

TANZANIA / JUDGMENT

19901123 TZHC Dar es Salaam

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TZHCDECIDED
23 November 1990

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL APPEAL NO. 21 CF 19GG OMMtY SALT.HvI , .. AF .?:8LLANT versus HUSSEIN IVI. SATVi.BJ A.....

JiBSI;OLDENT JU'DGMENT MASANCHE,J1 This appeal concerns tenancy of a house that belongs to the appellant "omary Salum. It is also a second ai2pea~ The resi)ondent,"Hussein M.Sa-meja, was the tenaJt~ he, having' derived the tittle from his father who is away an U.S.A. either on treatment or !or good. The case originated from the Dar es Salaam Regional ~ousing Tribunal There, the p::esent ap}ellant, who was the a1>.,ilicant then, ap,i?lied to i,he ~ousing Trib 1na.l for vacant possession of the suit premises on mainly 1 ·three gr::iund,3, First: ne argued in the Tribunal that he wanted the house so that he ienovate it. He informed the Tribunal that thJ h0use was in· a bad shape and there fore need repairs. His secJnd reason for a prayer f~r vacant possession was that the actual tenant, the one he had entered into ag7sernent, had abandoned the suit premises; in that he had migrated t~ U.S.A. since 1972 and ·was not likely to home back. But, he concedet that i~c responJent,_the son of his actual tenant~ had stepped into the shoes of his father in the sense that the respondent was paying~ and he, the ~;_,.t'licant, w""s accepting this rent for all those 16 years. / Bis third ground for seeking vacant p~seas~i0n was that after the renovation, he want the house far his own uso. Tnese three gr;Jun~:ls wera thrashod by tb?. i:- businc Tribunc.l, and in the end the Trfbunal ruled. that the resj,,ondent c ,ul:::l n0t be evictecl. The Chairman reasonod, I quote him: "We are not satisfied that tho a~)plicant wants vacant PC? Ssesseio1: ::>£ the suit~i.·Juse so that he couJ.~'.. renovatG itG For it has been stated that the house is in ~aod condition. We accordingly reject this as being gr~und for rep~sses of the suit home, Otherwise) ordinary revuir can be carriell Out while the respo~dent is inside. / \Vi th regard t~.) tho ~:::thor grnun-1. the respon:lent, who is the tenant 9 having abandoned suit h0use, we find that since the son of the rospcmlent 9 who is part ~:~!f the family of the respondent is in the suit h0~se, it cannot ba sai~ that the house is / abandoned. In any case, tho a::;Jplicant has all along been recei vinl rent fr,Jra the res~; ~:-n ::lent 1 s s)n {~n<::: he had not issued any 2 ~:it Under the circumstances we als0 reject this reason, as'being ground for rclossessi~n. The third reason put forward by the applicant as being grouni for repossession is that the applican1 wants ~o occupy the suit house himself and family. This ~eason cuuld be valid if the applicant had obtained alternative nccomodation £~r the family of the respon~ent. There is no evidence that the applicant has obtained alternative accommoda~ tion for the responJent 1 s fawilY-, This being the case therefore, we also reject this reas.on as being gr0und f:::ir repcssession of the suit house. Finally, therefore, this application is dismissed.,~! ~h "i:::osts." ,-. ·~-,r~ That is huv, the

, would return. But then, Mr. Muccadam for; et-s that in law the respondent is perfectly
 entitled to raise the defence of laches as against the applicant who has not been reasonably
 diligent in seeking relief. Sixteen years of inactivity by the appellant in so far as the
 respondent on the issue of whether or not the respondent is a tenant or not is far too long to
 be if any assistance to the appellant. I agree with Mr. Justice Gauthier that the conduct of
 the appellant is strange. The appellant must be estopped from denying that the respondent
 in his tenant. I agree with the Housing Appeal Tribunal that the appellant's appeal had no
 substance. The appeal is dismissed with costs. J.E. C. MASANCHE ' JU: ' IGE DAR ES S.11.AAM
 23rd November, 1990 Mr. Muccadam for appellant Mr. Muccadam/Mwckasungula for
 the Respondent. I CERTIFY THAT IT IS A TRUE COPY OF THE ORIGINAL. L. \. .. -
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