is neither an application by consent letter nor an application filed in the course of hearing.. As for the Order granting leave it was improper as it gave no sufficient reasons for granting such leave. Since no objection was raised against the propriety of the order granting leave to appeal, we say no more. We now return to the merits of the appeal. In consequence of our findings made in the body of this judgment, we are bound to dismiss this appeal with costs and we do so accordingly. Dated at Dar es Salaam this 26th day of February, 1988. F. L. NYALALI CHIEF JUSTICE I. M. MAKAME JUSTICE OF APPEAL A. M.A. OMAR .. JUSTICE OF APPEAL ~ r~certified that this is a true copy of the J. I-I. MSOFI'E SEIOR DEPUTY TEGTSTR!!R

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

Prepared on 14 October 2026 · Esheria