

TANZANIA / JUDGMENT

20101222 TZHC Dar es Salaam

COURT
TZHCDECIDED
22 December 2010

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

I ' IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL APPEAL NO. 224 OF 2005 (Originating from Housing of Appeal Tribunal of Tanzania at Dar.es '!, _r Salaam before Hon. Kajeri) FRANCIS XAVIER KAT AYA ~ PETITIONER VERSUS AMAN CCM BRANCH OFFICERESPONDENT Date of last Order 26/11/2010 Date of Ruling 22/12/2010 EX-PARTE JUDGMENT MASSENGI, J. Appellant Francis Xavier Kataya was applicant before the. District Land and Housing Tribunal for Ilala District and respondent Amana CCM Branch Office was respondent. Appellant was seeking for orders that the respondent be ordered to compensate him for loss of use and payment of rent during the time the pre.mises being locked. At the end of the day th~ application was dismissed with orders that, the respondent be given vacant possession and costs of the application to be equally shared. Appellant was not satisfied with that decision and he appealed to the Housing Appeals Tribunal of Tanzania whereby 1 the appeal was dismissed and the order of vacant possession against the respondent was maintained and appellant to borne the costs. He was also not satisfied and he has appealed to this court on the following grounds.

1. That the Regional Housing Appeal Tribunal erred in law and facts by failing to consider costs and refund for the suit premises which could have been found by valuation of the building rather than relying on or demanding the production of receipts of the work done and material brought.
2. That the Regional Housing Appeal Tribunal erred in law and in fact by not considering there were other quarrels different from rental payments acquired from side of the respondent.
3. That the Regional Housing Appeal Tribunal erred in law in their finding for vacant possession. They failed to consider payment of compensation for the suit expenses.
4. That the Regional Housing Appeal Tribunal erred in law and fact by not taking into consideration and order fresh evidence from several witnesses of Appellant not recorded by the District Housing Tribunal at Ilala as accompanied by the Appellant.
5. That the Regional Housing Appeal Tribunal erred in law and fact by failing to consider that one of the assessors appears 2 ,, in the Appellant's case in the lower tribunal is not at all entitled as he is barred by laws and Rules of the Tribunal.

6. That the Regional Appeal Tribunal erred in law and in fact in that it failed to discover that there was no notice for vacant possession of the suit premises if all Appellant was a problem to respondent.
7. The Regional Housing Appeal Tribunal erred in law and facts in not appreciating the fact that the respondent refused to receive the payment Tshs. 230,000/= and or even further payment from the appellant.
8. That the Regional Housing Appeal Tribunal erred in law and facts in failing to enter a finding that the execution was not supposed to take place on public holiday. Appellant appeared in person and respondent who was duly served didn't enter appearance. The court heard the appeal ex- parte in absence of respondent under order 39 rule 17 (2) of the Civil Procedure Code Cape 33 R. E 2002. The appellant requested to argue his appeal by way of written submission and his request was granted. Briefly facts of this suit are that are that Appellant claims to be a tenant of respondent since 1991 and he did construction to the tune of 1,900,000/= and it was agreed that he would deduct construction expenses from rent, that is half of the rent. In 2001 3 he had financial constrains and he could not continue with business, and paying rent as required but the construction expenses was not fully recovered and in 30 th March, he was given a notice to vacate .. By then he was claiming Tshs. 670,000/= a balance due to the construction expenses and on 22/4/2004 his office was broken and padlocks were replaced by another set and various items were missing including cash shs. 2.5 million shillings. Respondent admitted that appellant rented unfinished premises whereby the appellant finished the construction on agreement that construction costs to be deducted from rent after appellant has submitted receipts Appellant didn't produce any receipt instead he produced a list of building materials and prices. Then in 2001 the appellant defaulted to half pay rent as agreed and closed the premises. And they gave him several demand notices but he didn't abide to the notice rent arrears has accumulated Tshs. 480,000/= After going through both tribunal records and memorandum of appeal and submissions by appellant I have find that the main issue is the vacant procession of the suit premises. Appellant is praying the suit premises which was taken by respondent to be returned to him who was a legal tenant and respondent terminated the tenancy agreement without due cause. 4 Respondent though evidence before the lower tribunals was that he terminated the tenancy agreement after the appellant has failed to pay rend which accumulated to Tshs. 480,000/= and the premises was closed for more than one and a half years. Both . parties agrees that the appellant rented the premises but appellant had to finish construction of the premises and that the construction costs was to be deducted from the rent to the extend of 50%. The parties also agreed on the issue that appellant failed to pay the 50% of the rent per month to the tune of 480,000/=. The parties are not in agreement was verbal. According to appellant the construction costs was Shs. 1,900,000/=. The respondent didn't dispute on that only he said the appellant didn't meet the condition of producing receipts. Even witnesses called by appellant didn't give any help as PW2 who was hired to install gate locks and he was paid Shs. 1,500/=. That being the situation in this. Case then we has to restart to the principal that "who alleges must prove" Appellant claims that the

construction costs, was 1,900,000/= Therefore he has to prove. Going through the record there is a list of construction materials and their prizes. Also a certification of various people on the construction prize on various items was correct and their signatures. There is no date and who are they to certify. It is my opinion that the document is a not a document which can be used 5 as to prove the construction costs. The document contains a list of construction materials which are brought from various place and which could only be proved that they were brought by issuing of an official receipt as business transaction are done by way of issuing a receipt from the person who supplied the materials. The document in the record does not qualify to be a receipt certifying business transaction. I am of the opinion that the best evidence to resolve the issue was that of producing receipts of building materials or of calling the person who conducted the building as witnesses. The only witness was PW2 who testified that he was assigned to replace padlock. I am of no doubt that the appellant didn't prove the amount he used as construction costs and hence failed to prove his allegations. The respondent claims that appellant defaulted to pay rent, appellants agrees to have defaulted to pay rent but still in the construction costs he has some balance whereby respondent could deduct the rent arrears. But that was not the agreement. Though the appellant is denying to be issued with a notice but there is evidence a letter which was headed:- YAH: TAARIFA YA KUSITISHA UPANGAJI WAKO NA KUKUTAKA UHAME TOKA 6 . KWENYE CHUMBA MTAA WA UHURU ENEO LA AMANA DAR ES SALAAM" Dated 23/12/2002 addressed to appellant and the letter suffices to be a notice whereby the appellant was required to vacate the premises within 3 months appellant acknowledged to have received the notice by his letter dated 28/01/2003 but the informed the respondent about the constructions costs which were due. On 07/04/2003 respondent wrote a letter to appellant summoning him to his office for further discussion and he instated on the notice. On 18/4/2003 appellant receive a copy of letter copied to him that the suit premises will be opened on 19/1/2003. Therefore the applicant was well informed of what was going on and I don't agree with his allegations that respondent didn't serve him with a notice to vacate. The notice was properly issued as the appellant defaulted to pay rent and closed the premises without any consultation with the respondent. He admits to have defaulted paying rent and he tries to cover himself that the construction costs were due. But that was not among the tenancy agreement with the respondent. The agreement was to pay half of the rent every month. He defaulted to pay half of the rent every month. He defaulted to pay rent for 18 month and therefore the respondent was just to terminate the tenancy contract for non payment of rent regardless 7 " to what extent. It is the appellant who breached the tenancy contract and he to bear the consequence of it. I therefore find that the decisions of both tribunals were correct the decisions are hereby upheld. The appeal has no merits and it is hereby dismissed with costs. F.H. Massengi JUDGE 22/12/2010 Delivered in chamber court in presence of appellant in person ex-parte in absence of respondent. F.H. Massengi JUDGE 22/12/2010 8

Source & reproduction note

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.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/337067/source_file/f0cd8288f0de1257/20101222_TZHC_Dar_es_Salaam.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/francis-xavier-kataya-v-amana-ccm-branch-office-tenancytermination-tzhc-2010>

Prepared on 14 October 2026 · Esheria