

TANZANIA / JUDGMENT

## 19870203 TZHC Dar es Salaam

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TZHCDECIDED  
3 February 1987

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H-(c IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL APPEAL NO. 31 OF 1986 .!' (Original Kisutu RM• civil Case ~o.t36 of 1985 a"d Misc. (HC) Civil Cause Noo 101 of 1986) REGISTRAR OF BUILDING P•(,•~o•Qo•••• APPELLANT Versus J U D G t M E N T I ?n 10/9/1986 the Rent Restriction soard presided over hy Mr Chacha R.M. tuled that the present respondent/pl•intiff was a lawful\_ tenant of the R~gistrar of Buildings in apartment No.102 plot N0.461/158 along Nkrumah street in Dar es Salaam. Dissatisfied by the decision of the lower Court the Registrar of Buildin~ has appealed to this Court. It is not in dispute that the above named premises are Owned by the Registrar of Buildings, the appellants. Equally it 1s not disputed that at the time the building was acured, and the Registrar of s, •ildings consequently became the landlord, one, Sadr11ddin Shariff was liv~\_ng in the premises as the lawful tenant. Apparently the said Shariff was living in the premises'with the respondent 11ho, according to the evidence is a brother of Shariff. 1 Later, as the evidence showed, S~ariff left-the country for good leaving his brother, the respondent living' in the premises. Sometime in J.~ne, 1985 the respondent wrote a letter to the R"gistrar Of Buildings seeking that the tenancy be changed in his name. Apparently the request was refused and the respondent was evicted from the premises and one, Ngowi was given tenancy of the premises. 1 The respondent filed a suit for wrongful eviction and after the learned resident magistrate had heard evidence from both sides he came to the conclusion that the Registrar Of Bdildings wrongly evicted \ I • I 2 the respondent/plaintiff. T~ie learned resident magistrate q 11ot-;d sectidn 12 of the R,nt R•.:striction Act in support of his judgement. Before this court Mr. Raithatha learned counsel for the appellant argued that the lower court arred in relying on the provisions of section 12 as the basis of his decision that the respondent was entitled to live in the premises as a lawful tenant of the appellan,t. I t was the learned counsel's sulDrnission that section 12 was not relevant on the facts of this case. It was the learned counsel's argu!"Rent that the respondent w?s a trespasser. In support of his argument the court wa, referr,,:id to the deecision by this court in ONORATO v• PEERA ( t970 1H,C•~ 2l.~119-...,... ~TLAL DAM0DAR MALTAZER and Another Vf JARIWALfA T{A~N~~~ HOTE~ (1980) TLR 31 The Court was asked to allow the appeal on the ground that the \_former tenant had rese,rtded to subletting the. premise a without the eonsent of the landlord, the Registrar of Buildings. 1 Mr. Marando for the respondent argued in rebuttal that the facts in this case were peculiar in that members of the fftmily of the respondent were as a whole known to be tenants of the Registrar , of Buildings. It was argued that •fter the other members of the family had left, the respondent, who it was argued grew in the t I 1 premises becc!l11.e • the lawful tenant of the Registrar of Buildings. 1 In support

of this argument section ! Of the Rent Restriction Act . was quoi\$.t.eij. It was the learned counsel's submission that it was unreasonable · on the part of the Registrar of Buildi~gs to-refuse the respondent . allocation of the premises bearing in mind that he g~ew in the house. ·- From my reading of the proceedings in the lower couutt it is ·clear that the lawful tenant of the premises was o.ne. Shariff. I 1That Shariff was the lawful tenant Of the Registrar of Buildings ·'·.:, l" " ; !.; 1is evident from the testimony of Bonifau Ma~wiba, (OW 1). That (· . . being the posttion I fail to understand Mr.·Marando's argum~nt that "this.was a peculiar situation where members of the family were · designated as the tenants of the premises"· After Shariff had left the country it would appear that the respondent decided to remain in. the premistfs without the consent of . the .landlord, the Registrar of Buildfngs. As it was held by . -/tf:~~ Cout".t Af tWJ>ee-alse of DAMODAR - above ,CfL~O<t:1°4):!d - '!A person who enters upon the premises of another -without \_Jlis consent, express of implied is a trespasser. 11 On the facts of · ,c: thi-s\_ case the responden\_t was clearly a trespasser to the premises ,and he is accordingly not protected J::?:y the provisions of the Rtmt Restriction Act. I agrP.e with Mr. Raithatha's argument that the lower court erred in finding· that the respondent was lawfu~ly···In the premises The appeal accordingly succeedes with cost~. , DAR ES SALAAM ·3th February, 1987

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Prepared on 14 October 2026 · Esheria