

TANZANIA / JUDGMENT

boscov wilson warema 2 others versus tecla valerianl another 2023 tzhclandd 17294 26 october 2023

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26 October 2023

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r » IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO.268 OF 2023 fFro/77 Land Application No.229 of2014, by the District Land and Housing Tribunalfor Kinondoni.) BOSCOW WILSON WAREMA APPELLANT JOSEPH BONEVENTURE 2^^ APPELLANT EVARIST BEDA 3*^^ APPELLANT VERSUS TECLA VALERIANI RESPONDENT GODRICH EAST AFRICA COMPANY LIMITED....2'^^ RESPONDENT

JUDGMENT

Date ofLast Order: 11.09.2023 Date ofJudgment:26.10.2023 T.N. MWENEGOHA.J: This appeal was filed against the respondents based on the following grounds; -

1. That, the trial Chairperson erred In law and facts for failure to evaluate the evidence on record, therefore, reached to the wrong conclusion in favour of the respondents.
2. That, the trial Chairperson grossly erred in law and in fact in holding the appellants were served with notice and that their properties were removed in the presence of local leaders while during the trial, the chairperson himself admitted that he was not present when the appellant properties were removed from their respective frames.
3. That, the trial Chairperson erred in law and fact for not considering the fact that the appellant were rented the premises by PW-4 lawfully, and at the time they were removed their lease agreement were still valid.
4. That,the trial Chairperson erred in law and in fact in referring exhibit D-3 as sufficient evidence and notice to the appellants to give vacant possession of the frame while they were not part of the agreement The appeal was heard by way of written submissions. Living Raphael, learned counsel, appeared for the appellants while the respondents were represented by Advocate Martin Godfrey. Submitting on the ground of appeal. Advocate Living maintained that, the tenants were illegally evicted in the premises in question. The testimonies of PW1-PW5 proved that fact. He went on to argue on the 2"^ ground that, they were not given any notice prior to eviction and their properties were vandalized. That, they were forcefully evicted while still having one year rent fuily paid to the iandlord. On the 3^^

ground, it was argued that, it was wrong on the part of the Tribunal to agree that, the appellants were served with notice, basing on Exhibit D-3. That, the same has no evidential value as per section 104 of the Evidence Act, Cap 6 R.E

2019. As for the 4th ground, the same was abandoned, the counsel for the appellants did not submit on it.. In reply, Mr. Godfrey for' the respondents insisted on the 1st and 2nd grounds that, the trial Tribunal properly evaluated the evidence on record and reached to a just decision in favour of the respondents. That, the appellants were legally evicted and their properties were not at all vandalized as the appellant were given notice by the 2nd respondent. On the 3rd ground, it was argued that, the trial Chairperson, did not only rely on Exhibit D-3, but evaluated the whole evidence and reached to the conclusion that, the appellants were not entitled to the reliefs claimed. In a brief rejoinder, the appellants counsel reiterated his submissions in chief. Having heard the submissions by the parties and considered the records from the trial Tribunal, the issue for determination is whether the Appeal has merits or not. In discussing this issue, I will consolidate all three grounds and analyse them together. Looking at the records and submissions, it Is not disputed that, the premises rented by the appellants belonged to another person, different from the one who they entered into an agreement with, one Una Joseph Kasege. She was just an agent of the principle, one Benedict Joseph, who was the owner. Now,the said person is represented by the respondent, her wife, and an Adminstratix of the Estate of her late husband. Records reveal she actions against the appellants as they were reluctant to abide to her rules. The evidences on record are clear that they were served with a notice even though the appellants are questioning the validity of the said notice (Exhibit D-3). Above all, their eviction was done in the presence of DW2, a Street Chairperson who testified that, their properties were not in any way vandalized. Therefore, the case was decided in favour of the respondents because their evidence was heavier than that of the appellants, they deserved to win as stated in Hemed Said versus Mohamed Mbilu (1984)TLR 113. In the light of the above analysis, I find that trial Tribunal analyzed well the evidence in question and reached to a right Decision. I find that all three grounds are devoid of merits and they are rejected accordingly. In the event, the appeal is dismissed, the decision of the trial Tribunal along with the orders are upheld. Order as to Costs. T.=WfMWENEGOHA JUDGE 26/10/2023

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