

19940917 TZHC Dar es Salaam

COURT
TZHC

DECIDED
17 September 1994

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

IN ~fC.E. IIIGE COURT OF TIII~TZIITIA /Ji? ~nAll 1.P SALII41;~t .. --- ... CIVIL APPEAL NC.. 19 OF
1904 (From tho µ.ectsiön ~:f the Dis.i.riot Court et· Kisutu :i:n Civil CL.ae no. 195 of 1982) 0 1e J ~
msm:fN KHLfil1Y) ' ~ ~.ll'TEttANTS 2- k>~ S1IJL RKBI) Al'3Ait SALv!EJA ···.
~ , . . C ···. ; ·' Bl!!PONDENT ~,J., This is an appenl by Ja;i!"lor Russei·1 lilia.~l;ry and
Moba.mtld Abdul Rabi age.ins~- the judgment ~1d a..ctoe of ~he Rc~~ident, llag'imate oourt of ~
es:-. Salaam in which the trial cot~t he~.(- ~-:1, _Jli ~;;;tq :i,o;,,pondent/pla.intiff dose~d v.aoant
possession ()n the ~ounds of --~~~~d;::;i.c.t.P• In the Dar es Salaar:i r.~siden·, 1..hh1ratoia ooou:rt
the respond.eIT/I/pl.a.int~. filed a suit against the_ ~ellan-te fo:11 eviotiön ot the appellants
from °!ihe &Nit prelJlise.. The appella.tlis 1'm!e te~"°!l:ts in the l!Juit premises. ~e 11\d.t
premises were bol.1€h°t by fae :respo1~e:lts father· with the appellan1ls aa tenants. The
µ.PQfj'I of btzy-i:ng the w.it lt'emises was to g.ot e.DQommo~tion· ~:- the :eapondenti a ta.th.er~;
s family. \i4Gn t.1te »espondsnt.i e father died.1 the- nspo~t toqk over ·11he suit pn~se\$~ Th~
appetlante 1"!re served with. n.otioes to vacate but the.Y neve~ did. so as J;hey said that they hed
no-where to SO• The ~es.pondent ·said i"twther :µi his ,v;td.enoe that his tamUY_, ·uas being;
aakod. to move out of the hoUJJO 1n tmich tna:1 we::o at~ing because tho:, had~ their Qffl\
house-, naznel,y ,lih<? e-.1.i t tiremise s. tl,'laQve:c-, he testified. f\~ttither, · · the plaoe whu-e his
f ami!,y 't,a,s st~ir...; wn.e toQ small, whereas the sui.t . ! ~ FeJDies 'ffe:ct IH.ggor· and a better
pla.co :fer "li~:.1, ~'he appellants vere also· said to have'. det'aulted in tl~e p~men~ of rent.

- • , I ' ' . . %n defence the tirat appella.n",ftaiatri 0011,.;ed.od to most ot what ,ras said. I • , b~ the r.esporident. • ~ hovrever• said-tha~ ho ~s ~ihg rent through his . ad"f.OOate. lie admi.tted g~t~t:ng notices to V.¥:~a.to \cAd he tr"ied to find anothe~t \ house but he was not m.,coco3fttl• The aooond nppella.'l"ti Rabi (t8v¢ aWl.a.l:' ~-... evidence. The. lea-mod trial l:fugia!'i;ratc found tha~ ~t;~o su.it pr.eniises wcro reason~:. abl:Y reqUired by tho :r1;3s~nd~_rit..' and. M.q family, A:rtor. oitin& tho oa.se of IZdallah A@iz v Jladijc\ S3r\iil f S7~ W 22 lie Zound •that 1n tho ou-onnsta.noes of this oaso there was no need :tor alte1-na.~tvo :Mcommo4a'tio1\ ~to be a.Yailab].e . to the appellants and. tho:'i; 1-'i; 1n.s r-0.asona.ble -'liO otdm' vacant t,oasessi-On against the .Appell.¢ta. 'I.1110_ lentn.od :r.qg:istrat_o _orderod. •the appeUonts to va0ate the eui t pr:eraises m:thi11• ,3 montl.s from 3o/3/1984• 1

- learned Magistrate ~red i.11 holding th2.. t tho plai11·(i:f"f' doservod vaoa.n.~ peese-esion and ·tnc ,aoooncl. ono was -:~1~t -:"10 loc:irned Magistrate e:rrred in hltclng tba.t bocnut!le tho ~cr;:p-ondant,h-0.d. ;lcon r~ivcn notice by his landlord so too tho reepo~ent doscrvoll.- Vac.:;lt por.:t:cs:::ion of the suit_ prGlliscs· ' ' In ourt, Mr· El 1~:ti,y ~guoo. ~hat ·i~ ~¥ not ti-Qa. th.a.t- the ,:Or~----- ndent had gt"cat hardahip 1'ooro.1.m0 on J(?-/84 ~to 801d. tho house to 01¥1 ~amed Ta.id. Tanji· 1ho j~uli~Ol't of ·~10 oa.so llt\S dolt~ercd on 19/3/{4.. lte: ar.guod tha.t- if tho_~turpo11Aartt Mode(\ tho ho\,\So tor: his ~oupation, l/D3 tid. ho sell iti ~. ·m.ir.iamry rot~d to tho oasG of@st.allah /i.Zi~1 ¥ j a ~ala oited. above nnd S3.1d that ~b.e dooisioll in -that oase has never ~ followid by ~ s 0-: ·l;hc IJigh Oourw M it 1~ a ~adioe.l intorprotation · of tho Rant Re~iotion JQt. Ho argued. ·, :-:~ tho Rant Jlcstriotion Act .40,tf JIQ't :t'.OCog'iU.'tp tho 'llardsh:t,p ~f tho landlot'\ ii' ~hero is no alternativa aoco1111110dation. He prqyCld f c,r tho app~ to ::,o a.lallowoct. . I In :op31, the rospnd.o~tt ru.\mi'\ted scl\j,}lg -tho houso but only after pttillg tho ju.dgmGnt ill .hia tc1,your and._ ·thnt 't-o did so as lto ow4 ·moi1o;r to· peoi,te. :C Ghoul~ fir~ .¢ all deal with tho guo ,J,ion of' salo ot the suit promiaea to one T~, .I ® uot -soc how this 9'-tier ~ 'bo used as the basis ot· azJY ·ozment ~ i;hio CLppo~ 1ho r o ~ ~ _a.dJnits ao11~ tho hou.so (suit Jftm3,101) a.tttJr ~O_dvil~ judpont, I~. i(l. MAamry .lllainta.ins thii;h it , I was sold_ a rncmth l>Gtorc ~j~nt. .Aa-I -said earfi= on; : do no_t s~o ho~ f,J,uu/3, .. , p ' : I \ ' . .<~~-1~: , . .;:-'I:~;~<; ·.-: ' ' ;'""; / .,:_____ -tbis apwi:I, oo.urt C~"l- stnrt: co~nsidor:\ng :fr.U.\$Ll ovidoncc g.cared to ahov tha,·f\~rf~; the ovidonoo· givo~ in ti.~G ~!t'ial oou;rt was no·e ~-l'uo. I viould onl;f do so if ~t~}~ thow had been an applico/;~011 for ad.(u.~:iii~:- t:!7Qs,h.~,ovidGl\oe. Jt '4ll thGl'~:-1\~:~.)' - ~o only ~ther.. t>Zc,,,10~1~ by l.f.r· El &""~√ is that Ai!df1ls19l,Ame;°jr~; .. . •. &A~~ ~"YI\ is bad law. ITo d'id not ~ - 0 to om d.eoided ~ tc) ~t. effoot :Dur.thormore tho loarµod llnaidcut. -Magist:a~ wa~ o ~ - ~ to fol.lcp, ~ A~i s G~o i:~ tho ·f'Ql:its ,wc:c.o- similar. ~) ' 6 ' to~ tho tac.ta foW1d I have no doubt. t!U>.t ·,;!ley Cv ,j!rJlilt\l' to tho ·f'aot1 ·in Abd..,JJ.al,. Azizia OaeQ· :a_v docidil.'11(; aoorclli.~ to t1:tc ~1nGip1o o~i~'to~ in lbcla\lah Azizt-a oaeo- tho loarned. liL.~i.rtr2.to was· c.:;i ~ ~ ria'ht.~.aaak moa1\IQ ho. oould- not. ha.Vo ~ed A'bdal.1~1 ,l\~iz' a oczc. ~:iho jud{,·ment ot tho loa.l'DCd ?,~itrlirate
- hJ""i.}~GB_, 17/9/1991 ~ Dolivorod to the p~oo· on 17/\$!(199f,- ·. . . _~;m{__~~ }~,2~. &mn:ort· ~Pt1.t'Y mroor~ ·., ·..... : .: ·: ·,;· ·mw ··COUR~
-

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/341258/ source_file/4fddf5c6a5bc03e8/19940917_TZHC_Dar_es_Salaam.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/jasmin-kassam-khimji-v-abbas-sameja-eviction- tzhc-1994

Prepared on 14 October 2026 · Esheria