

TANZANIA / JUDGMENT

20120704 TZHC Dodoma

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DODOMA LAND CASE APPEAL NO. 19
OF 2010 (From the decision of the District Land and Housing Tribunal of Dodoma District at
Dodoma in Land Case No. 9 of 2010) IBRAHIMU B. MAKWARU
APPELLANT VERSUS ABDALLAH ATHMAN KHALFAN RESPONDENT

JUDGMENT

B.R. MUTUNGI, J. The appellant Ibrahim B. Makworu is represented by Mr. Nyobiri legal counsel in on appeal arising from the decision of the District Land and Housing Tribunal. In pursuing the appeal the appellant has raised three grounds of appeal as here under. 1 ~ - ---f} That, t---h-e~----tr---ia-----cl-t~ri~b-u-na--;--I-e-rr-e--d_,----_,_in~la_w_a_n~d in orderfng tne appellant to pay the alledged increased rent when there was no such an agreement.

- 2) That, the trial Tribunal erred in law and fact in deciding that the counter-claim did not relate to Land lord and tenant relationship.
- 3) That, the trial Tribunal erred in law and in fact for failure to properly analyze the evidence on record. The appellant's learned counsel proceeded to submit that as per the record the appellant was respondent's tenant and was paying Tshs. 100,000/= per month as rent. Eventually the respondent increased the rent up to Tshs. 350,000/= per month. The learned counsel submitted further that the increase in rent was not communicated to the appellant and neither 2 was he consulted. The increase came to his notice after he was issued with a notice to vacate the suit premises. The learned counsel further narrated in his submission which was to cover the second ground of appeal that, the respondent would borrow money from him which amount accumulated to Tshs. 5,000,000/=. The amount was to deducted from the monthly rent. As the appellant received the notice to vacate he was further ordered to pay the rent arrears from 16/7/2009. It is upon the above foregoing facts that the learned counsel submitted that the increase of the rent had no justification. Worse still the increase itself was too big as it rose from 100,000 to 350,000/=. Not only that, the appellant had only rented a single room which no renovation was ever done nor value added to it. The reason that was 3 advanced that the area was having a higher market value . this needed evidence to substitiate the some. In regard to the borrowed money this was supposed to be returned to the appellant or deducted from the rent. It was not proper to dismiss the counter claim and proceed to evict the appellant. From the foregoing in the appellant's counsel's opinion the

trial tribunal relied only on the evidence of the respondent and ignored that of the appellant. It follows therefore the appeal should be upheld with costs. On the other hand the respondent Abdallah Athumoni Kholfon contested the appeal by submitting that it is true the two were land lord and tenant. They had reduced the tenancy agreement in writing before advocates and this 4 In conclusion the respondent submitted that the judgment of the District Land and Housing Tribunal should not be foutered as it was proper and just and the appeal should be dismissed for lack of merits. In deliberating upon the grounds of appeal filed, I will start with the first one. The only evidence there is on record is that the two were land lord and tenant under tenancy. agreements of 2007 /2008 and 2008/2009. I have heard the parties in this appeal, and upon carefully perusing the judgment of the trial tribunal as well as the submissions made by both parties the following matters have come to my attention. 6 -- ---- -- __), -- was done twice. After the lapse of the contracts, the respondent had approached the appellant and informed him that he was increasing rent but the respondent kept silent and proceeded for a at least five months without paying the same. This necessitated him to go before the District Land and Housing Tribunal to lodge his complaint. It is here that he was declared the winner. The story did not end here as he found himself before the police, on allegation that he was indebted to the appellant for an amount of Tshs. 5,000,000/=. He was charged before the District Court in a criminal matter and the court convicted him forthwith. The respondent has been aggrieved by the findings and judgment of the District Court and taken the matter on appeal. 5 (.. The appellant argument is based on the fact that the increase of rent effected by respondent was not justified in the sense that there was no agreement. The appellant is attacking the decision of trial tribunal that it erred in law and fact in dismissing the counter claim that it did not relate to the landlord and tenant relationship. He further added that the trial tribunal failed to analyze the evidence properly. From my reading the matter at the trial tribunal had the following prayers:

- i. The respondent to be evicted from the suit premises. ii. Payment of Tshs. 2, 100,000/= being arrears of rent from July 2009 7 ,
 - - - - - iii. Costs of this application 1v. Any other reliefs the court shall deem fit to issue."
- It is not disputed that the appellant was a tenant and the respondent was a land lord, as evidenced by the lease agreement dated 76/7/2007 and second lease agreement dated 9/7/2008. The first lease agreement which was drafted by RWEYONGOZA CO ADVOCATE under paragraph 4 revealed the following conditions and I quote.
4. KODI, Mpangaji atalipa kodi kwa mwezi shilingi LAKI MOJA (Tshs. 100,000/) tuna kodi hii italipwa kwa 8 muda wa mwaka mmoja. (yaani 100,000 X 12/= 1,200,000 tu Again the second lease agreement dated 9/7/2008, paragraph 3 provides that:- KWAMBA, Mpangaji atapanga chumba hicho kwa muda wa mwaka mmoja tu kwa mwezi, ambayo kwa mwaka mmoja itakuwa ni shilingi 1,200,000 tu, ambazo :~\~ zimelipwa kwa mpuo wa awamu moja". Therefore it is evident that the rent in both agreements entered by the parties in dispute, was Tshs. 100,000/= per month which was paid in full by the tenant. 9 . . ~ . . . Now the issue

is, was the said increase of rent done during the subsisting of the agreement or during the existing of the lease agreement or after elapse of lease agreement? Page 2 of the decision of trial tribunal, reveals that according to the testimony of the land lord the increased of rent of 350,000 was introduced to the tenant on 17/7/2009. However at page 3 of the proceeding of the tribunal,. respondent who was an applicant testified that according to the agreement it stipulated that before expiry of the agreement there must be an agreement for continuance of yet/another agreement. He further testified that three months before expiry of the lease agreement the respondent talked to appellant and he said they agreed to 10% increase the rent up to Tshs. 350,000 to the next tenancy agreement beginning on 17/7/2009. On the same page i.e page 3 the respondent when he was cross examined by Mr. Nyabiri learned counsel for the appellant he testified that, they talked orally that the rent is to raise up to Tshs. 350,000/-. He further testified that they didn't sign anywhere. It is his testimony that he never communicated with appellant in writing about the rise of rent. Furthermore the respondent during cross examination by assessors he said that he is praying for payment of rent arrears at the tune of Tshs. 350,000/= per month July 2009 to date. On page 6 of the proceedings of the trial tribunal the testimony of the appellant is such that they never agreed with the landlord over the increase of rent from Tshs. 100,000/= to Tshs. 350,000/=. Having gone through the above evidence adduced by both parties in the trial tribunal, without any doubt, there was no any agreement by tenant who is appellant now on the increase of rent. It suffices to say there was no agreement to effect the same. I would at this juncture register my observation that the two had a culture of going before a lawyer to legally officiate their tenancy agreements. It follows then that one wonders as to why the change in attitude after the increase in rent. The obvious answer is that there was never a common consensus and therefore no tenancy agreement was entered into. There was therefore no justification for the respondent to have claimed the increase of rent

- I find great difficult to follow the line of reasoning adopted by the chairman of District Land and Housing Tribunal at page 3 when the Tribunal ordered respondent who is now appellant to pay rent arrears at the rate of Tshs. 350,000 per month from 17/7 /2009_ to up to the date of delivery of the judgment. Before proceeding to make the order the trial tribunal had to have the evidence and justification from both parties, an element lacking during trial. On the same basis the first ground of appeal has merits. Skipping to the second ground of appeal that the tribunal erred in law and fact in deciding that the counter claim did not relate to landlord and tenant relationship. Glancing at page 2 of the judgment of the trial tribunal, the appellant who was respondent was recorded as testifying that, he did not refuse to vacate the suit premises 13; rather his landlord was indebted to him. He testified that he had advanced a sum Tshs. 5,000,000/= the sum which amount has not been repaid to date. This was a loan borrowed by the landlord. In addressing the issue of counter claim, the trial tribunal at page 3 made its finding that the respondent gave the applicant such amount as a loan then it was a normal agreement (private contract) which does not relate with the tenancy agreement. I

share the same view as above on this matter with the chairperson, and I find there was no any clause neither in the lease agreement dated -9/7/2008 nor the lease agreement dated 16/6/2007, which stipulated that the Tshs 5,000,000/- was a loan to be deducted from the rent. There is no any other agreement that envisages the loan issue and how it was to be repayable. Even if I consider exhibit DI tendered before the tribunal by appellant I find no clause which provides to the effect that failure to pay by respondent the said amount will be deducted from the rent. It was thus wrong for the appellant to have assumed that he could stay in the disputed house as the Tshs. 5,000,000/= was to be deducted to form part of the rent. Having so found, I find that the said counter claim did not relate to the landlord and tenant relationship as held by chairman. The second ground has no merit. Coming to the last ground which provides that the trial tribunal erred in law and fact for failure to properly analyse the evidence on record. As per the record of the trial, tribunal, the appellant had one witness and the respondent had no witness. My careful perusal of the evidence adduced by both parties to the tribunal vis-a-vis the Judgment of trial tribunal partly the chairman was right and partly was not. The payment of arrears order was definitely wrong. The area which was partly right as far as the orders made by tribunal are concerned is the order that the respondent/appellant to vacate the suit premises which situate on plot No. 6 Block 12, 6th street Dodoma Municipality.

- The second part in his verdict which I find was not correct in law is the order that the respondent to pay rent of Tshs. 350,000/= per month from 17/7/2009 to the date of delivering the tribunal judgment. This had no justification at all. My reason for the above is that, the lease agreement has already expired, therefore the tenant/appellant has to vacate the suit premises which situate on plot 6 Block 12 6th street Dodoma Municipality. The second lease agreement dated 9/7/2008 under clause 4 (d) provides that. I quote.
4. MKATABA, HUU VILEVILE UMASHUHUDIWA NA MWENYE NYUMBA KAMA IFUATAVYO d) Mkataba huu ni wa mwaka mmoja kuanzia tarehe. 17/7/2008 hadi tarehe 16/7/2009" 17 ____ . Without a shadow of doubt the lease agreement had already expired since 16/7/2009, therefore it was prudent to order that the appellant to vacate the suit premises which situate on plot No. 6 Block 12, 6th street, Dodoma Municipality of which I do hereby uphold. In view of what I have stated the appeal succeeds only to that extent. In considering the circumstances of this appeal I make no orders as to costs. B.R. MUTUNGI JUDGE 4/7/2012 18 Read this day of 4/7/2012 in presence of Mr. Njulumu holding brief for Mr. Nyabiri for appellant and the respondent in person. B.R. MUTUNGI JUDGE 4/7/2012 19

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