

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CORAM: MUSTAFA, J.A.; MAKAME, J.A. And KISANGA, J.A.

CIVIL APPEAL NO. 19 OF 1984

Between

FATUMA A. M. DADAWALLA. APPELLANT

And

ISMAILJEE M. ABDULLALI. RESPONDENT

(Appeal from the judgment and decree of the
High Court of Tanzania at Dar es Salaam
(Mr. Justice Mtenga) dated 31st day of
March, 1983

in

Civil Appeal No. 27 of 1978

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant Fatuma was the owner of a flat in a building in Mlima Street, Dar es Salaam. It was acquired by the Registrar of Buildings under the Acquisition of Buildings Act, but it reverted to the appellant in July, 1977. It seems while the flat was vested in the Registrar of Buildings, the respondent Ismailjee became its tenant, apparently on a monthly basis, at the rate of Shs. 943/35 a month.

When the appellant re-acquired the flat, she wanted vacant possession of it, and although there was evidence that the respondent was always ready willing and able to pay the rent, the appellant was not interested in receiving rent, but only in recovering possession of the flat.

The appellant filed an action in the Resident Magistrate's court in Dar es Salaam for vacant possession of the flat. In the plaint the appellant alleged that she was the landlady of the flat, and the respondent the tenant. She claimed possession on the ground of non-payment of rent by the respondent.

In his defence the respondent alleged that the appellant refused or neglected to accept rent and that he was always ready and willing to pay whatever rent was due. He also alleged that it would not be reasonable in the circumstances to make an order of possession. He also contended that no cause of action arose, and it transpired that that was based on the ground that no notice to quit had been served on the respondent prior to court action.

In evidence it was established that the appellant was living in a flat as a tenant of the Registrar of Buildings. The building in which the flat was situated was due for demolition, and the appellant, together with other tenants in the building, had been given notice to quit. Eviction was suspended pending the availability of alternative accommodation being found for the tenants of the flat, including the appellant. But a representative of the Registrar of Building, D.W.2 Omari testified that: if the appellant could get alternative accommodation, and vacate the flat, the Registrar would not let the flat to another tenant, presumably because the building has been earmarked for demolition.

In his judgment the Magistrate found that the respondent had always been ready and willing to pay his rent. As regards alternative accommodation, he found that as the appellant was willing to exchange her existing flat with the respondent, that would be reasonable alternative accommodation. The magistrate had earlier held that the lack of a notice to quit was not fatal; he held that the filing of the suit for possession on 30.10.78 would serve as sufficient notice. He made an order of possession, to take effect as soon as the appellant offers in writing the premises she occupied to the respondent, and for all rent arrears deposited in court to be paid to the appellant.

The respondent appealed to the High Court, which reversed the judgement of the Resident Magistrate. The High Court (Mtenga, J.) held that a notice to quit was necessary in this case, for until that was done, the respondent remained a contractual tenant. The appellant herself had alleged that the respondent was her tenant at Shs. 343/45 a month, and it was clear that the respondent was in occupation of the flat on a month to month contractual tenancy, and can only become a statutory tenant if he holds over after being served with a notice to quit. The judge also held that the appellant had failed to provide alternative suitable accommodation to the respondent.

We think that the judge was right on both counts. In our view, on the evidence adduced, the respondent was in occupation as a contractual tenant on a month to month basis, and a notice to quit was necessary before the appellant could

file an action for eviction. Mr. Lakha for the appellant has referred us to the provisions of Section 26 of the Rent Restriction Act Cap. 479 and called our attention to the proviso. He maintained that a notice to quit was not necessary. We think that the provisions of section 26 refer to a statutory tenancy, and have no application to this case. There was no satisfactory evidence at all that suitable alternative accommodation was available for the respondent, in terms of section 19 of the Rent Restriction Act. D.W.2 Omari had clearly stated that if the appellant vacated the flat, that flat would not be sub-let to another tenant. In view of that testimony we fail to understand how the Resident Magistrate could have held that the flat which appellant is occupying could provide alternative accommodation to the respondent.

In the circumstances, we dismiss the appeal with costs.


DATED at DAR ES SALAAM this. ^{22nd}....day of February, 1986.

A. MUSTAFA
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(L. A. A. KYANDO)
REGISTRAR
COURT OF APPEAL OF TANZANIA