

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: MAKAME, J.A., MFALILA, J.A., And LUBUVA, J.A.)

CIVIL APPEAL NO. 46 OF 1995

BETWEEN

QURBAN T. VAID APPELLANT

AND

SHIRIN HASSANALI RESPONDENT

(Appeal from the Judgement and Decree
of the High Court of Zanzibar)

(Kannyonyele, J.)

Dated the 29th day of May, 1995

in

Civil Appeal No. 14 of 1994

And

(From Order and Decree of Rent Restriction
Board in Civil Application No. 20 of 1990
dated the 31st day of August and 28th day
of September, 1994)

JUDGEMENT OF THE COURT

MAKAME, J.A.:

The present respondent, SHIRIN HASSANALI, applied to the Rent Restriction Board in Zanzibar to be given vacant possession of a house she and her sister had inherited from their deceased mother and which the appellant was in occupation of for several years. The Board granted the prayer: it ordered the appellant to give vacant possession of the said house to the respondent within three months of the pronouncement of the decision. It was also ordered that the appellant should pay arrears of rent and that each party should bear his or her own costs.

The present appellant went to the High Court, Zanzibar, on appeal, where Kannyonyele, J. dismissed his appeal. He has further

appealed to this Court. He is represented by Mr. Ajar Patel, learned advocate, while the respondent was advocated for by Mr. S.B. Chamriho, learned Counsel.

Mr. Patel filed and argued four grounds of appeal. We propose to deal with the last one first.

The essence of Mr. Patel's complaint in the last ground was that the rules of natural justice had been breached by the Rent Restriction Board which had conducted itself in such a manner as to render the proceedings a nullity. The coram on different dates was not constant so that two members of the Board did not hear some portions of the evidence and therefore they were not really in a position to pronounce their views on the whole testimony. Another limb of Mr. Patel's complaint was that there was no indication on record that the requirement that the decision of the Board should be by a majority of votes had been complied with.

In answer to the above-mentioned complaint Mr. Chamriho, for the respondent, urged us to do two things. One that we should agree with the learned High Court judge who was of the view that the failure to record the views of each individual Board member, and thus indicate how each member 'voted', was merely a procedural irregularity capable of being cured. Two, that we should find that the variation in coram was neither here nor there really because the coram remained the same on the days which really mattered, the days of the actual hearing.

The record is loud and clear. Even if one was to ignore what transpired before 13th March 1991, on that day when the hearing proper commenced, the Board Coram was:

1. Ussi K. Haji, evidently the Chairman;
2. Rama Keis;
3. Ali M. Rajab;
4. A.M. Mnoga; and
5. The Secretary.

On the next and only other hearing date, 22nd July 1992, however, the Board Coram was as follows:

1. Ussi K. Haji,
2. Ali Rajab,
3. Rama Keis,
4. Meya Abdallah Rashid, and
5. The Secretary.

Thereafter the matter was adjourned for Judgement. So, as it can be seen, A.V. Mnoga who heard evidence on the first occasion did not attend on the second occasion. Similarly, Meya Abdallah Rashid who attended on the second occasion was a stranger to the earlier panel. Therefore giving the record the most generous interpretation, two members of the Board participated in arriving at the final decision when they had heard only portions of the evidence. This cannot be right.

Mr. Patel brought the decision of ALI ABEID SALIM Versus ALI MAHRUZ BIN SALEM (Zanzibar Law Reports Vol. VIII 1951-56) to our attention. That decision was by Windham C.J. We endorse his view that "... where it is a question of the Board's hearing evidence upon which its decision is to be based, then the Chairman and Members who make that decision should have heard all the evidence".

We agree with Windham C.J. that it is offensive against the concept of natural justice to have a decision given by a Board composed of members who, or any one of whom, had not heard the whole of the evidence upon which that decision is given. To the extent that the Coram was variously constituted on the two occasions it had no jurisdiction.

There is further substance in Mr. Patel's complaint. There is no way one can tell for certain to what extent the individual members participated in the hearing of the matter and, more particularly, in arriving at the decision. The law ordains that the decision of the Board should be "by a majority of votes of members present and voting ...". The mere fact that some members ~~were present~~ when the decision was being read out is not a sure indicator that they or the majority of them had voted in favour of it.

There is yet one more problem. According to the record, on the day the judgement was delivered "Bodi yote" was present. Now we ask ourselves which "Bodi" was this. We ask because this was now 31st August 1994, over two years after the matter was adjourned for judgement on 22nd July 1992. The matter was first placed before the Board on 20th November 1990 so by the time judgement was delivered the Board, or at least some members of it, had outlived their tenure because under Section 6 (6) "a member of the Board shall hold office for a period of three years but shall be eligible for re-appointment". Had all the members been re-appointed or is it possible that by over-sight none had been, in which case they acted illegally unless there was a saving provision? This last

matter casts doubt on the legality of the Board at the time the judgement was delivered but even without this dimension the varying panel of the Board, as explained, was enough to make the proceedings null and void.

Because of the foregoing we find it unnecessary to consider the other three grounds.

For reasons we have outlined we quash the proceedings and direct that the matter should be heard afresh by the Rent Restriction Board. Each party to bear his or her own costs.

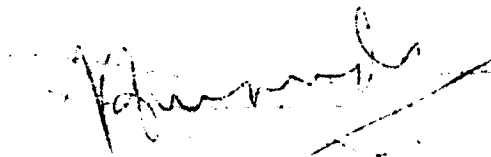
DATED at DAR ES SALAAM this 7th Day of August, 1996.

L. M. MAKAME
JUSTICE OF APPEAL

L. M. MEALILA
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

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


(B.M. LUANDA)
SENIOR DEPUTY REGISTRAR