

TANZANIA / JUDGMENT

tausi abdallah vs ebehard moyo

2012 tzhc 136 5 august 2012

COURT
TZHCDECIDED
5 August 2012

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT SONGEA LAND CASE APPEAL NO. 2
OF 2008 TAUSI ABDALLAH APPELLANT VERSUS EBEHARD
MOYO RESPONDENT

JUDGMENT

FIKIRINI, J: Tausi Abdallah being aggrieved by the decision of Songea District Land and Housing tribunal appeals to this court. The appellant had the following grounds of appeal: That the District Tribunal erred in holding that there was no breach of the tenancy agreement while the respondent admitted installing a saw mill machine contrary to the agreement. She also raised that the tribunal relied on evidence not on record and that the consent of the appellant was immaterial as the demolition of the inner walls of the suit premises did not amount to breach of agreement. The appeal was argued by way of written submissions. The appellant's submission was to the effect that the agreement between the parties was the premises were leased for the purposes of installing hulling and milling machine and not anything else. Therefore for the respondent to install saw mill was contrary to their tenancy agreement, though the respondent claims to have had that installed even before the signing of the tenancy agreement. He as well highlighted in cross examination that he did that without consulting the appellant. Nonetheless, the appellant emphasized that the written contract between the two must be left to speak by itself and not to be altered by word of mouth. In addition she challenged the Tribunal's reasoning that consent was not important in this case. The appellant believes consent is important as consent is a core issue in agreement. Otherwise there would have been no point of reducing the agreement in writing. As for the evidence not on record, it was the appellant's submission that nowhere in the tribunal proceedings has the respondent justified his decision to demolish the inner walls of the suit premises on account of the nature of his business. The Tribunal therefore invented this evidence. Reacting to the above submission the respondent one Mr. Ebehard Moyo, submitted that the lower tribunal decision was properly arrived at. The respondent further in his submission denied to have carried the demolition of the inner walls without the appellant's consent and went on to state that in actual fact the said was done after discussion with the appellant and in accordance with the tenancy agreement. According to him, there was therefore no any breach of agreement. I have carefully reviewed the tenancy agreement subject of this

appeal. Indeed the agreement was for installation of hulling and milling machine. There was nowhere in the agreement it was stated and agreed that the premises could be altered to accommodate the respondent's saw mill machine. This is irrespective of what the saw mill machine was intended for. I am saying so, because from reading the lower tribunal record I came cross explanation that the saw mill machine was installed so as easy the respondent's task of renovating and finishing the suit premises. Clause 5 of the agreement specifically spell out that any other changes have to be discussed between the parties. I did not get the indication that there was such discussion and agreement that the respondent could as well demolish the inner walls and install saw mill machine. This brings me to the conclusion that undeniably there was a breach of contract. The District Land Tribunal therefore erred in law and fact in considering otherwise. Similarly, I did not agree with the District Land Tribunal that consent was not important in the agreement between parties. As well submitted by the appellant consent is important and in fact is a core of any agreement. In the agreement between the appellant and the respondent that had been clearly stipulated in paragraph 5 of the agreement signed on 7th January, 2004. It has also been evidence that the tribunal invented evidence as from reading of the record there was nothing stated justifying the respondent's demolition of the inner walls based on the nature of his business. With or without justification, if what he did was not part of their lease agreement still the respondent would have been wrong. Accordingly this appeal is allowed and the District Land Tribunal decision is hereby set aside. It is so ordered. P.S. FIKIRINI JUDGE 5th AUGUST, 2012

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