

TANZANIA / JUDGMENT

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'-i . Sc. .:-~.. ""1...-!;~~!'" ,---- ~ ~ ---t, ' ..;. IN THE HIGH COURT OF TANZANIA ATMOSHI (DC) CIVIL APPEAL NO. 16 OF 2003 AND (DC) CIVIL APPEAL NO; 20 OF 2003 CONSOLIDATED) (C/F HOUSING TRIBUNAL APPEAL NO. 28/2001) G.P. RUTACHUBIRWA A -----APPELLANT VERSUS ALFRED MAKUNDI i ~ t. i GENERAL TYRE (E.A) LTD. -----RESPONDENTS . JUDGMENT 0 HON..JUNDU, J. .., This Judgment determines two consolidated appeals, that is Civil Appeal No. 16 of 2003 st filed by O.P. Rutachubirwa, hereinafter called the 1 Appellant, and Civil Appeal No. 20 of 2003 filed by the General Tyre (E.A.) Ltd, hereinafter called the 2nd Appellant. Mr. Alfred Makundi is the first Respondent in both appeals whereas the 1st Appellant is the second Respondent in Civil Appeal No. 20 of 2003 and the Second Appellant is the Second Respondent in Civil Appeal No, 16 of 2003. Both appeals arise from the. decision of the Ho~sing ~ppeals Tribunal of Tanzania in Housing Appeal No. 28 of 2001 which arose from original Application No. 21 of 1995 of Kilimanjaro . Regional Housing Tribunal. ;,f The 1st Appellant had leased his premises on Plot No .. 219 A Block 181/182, Moshi (© Municipality to the Second Appellant for a period from 1st November, 1992 to 31 st October, 1994. The First Respondent was an employee of the Second Appellant the latter alloc:ltcd the said premises to the 1st Respondent by virtue of employment\;ontract between the two. ·An employment dispute . I arose between the two afterthe ; Second· Appellant had terminated the services of the. 1st Respondent ' ,!.. -\ ~ thus the latter filed Industrial Dispute No. 15 of 1993 at the Industrial Court of Tanzania and also obtained a temporary injunction restraining the second Appellant from evicting him from the said premises until the said Industrial Dispute No. 15 of 1993 had been heard and determined. i · 1 In 199.5, the First Appellant filed RHT Application No. 21 of 1995 at the Regional Housing I Tribunal, Moshi, Kilimanjaro against the Second Appellant seeking interalia, orders for payment of 1 rent arrears and vacant possession of the demised premises and repairs thereof. The said Tribunal entered judgment in favour of the First Appellant but as execution was about to take place the First ·1 Respondent applied and obtained an order from the Housing Appeals Tribunal that he be joined in i ! the application hence RHT Application No. 21 of 1995 started de novo - having been amended to include the First Respondent. The industrial dispute at the Industrial Court of Tanzania was disposed on 18/2/1994 in·favour of the First Respondent. However, the Second Appellant did not wish to continue with the First Respondent hence they concluded and executed a Deed of Separation , , Package whereby the Second Appellant paid the First Respondent certain sums of money as ' ! terminal benefits and that the First Respondent was to vacate from the demised premises on or before 31 st November, 1994. The First Respondent did not vacate from

the said premises despite receiving full payment under the Deed of Separation Package and despite the expiry of the temporary injunction which ended as a result of finalization of the industrial dispute between him and the Second Appellant. ' 1 The Regional Housing Tribunal heard the amended RHT Application No. 21 of 1995 in which the Second Appellant and the First Respondent were found liable severally and jointly. The said tribunal granted an eviction order, granted all claims for payments in sums of 1,500,000/= being compensation for damage caused to the demised premises, shs.4,720,000/= being rent arrears from November, 1994 to June, 1998, shs.400,000/= for water bills, shs.1,287,797/95 being electricity bills and shs. 520,054/40 for telephone bills. It further ordered any respective subsequent bills or charges up to the date of vacant possession of the demised premises, payment of mesne profits at a rate of shs. 140,000/= per month from July 1998 to the date of judgment and/or till vacant possession of demised premises, payment of Tshs. 2,000,000/= being general damages payment of interest as , per respective rates and dates of accruals as prayed and payment of shs.80,000/= being Applicant's . . expenses/costs .. of hiring a lorry to return the household effects of the would be tenant of the ' applicant. Aggrieved by the said decision, the First Respondent appealed against it to the Housing Appeals Tribunal of Tanzania in Housing Appeals No.28 of 2001. He had filed seven (7) grounds of appeal but the said Tribunal only dealt with grounds Nos. 1, 2 and 6. . . Briefly, the Housing Appeals Tribunal in its decision held that the First Respondent could not , be held liable for the various claims that had been decreed by the RH Tribunal in Application No. 21 of 1995 because he had no any contractual relationship with the First Appellant, hence he could not be held responsible for any breaches in the lease agreement between the First Appellant and the 2 Second Appellant. It held that the First Respondent was occupying the demised premises by virtue of his employment with the Second Appellant. 'The said Tribunal further held that the proceedings and the decision of the RH Tribunal were null and void as the latter changed members contrary to the mandatory provision of Section 11 (3) of the Rent Restriction Act No. 17 of 1984. It quashed and set aside the proceedings and the judgment of RH Tribunal in Application No. 21 of 1995. Having been aggrieved by the decision of the Housing Appeals Tribunal, the First Appellant . . . as well . as the Second Appellant have appealed to this court in the respective Civil Appeals above . . . ' . . . named. In Civil Appeal No. 16 of 2003, filed by the First Appellant, the latter, in his Memorandum of Appeal has listed four (4) grounds of appeal namely, that:-

1. The Housing Appeals Tribunal grossly erred both in fact and in law in entertaining the 1st Respondent's Appeal whereas the same was time barred.
2. The Housing Appeals Tribunal grossly erred both in fact and law in being in disagreement with the holding of the Regional Tribunal that since the Respondent was occupying the suit premises by virtue of his employment with the 2nd Respondent, once his employment ceased, his legitimacy for occupation thereof ceased as well.
3. The Housing Appeals Tribunal grossly erred both in law and fact in holding that the Respondent could not be held liable jointly and severally with the 2nd Respondent under ' the Judgment of the Regional Housing Tribunal.

4. The Housing Appeals Tribunal grossly erred both in law and fact in quashing and setting aside the proceedings of the Regional Housing Tribunal purportedly on account of lack of jurisdiction. Based on the above grounds of appeal, the First Appellant in his Memorandum of Appeal prayed to call this court to allow the appeal; quash and set aside the judgment and the decree of the Housing Appeals Tribunal and condemn the First Respondent . . . to costs in this Tribunal and in the Housing Appeals Tribunal. . . The Second Appellant, in his Memorandum of Appeal in Civil Appeal No. 20 of 2003, has listed the following grounds of appeal:-
- (1) That the Honorable Tribunal erred in law and fact in quashing the Trial Tribunal's Proceedings and Judgment.
 - (2) That the Honorable Tribunal erred in law and fact in condemning Appellant's Respondents to pay costs. \ 3
 - (3) That the Honourable Tribunal erred in law and fact in allowing the appeal. /
 - (4) That the Honourable Tribunal erred in law and fact in not ordering a Trial de nova. Based on the above grounds of appeal, the Second Appellant, in his Memorandum of Appeal prayed to this Court to quash and set aside the judgments and decrees of the two lower tribunals and order a trial de nova and to condemn Respondents to costs in Civil Appeal No. 20 of 2003. These two appeals were consolidated by an Order of this court dated 2/9/2003. On 26/2/2004, by consent, the parties were ordered to dispose the two appeals by way of written submissions. The parties have fully complied with the deadline dates for filing their written submissions. Mr. Kamara is advocating for the First Appellant who is also the Second Respondent in Civil Appeal No. 20 of 2003. The First Respondent is advocated by Mr. Temba, learned counsel. The Second Appellant had no counsel, it argued the appeal by itself. I hasten to point out that the Second Appellant argued ground four (4) only in the grounds listed in its Memorandum of Appeal. I have carefully considered the submissions of all the parties in the two consolidated appeals. I have also read the record of the two tribunals below including their judgments. I will first deal with the grounds of appeal stated in the Memorandum of Appeal in Civil Appeal No.16 of 2003. I will later on deal with the grounds of appeal stated in the Memorandum of Appeal in Civil Appeal No. 20 of 2003. The first ground of appeal in Civil Appeal No. 16 of 2003 states that the Housing Appeals Tribunal grossly erred both in fact and in law in entertaining the 1st Respondent's Appeal whereas the same was time barred'. The issue therefore is whether the 1st Respondent's appeal in the Housing Appeals Tribunal was time barred. Mr. Kamara in his 1st submission contends that the 1st Appellant in his submission before the Housing Appeals Tribunal had contended that the 1st Respondent's appeal (Judgment in the said Tribunal was filed out of time but the said Tribunal did not make any finding on the said point which it would have sustained the said appeal. He expounded the said point further, that the judgment of the RH Tribunal in Application No. 21 of 1995 was delivered on 29/11/2000 and copies certified on 12/12/2000 while the Decree was extracted, signed and certified on 13/12/2000 but the . . . \ 1st Respondent collected copies of Judgment and Decree on 2/4/2001. He contended that the 1st

Respondent was not prompt in collection of the said copies, he wasted 106 days and did not obtain leave to file his appeal out of time hence he contravened Rule 5 of G.N. No. 249/1990 which requires an appeal to the Housing Appeals Tribunal to be filed within 45 days from the date of the decision of the RH Tribunal. On the other hand, Mr. Teemba, learned counsel for the First Respondent in his submission opposed the submission of Mr. Kamara on the first ground of appeal. He submitted that the issue of the 1st Respondent's appeal being time barred before the Housing Appeals Tribunal was never canvassed in the said Tribunal hence the 1st Appellant is barred to raise it before this court. He contended that in any case, the First Respondent was not late in filing his appeal at the Housing Appeals Tribunal as time started to run after he had collected the certified copy of judgment and decree and he acted promptly thereafter. In his rejoinder submission, Mr. Kamara, learned counsel for the 1st Appellant replied that the point of time limitation was fully canvassed by the 1st Appellant in the Housing Appeals Tribunal as is evident in item 7 in the written submission of the 1st Appellant in the said Tribunal. I have carefully considered the contention (issue) of the 1st Appellant that the 1st Respondent's appeal at the Housing Appeals Tribunal was time barred. My careful reading of the judgment of the Housing Appeals Tribunal in Housing Appeal No. 28 of 2001 does not show that the said point was considered and determined by the said Tribunal. In such situation, it is my considered view that the first ground of appeal by the 1st Appellant before this court is not borne out by the judgment of the Housing Appeals Tribunal in Housing Appeal No. 28 of 2001 in which decision the 1st Appellant has appealed against in this court. Further, it is true as contended by Mr. Kamara in his submission that the 1st Appellant in his written submission before the said Tribunal had challenged the 1st Respondent's appeal in the said Tribunal that it was time barred. Therefore, it can be said that the 1st Appellant in his submission before the said Tribunal was in fact objecting to the 1st Respondent's appeal on the ground that it was time barred. Was this the proper way of raising the issue before the said Tribunal? My attention is drawn to Rule 20 of the Housing Appeals Tribunal (Appeals) Rules on how to raise or take preliminary objections in the Housing Appeals Tribunal. The said Rule states as follows- "20. Where a respondent intends to take a preliminary objection to any appeal or any part of it, he shall, as soon as practicable before the hearing begins, give reasonable notice to the Appeal Tribunal and to the other parties to the appeal of that objection; and if that notice is not given, the Appeals Tribunal may adjourn the hearing and make such order as to costs as it may deem just." In my considered view, the point of time limitation against the appeal of the 1st Respondent at the Housing Appeals Tribunal which the 1st Appellant had stated in his written submission before the said Tribunal was in the form of objection against the said appeal and the 1st Appellant should have raised the said point by way of a preliminary objection in the manner stated under Rule 20 of the Housing Appeals Tribunal Rules as above quoted. So by raising the said point in his written submission before the said Tribunal, the 1st Appellant who was the 1st Respondent in the appeal before the said Tribunal did not comply with the mandatory requirements of Rule 20 of the Housing Appeals Tribunal. Further, in any event, though the 1st Appellant contends that the 1st Respondent's appeal before the Housing Appeals Tribunal was time barred, he did

not state in his submission in the said I Tribunal or in this court as to when the 1st Respondent had filed his appeal in the said Tribunal apart from alleging that the said Respondent was not prompt in collecting certified copies of the judgment and decree of the RH Tribunal in Application No. 2 of 1995. In his submission, the 1st Respondent contended that he was not late in filing his appeal before the said Tribunal as time started to run after he had collected the certified copy of judgment and decree, so he submitted that he acted promptly. Unfortunately, the 1st Appellant did not reply to the said contention of the 1st Respondent in his rejoinder submission. In the final result, I find and hold that the first ground of appeal by the 1st Appellant has no merit. I will consider the second and third grounds of appeal by the 1st Appellant collectively. The 1st Appellant in the second ground of appeal contends that the Housing Appeals Tribunal grossly erred in law and in fact in being in disagreement with the holding of the Regional Housing Tribunal, stating that since the 1st Respondent was occupying the suit premises by virtue of his employment with the 2nd Respondent, once his employment ceased, his legitimacy for occupation thereof ceased as well. While in the Third ground of appeal he contended that the Housing Appeals Tribunal grossly erred both in fact and in law in holding that the 1st Respondent could not be held liable jointly and severally with the 2nd Respondent under the Judgment of the Regional Housing Tribunal. Mr. Kamara, learned counsel for the 1st Appellant made a very depth submission in support of the said two grounds of appeal detailing the background of the case and that the 1st Respondent was responsible for the vandalism of the demised premises and solely responsible for his unwarranted occupation of the demised premises even when there was no subsisting relationship of employee/employer between him and the second Appellant. He further contended that the 1st Respondent was solely responsible for his occupation of the demised premises while he was neither in the 2nd Appellant's employment nor with any tenancy agreement with the Appellant. He further contended that the 1st Respondent himself had applied in the RH Tribunal to be made a party in Application No. 21 of 1995 hence he was an architect of his joinder and should blame himself. On the part of the 1st Respondent, Mr. Teemba, learned counsel in his submission contends that the findings of the Housing Appeals Tribunal cannot be faulted. He submitted that the 1st Respondent had no duty to return or hand over the suit premises to the 1st Appellant as that was the duty of the 2nd Appellant as a tenant of the 1st Appellant. He further submitted that the 1st Respondent as a mere employee of the 2nd Appellant had nothing to do with the matter as he was not a party to the lease agreement between the 1st and the 2nd Appellants. Could the 1st Respondent be held severally and jointly liable with the 2nd Appellant before the RH Tribunal in Application No. 21 of 1995? Could the employment contract on the part of the 1st Respondent give legitimacy to the occupation of the demised premises? Mr. Kamara, as I have earlier stated has made a depth submission in support of the said grounds of appeal and in his view the 1st Respondent was simply a difficult and incorrigable character. I need not repeat the detailed submission of Mr. Kamara. On the other hand, Mr. Teemba, learned counsel for the 1st Respondent submitted that the Housing Appeals Tribunal decision was correct in that the 1st Respondent could not be held liable in the matter as he was not a

party to the lease agreement between the 1st Appellant and the 2nd Appellant. Having carefully considered the submissions of both parties and the judgment (~) of the Housing Appeals Tribunal, I find and hold as found and held by the said Tribunal that the 1st Respondent could not be held responsible for ;my brc~1c~.cs of the lease agreement between the 1st Appellant and the 2nd Appellant as he ,was not a p;irty lo the s:lid lease <1grccment. He had no contractual relationship of any kind with the rt Appell~mt. He merely occupied the demised premises by virtue of his employment with the 2nd Appellant. The RH Tribunal's jurisdiction is on landlord-tenant relati~nship which only existed between the 1st and the 2nd Appellant. No such relationship existed between the 1st Respondent and the 1st Appellant. In my considered view even after the 1st Respondent's employment with the 2nd Appellant had ceased, it never followed that he became a tenant'to the 1st Appellant, over the dc1~1iscd premises sti 11 no landlord - tenant relationship 7 existed between them. So in my considered view, any action against the 1st Respondent or remedies for his action in ~he demised premises were to be found elsewhere not in the RH Tribunal because the latter is limited to landlord- tenant relationship only. The fact that the 1st Respondent had on his own applied to be joined in the appiication before the RH Tribunal in itself did not make him liable nd for breaches of tlie lease agreement between the 1st and 2 Appellants as he was still ~10t a party to the said agreement. There_ was still no pri vity of contract in the said lease agreement to the 1st Respondent. He was a total stranger to the said lease agreement hence he could not be made liable nd in person or jointly and severally with the 2 Appellant. In the upshot, I find and hold that the 2 nd . and 3 rd grounds of appeal have no merit. In his fourth (4) ground of appeal, the 1st Appellant contends that the Housing Appeals Tribunal grossly erred both in law and fact in quashing and setting aside the proceedings of the Regional Housing Tribunal purportedly on account of lack of jurisdiction. Was the said Tribunal I correct to quash and set aside the proceedings of RH Tribunal on lack of jurisdiction? This is the : issue to be considered and determined by this court in this ground of appeal. Mr. Kamara, learned 'I counsel for the 1st Appellant, {n his submission contends that it was not proper for the Housing Appeals Tribunal to quash and set aside the RH Tribunal proceedings on account of lack of jurisdiction because the 1st Respondent who had stated the said point in his petition of appeal before the said Tribunal did not canvass the said point in his written submission he filed in the said Tribunal which ineatit that he had abandoned it. He further contends that contrary to what the Housing Appeals Tribunal had held, it was proper for Mrs Awadhi, an assessor in the RH Tribunal to have given her opinion on conclusion of the trin~; He submitted that this is so because the hearing of the application before theRHT commenced on 24/11/1999, the assessors on this day were Mrs Lyimo and Mrs Awadhi and that the said hearing was concluded on 17/10/2000 whereby the assessors were the same and they 'were the ones who g;1vc opinion. 1-Ie contended further that though Mr. Mdumare at one time sat on corm11 in the course or the RI-IT proceedings but did not give opinion. In such circumstances, Mr. K:1111:1rn contended that Section 11 (2) and (3) of the Rent Restriction Act, 1984 could not be interpreted as done by the Housing Appeals Tribunal to preclude Mrs Awadhi to give her opinion. He further submitted that after all the chairperson of RH Tribunal -. ' . is not bond by the opinion of the assessors and

he may determine an application even if the assessors . who sat with him were absent on the subsequent dates after the first date of hearing. . . . 8 ; On the other hand, Mr. Teemba, learned counsel for the 1st Appellant, in his submission 0 ____ _j contends that the issue of jurisdiction was well addressed by the Housing Appeals Tribunal of Tanzania and that its findings cannot be faulted. /He contends that the fact that the issue was not canvassed or argued by the 1st Respondent at the Housing Appeals Tribunal did not bar the said Tribunal to address itself on it. He submitted that the said point was a point of law which the said Tribunal correctly addressed itself and came to the right conclusion. Mr. Teemba in his submission , prayed to this court to dismiss the 1st Appellant's appeal. In his rejoinder submission Mr. Kamara, learned counsel for the 1st Appellant contends that the 1st Respondent in his submission submitted nothing worth save that he admitted that the 1st appellant was adjudged adversely without being afforded an opportunity of being heard on the said point. I have carefully considered the submissions of both parties on the fourth ground of appeal by : the 1st Appellant. I have also perused the records of the two tribunals below, much more so the proceedings of RHT Tribunal in Application No./ 21 of 2003 on which the issue is based. I have also read the judgment of the Housing Appeals Tribunal on the matter. To refresh my memory, the issue is whether the Housing Appeals Tribunal is incompetent proper ly to quash and set aside the proceedings of RHT on lack of jurisdiction. Mr. Kamara made a very depth submission as we have seen contending that the said Tribunal erred to deal on the said joint basis use the 1 Respondent did not canvass the said point in his submission despite stating it as his point of appeal before the said Tribunal and that contrary to what the said Tribunal held, it was proper for Mrs Awadhi, an assessor at the RHT Tribunal to give opinion at the conclusion of the application. On the other hand, Mr. Teemba in his submission held that the findings of the Housing Appeals Tribunal on the above issue were proper in that the point of jurisdiction was a point of law despite not being canvassed by the 1 Respondent in his submission.

- In my considered view, though the record shows that the 1st Respondent did not canvass the point of lack of jurisdiction in his submission/before the Housing Appeals Tribunal despite raising the same in his petition of Appeal in the said Tribunal, I quite agree with the submission of Mr. Teemba that it being a point of law, the said Tribunal could still dwell on the same point in its
- I decision. Much more so, Rule 4 of the Housing Appeals Tribunal (Appeals) Rules provides inter alia that in deciding the appeal, the said Tribunal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the said Tribunal. In other words, though, if the 1st Respondent did not canvass the said point in his submission before the said Tribunal despite - I 9' \ I stating it in his memorandum of appeal, it did not bar the said Tribunal to take that point in deciding the appeal in accordance with Rule 4 mentioned above. As regards the opinion of Mrs. Awadhi at the conclusion of the RHT proceedings, it is my considered view that the findings of the Housing Appeals Tribunal were correct and in order. I quite agree with the findings of the Housing Appeals Tribunal that Mrs Awadhi did not sit and hear the RHT application throughout. The

record of the RH Tribunal in Application No. 21 of 2003 shows that the hearing of the application took place in three (3) different dates. On 24/11/1999 the Vice Chairman had sat with Mrs. Awadhi and Mrs. Lyimo while on 2/8/2000 he sat with Mr. Mdumare and Mrs. Lyimo and on 20/9/2000 he sat with Mrs. Awadhi and Mrs. Lyimo. I fully subscribe to the finding of the Housing Appeals Tribunal that the RH Tribunal erred on 2/8/2000 to invite Mr. Mclumarc to sit on the coram as a member; the Vice-Chairman ought to have continued with the hearing of the application assisted by Mrs. Lyimo alone. Further, I quite agree with the finding of the Housing Appeals Tribunal that on 20/9/2000, the hearing of the application ought to have proceeded while the coram was that of the Vice Chairman being assisted by Mrs. Lyimo alone and that on 17/10/2000 Mrs. Awadhi ought not to have been asked to give her opinion as she had not sat in the hearing of the application throughout save Mrs. Lyimo who had sent from the commencement of the hearing to the end hence competent to file her opinion. It is therefore correct as held by the said Tribunal that inviting Mrs. Awadhi to give her opinion which the Vice-Chairman subsequently acted upon vitiated the proceedings and the judgment of the RH Tribunal in Application No. 2) of 1995. Therefore, I find and hold that it was proper and correct for the Housing Appeals Tribunal to quash and set aside the proceedings and judgment of the RH Tribunal in Application No. 21 of 1995 on lack of jurisdiction. Hence ground No. 4 of the appeal of the 1st Appellant lack merit. Having disposed all the grounds of appeal in the Memorandum of Appeal filed by the 1st Appellant, I now move to consider and determine the grounds of appeal filed by the 2nd Appellant in this court. Though the 2nd Appellant had filed four (4) grounds of appeal, it only canvassed and argued ground No. 4 in its submission containing the following grounds of appeal had been covered by Mr. Kamara, learned counsel for the 1st Appellant in his submission. In his fourth ground of appeal, the 2nd Appellant contended that the Housing Appeals Tribunal erred in law and fact in not ordering a trial de novo. In his submission in support of the said ground of appeal, the 2nd Appellant contended that the Housing Appeals Tribunal having found that the RH Tribunal had acted contrary to Section 11

- (2) & (3) of the Rent Restriction Act, 1984, the proper order to be given was to quash all the proceedings and judgment of the said trial Tribunal and to have ordered a trial de novo before a well constituted tribunal. The 2nd Appellant contended further that by allowing the appeal as done by the Housing Appeals Tribunal, it meant that the 2nd Appellant was made to bear the burden for a wrong committed by the RH Tribunal. The said Appellant prayed to this court to quash and set aside the proceedings and judgments of the two tribunals below and order a trial de novo before a well constituted tribunal. In his submission, Mr. Kamara, learned counsel for the 1st Appellant is opposed to the prayer of the 2nd Appellant for this court to order a trial de novo. He contends that the participation of Mrs. Awadhi in the trial before the RH Tribunal did not affect or vitiate the said trial as it was lawful and proper. He further contends that a trial de novo would not be in the interest of the 1st Appellant as he has already disposed off the subject premises and he no longer holds title over the same such that a trial de novo would be overtaken by events. On the other hand,

Mr. Teemba, learned counsel for the 1st Respondent contends that the 2nd Appellant submitted that the Housing Appeals Tribunal was not properly constituted during its deliberations and at the time of delivering its ruling. He contends the said anomaly was well considered by the Housing Appeals Tribunal plus other grounds and came to the conclusion that the 1st Respondent's appeal before the said Tribunal had to succeed. Mr. Teemba in his submission prayed to this court to dismiss both appeals. I have carefully considered the submission of all parties on the fourth (4) ground of appeal by the 2nd Appellant. I have also read the decision of the Housing Appeals Tribunal which quashed and set aside the proceedings and the judgment of the Housing Appeals Tribunal in Application No. 21 of 1995. The issue is whether having quashed the proceedings and judgment of the Housing Appeals Tribunal in Application No. 21 of 1995, the Housing Appeals Tribunal should have ordered a trial de novo. The 2nd Appellant in his submission contends that the Housing Appeals Tribunal should have ordered a trial de novo, otherwise the said Appellant would bear a burden for a mistake committed by the Housing Appeals Tribunal itself. The 1st Appellant in his submission contends that the proceedings and judgment of the Housing Appeals Tribunal in Application No. 21 of 1995, are correct and that a trial de novo would not be in the interest of the 1st Appellant. The 1st Respondent contended that the decision of the Housing Appeals Tribunal to quash and set aside the proceedings and judgment of the Housing Appeals Tribunal was proper and correct and that the 2nd Appellant in its submission had so admitted. I have already earlier on in this Judgment held that the Housing Appeals Tribunal was correct to quash and set aside the proceedings and judgment of the Housing Appeals Tribunal in Application No. 21 of 1995 on lack of jurisdiction. As we have seen, that was just one of the grounds that led to the Housing Appeals Tribunal to quash and set aside the proceedings and judgment of the Housing Appeals Tribunal. The other ground was that as far as the 1st Respondent was concerned he was not a party to the lease agreement between the 1st Appellant and the 2nd Appellant hence he could not be held liable for breaches of the said lease agreement. Now, that the proceedings and judgment of the Housing Appeals Tribunal were vitiated by non-compliance of Section 11 (2) & (3) of the Housing Appeals Tribunal was a defect occasioned by the Housing Appeals Tribunal itself and not by the 2nd Appellant. In my considered view the Housing Appeals Tribunal would have considered possibility of ordering a trial de novo. The said Tribunal had such power under Rule 30 of the Housing Appeals Tribunal (Appeals) Rules. Could this court order a trial de novo today? Yes, I must admit that the Rent Restriction Act, 1984 has long been repealed which means that the Regional Housing Tribunals and the Housing Appeals Tribunal are no longer in existence such that an order for trial de novo before the Housing Appeals Tribunal would be redundant. Further, having held that there was no contractual relationship (that is landlord - tenant) between the 1st Appellant and the 1st Respondent it means that the remedy for the 1st Appellant against the 1st Respondent in respect of the demised premises has to be sought elsewhere other than at the Housing Appeals Tribunal hence a trial de novo before the said Tribunal may not be effective against the 1st Respondent. In short, in my considered view, an order for trial de novo before the Housing Appeals Tribunal in the aforesaid circumstances may currently be difficult to be acted upon by the parties. In the final upshot, the appeal by the 1st Appellant is dismissed. Appeal No. 16

of 2003 has no merit and is hereby dismissed with costs. The appeal by the 1st Appellant, that is Civil Appeal No. 20 of 2003 is meritorious and is hereby allowed with costs to the extent that the Housing Appeals Tribunal having quashed and set aside the proceedings and judgment of the RH Tribunal in Application No. 21 of 1995 should have ordered a trial de novo before the said RH Tribunal. However, as the Rent Restriction Act, 1982, has now become inoperative, it is held that the RH Tribunal and the Housing Appeals Tribunal no longer exist, and no trial is to be ordered. In the circumstances, the 1st Appellant or the other parties involved in the dispute, subject to the law of limitation are free to institute fresh proceedings in a court or tribunal of competent jurisdiction to seek for appropriate remedies in respect of the dispute. It is so ordered. F.A.R. JUNDU, JUDGE, 31/3/2006 Right of Appeal Explained. F.A.R. JUNDU, JUDGE, 31/3/2006 31/3/2006 Coram: F.A.R. Jundu, J. For the Appellant: Absent For the 1st Respondent: Absent For the 2nd Respondent/Appellant: Mr. Amosi Kimaro, Personnel Officer C/C: Muyungi F.A.R. JUNDU, JUDGE, 31/3/2006 13

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