

TANZANIA / JUDGMENT

19921208 TZHC Dar es Salaam

COURT
TZHCDECIDED
8 December 1992

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~ IN THE HIGH COURT OF TANZANIA A,1: PA!:L\$.?-JiALAAM CIVIL APPEAL NOo 17/1990
01'-'JARI A~ BAKHUWAR 0000000000000000 APPLICANT versus KARIM ALLY MBIKU
0000000000000000• RESPONLJENT s.;.4•-~--

JUDGMENT

On 13 JUne 1987 the Oar es Salaam Regional Housing Tribunal found from evidence aAr'luceo, that the appellant, omar A~ s,khuwai, l:laA recovererl the sum of shs.20;000/= .which be ha" spent to ronstfuit a house belonging to the responr'lent 1 Karim Ally Mbiku. The appell-.nt recoveren the expenses by occupying tne house anA he recovereA hi~ expenses from the rent he was requireA to pay to the responAent. T~e Regional Housing Tribunal also foun~ that the appellant fl a Aef aul ta" in paying rent for the premises, an,, he ha,, also breacheA the 'ean! inr,y conr'litions by erecting structures without the consent of the respon-'enf• The Tribunal or,,ere,, the appellant to be evicteA from the tuil premitset~ The appellant appealetll to the Housing Appeals Tri~unal whieh "'isrni,ie" his appeal on 10 September~1987. This is a secon,, appeal~ ~ 1~ I The~ eviAence on recorrr'I is clear that after tlie appe11~ant haA completer'! constl:'lt.ction of the house on the respon,,!lentts plot ar; ag.iew-4;. he occupier'I the premises as a tenant an,, he rec6vereA the expenset he incurre~ in the construction. He continue,, occupying the premi.se- even after recovering his expenses, The house belonge,, ~ the re~ponAent; anr'I there is no Aoubt about itw But the appellant continue~ o~py~ ing the premises even al'ter recovering the expenses he haA ineurre~ in the construction; an~whe AiA not pay the rent to the re~ponAeni. There was also clear evir'lence that the appellant constructeA ~trur.tu.re'c on the lann, without the consent of the responAent who was the l~n,,lor~. . . That was clear b.reae:h of the tenancy agreement, an,, bo~!l the Regional Housing Tribunat anA the Housing appeals Tribunal founA that the appellant shoulA be evicten from the suit premises. He was p.r.ope.rl,l': ' . . evicted. That shoulA be enough to Misode of this ~peal. , , , , ' .. ~ ..., 1 . 2 ... Yiro Eo H. Mbuya, learne...1 counsel for the responAent, submitteA that ~hat the appeal is- time-barreA, ... having been fileA after the perioA ol limitation haA expire~; ~nA n5 teasons have been given for the ,qelay.. As I have alrea,qy stateA 1 the Housing Appeal~ Tribunal rlismisseA to appeal on 10 September 1987. The appe!lant r11e..-1 Civil Appeal No. 27 of 1981; an" on 14 March 1989 KyanAo, J. Aismisses'I the appeal. Then the appe11aftt file" MtsceJ:.'lanepti# Civil Cause Noo 30 of 1989 for leave to refile the appeal. - on :.2 !I~cember 1989, Kyanc:l.o, J. grante<i the application, out refuse.'4 stay of exelu- tion penr'ling appeal. The appellant file"

Civil ... Appeal No. 1 .. :>f 199'0 on 22 February 1990, but the appeal was with"rawn before Mapigano, J. on 30 March 1990. This appeal was fileA on ... 16 May 1990,1 From the time the appellant was grnnte" leave to refile the appeal on 22 Oecember, 1989 till this appeal was filed on 16 May 1990, it 11 a periocf of five monthso ... The appellant shoulA have appealeA within ninety ..-lays as prescriben in the First Sche"ule Part rr,. item l of the Law of Lim3'.tation Act. That perio" starteA to run fr.'. ,m the „qate ~e .., was granter" leave to re-file tne appeal. No affiAavit has been fileA to explain the reason for the r'lelay. For this reas ,n alsn the appeal must be rlismisse". This appeal is, for the reasons given, Aisrnissee,q with coat~. 1;\ \i\ \J\ l,JJ fi,~ Wo J., MAINA Jt.J1JGE At DAR ES SALAAM 8 December 1992 Appellant present in person Mro Eo Ho Mbuya for the Respondent

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