

TANZANIA / JUDGMENT

elizabeth augustino said vs oysterbay properties ltd another 2005 tzhc 130 22 june 2005

COURT
TZHCDECIDED
22 June 2005

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC. CIVIL CAUSE NO.157 OF 2005 ELIZABETH AUGUSTINO SAID..... PETITIONER VERSUS

1. OYSTERBAY PROPERTIES LTD.....1st RESPONDENT
2. ABBA PATRICK MWAKITWANGE Alias PATRICK ABBA ROBBERT.....2nd RESPONDENT

RULING

SHANGWA, 3. On 29/7/2004, the Petitioner Elizabeth Augustino Said through the Services of Mr. L.R. Chua, Advocate filed a petition against the respondents Oysterbay Properties Ltd and Abba Patrick Mwakitwange @ Patrick Abba Robbert for the recovery of US dollars 28,500 plus Tshs.657,304/= which were ordered to be paid to her by the Dar es » Salaam Housing Tribunal in Rent Application No.437 of 2002 of whose registration number has wrongly been indicated in the Certificate of Urgency under which her petition was brought as number 347 of 102. On 7/10/2004, the respondents filed a reply to her petition in which they raised a preliminary objection on three grounds. First, that the petition is not maintainable in Law. Second, that this court has no jurisdiction to determine the questions raised in the petition. Third, that annexure 9 to the petition which is an affidavit of Edward Augustino Said is bad and inadmissible. It was contended on behalf of the respondents by Mr. Silvester Shayo, Advocate that this court has no powers to assist the respondent to be paid as ordered by the Dar es Salaam Regional Housing Tribunal in Rent Application No.347 of 2002 because the decrees of the said Tribunal are enforceable in the Court of the Resident Magistrate and not in the High Court. He based his point of contention on S.48(1) of the Rent Restriction Act, No. 17 of 1984 which provides as follows: "S.48(1) A duly authenticated copy of any determination or order of the tribunal may be filed in the Court by any Party to the proceeding and on, such order being filed and notice of such filing being served on the tribunal by any Party filing the same, such determination or order may be enforced as a decree of the Court". 3 He said that under S.3 of the Rent Restriction Act, No.17 of 1984, the term 'court' means a court of the Resident Magistrate. Mr. L. R. Chua, Advocate for the Petitioner conceded that under S.48(1) of the Rent Restriction Act, No.17 of 1984, the decrees of the

Regional Housing Tribunal are enforceable in the Court of the Resident Magistrate. However, he submitted that the essence of his client's petition is not to execute the order or decree of the Dar es Salaam Regional Housing Tribunal but to expose the true nature of the 1st respondent Oysterbay Properties Ltd who is a judgment debtor with no visible property that can be attached to pay the debt it owes to the Petitioner. For me, I think that his client's petition filed in this court is not merely to expose the true nature of the 1st respondent Oysterbay Properties Ltd. It is clearly aimed at executing the order or decree of the Dar es Salaam Regional Housing Tribunal in Rent application No. 347 of 2002, so that, she may recover 4 her debt of US dollars 28,500 plus TShs.657,304 from that Company which is owed to her. Therefore, the true nature of Elizabeth Augustino Said's petition is to ask this court to assist her in the recovery of her debt from the respondents who have not been able to settle it after having been ordered by the Dar es Salaam Regional Housing Tribunal to do so in Rent Application No.347 of 2002. I so find. The fact that the respondents were ordered to do so by the said Tribunal is not in dispute. According to S.48(l) of the Rent Restriction Act, No.17 of 1984, the order of the Tribunal may be filed in the Court for enforcement as a decree of the court. Under S.3 of the same Act, the term 'Court' means a Court of the Resident Magistrate. That being the legal position, I agree with Mr. Silvester Shayo for the respondents that the petitioner is seeking 5 assistance for execution of the order of the Dar es Salaam Regional Housing Tribunal in a wrong forum. The proper forum in which such assistance should be sought is a Court of the Resident Magistrate. The petitioner may do so by filing an application in the said court under O.XXI, r.10(2) (J) (ii) and (iii) of the Civil Procedure Code 1966 requesting it to attach the respondents' properties or to arrest and detain in Civil Prison the Director of the 1st respondent Oysterbay Properties Ltd and the 2nd respondent Abba Patrick Mwakitwange @ Patrick Abba Robert. Having said that the petitioner is seeking assistance for execution of the order or decree of the Dar es Salaam Regional Housing Tribunal in a wrong forum, the first and second points of preliminary objection raised by Mr. Silvester Shayo for the respondents are now affirmatively disposed of. Having disposed of those points in a way I have done above, I do not see any need to address myself to the third 6 point raised by him in his preliminary objection. That is whether or not the affidavit of Edward Augustino Said - annexure 9 to the petition is bad and inadmissible. I do not see any need to do so because the question of the defectiveness and inadmissibility of this annexure dies with the striking out of the petitioner's Petition which I hereby do and order that each Party should bear its own Costs. A. Shangwa JUDGE 22.6.2005 Delivered in Couftat Dar es Salaam this 22nd day of June, A. Shangwa JUDGE 22.6.2005

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