IN THE HIGH COURT OF TANZANIA
AT DODOMA

Civil Appeal No. 49 of 1995

(Originating from the decision of the District Court of Singida in Civil Case No. 2 of 1995)

NATIONAL HOUSING CORPORATION…….. APPELLANT

VERSUS

SUKA GENERAL SUPPLIES…… RESPONDENT

J U D G M E N T

KAJI, J.:

The appellant, THE NATIONAL HOUSING CORPORATION, is a public corporation, managing housing estates established under the National Housing Corporation Act, 1990.

The respondent, SUKA GENERAL SUPPLIES, is a business entity registered under the Business Names (Registration) Ordinance, Cap 213.

On 1st August, 1993, the appellant and the respondent entered into a tenancy agreement whereby the appellant rented its house situated on Plot No. 17 Block "J" Sokoine Road in Singida Town, to the respondent, under terms and conditions specified in the said Tenancy Agreement Exh. P7. At the time, the respondent partners in business were either H.N.A. Sufei and Bwaira Biseko, or H.N.A. Sufei and another,

or were expected to be HNA Sufei and Bwaira Biseko. Later there was a misunderstanding between the partners or who were expected to be partners. This prompted the appellant to issue a notice of termination of the tenancy. The notice was directed and served on H.N.A. Sufei who was the principal officer of the respondent. The notice was for one month, that is, from 1.12.1994 to 30.12.1994. At almost the same time, the appellant rented the premises in issue to Bwaira Biseko.

The respondent protested the notice as well as the reallocation of the premises to Bwaira Biseko. There was no compromise. Consequently the respondent instituted the case against the appellant which led to this appeal, claiming for *inter alia,* a declaration that, it was and is still the lawful tenant over the premises in issue, and also a declaration that, the termination notice issued to Sufei and the reallocation of the suit premises to Biseko were null and void. The respondent claimed also for Shs. 10,000,000/= being compensation for inconvenience and interference caused to the respondent's business and customers following the issuing of the notice of termination of the lease agreement.

The appellant denied the claim and raised a counter claim for vacant possession and payment of Shs. 48,000/=

being unpaid rent for the months of December, 1994 and January, 1995.

The respondent was successful in respect of being declared the lawful tenant and the termination notice and reallocation to Biseko being declared null and void. The respondent succeeded also in respect of its claim for compensation to a tune of Shs. 2,500,000/=.

The appellant was dissatisfied with the decision. Hence this appeal.

Before this court the appellant is advocated for by Mr. Nyabiri, learned counsel, who had also represented the appellant at the trial. The respondent is represented by Mr. Jundu, learned counsel (as he then was) who had represented it also at the trial. There are 7 grounds of appeal.

The hearing came up before the late Kyando, J. who directed learned counsel to submit written submissions to what they obliged. He also ordered additional evidence of Biseko under ORDER XXXIX Rule 28 of the Civil Procedure Code, 1966 which was also complied with.

I have carefully considered the lengthy and well

elaborated rival submissions by learned counsel for both parties.

I will start with the first ground of appeal, that is, whether the learned trial Senior Resident Magistrate, erred when he held that there was no partnership between H.N.A. Sufei and Bwaira Biseko.

According to the evidence on record, it is apparent that Sufei and Biseko had intended to run Suka General Supplies in partnership. This is clearly borne out by Exh. P2.

But as turns of events depict, a misunderstanding between Sufei and Biseko erupted. But notwithstanding that misunderstanding, Suka General Supplies which was registered under the Business Names (Registration) Ordinance Cap 213, was not deregistered. It continued to be in existence with the partners registered thereat, be it Sufei and Biseko or Sufei and whoever was registered there. If Biseko is not registered as one of the partners and feels he has been conned by Sufei, he is free to pursue his right through the proper channel, and subject to time limitation.

I am aware this issue of partnership cropped up for determination whether the suit premises were leased to the respondent on the understanding that the respondent is a business entity owned under partnership between Sufei and Biseko. Admittedly, the preliminary process, such as the

application for allocation, would suggest so. But finally the suit premises were leased to the respondent as a business entity regardless as to who were the owners or partners. I say so because the letter of allocation Exh. P6 and the tenancy agreement Exh. P7 simply say the tenant is Suka General Supplies. There is no mention of Sufei or Biseko or anybody else. Therefore, whether Biseko was a partner in Suka General Supplies or not, is of little significance as far as the tenancy to Suka General Supplies is concerned. This was dealt with at length by the learned trial Senior Resident Magistrate when discussing the 2nd framed issue that is,

> "whether the dispute between the plaintiff (i.e. current respondent) and one Biseko in law terminated the firm (partnership).

The learned trial magistrate discussed it rightly and I have nothing materially to fault him on this.

As far as the 2nd ground of appeal is concerned, that is,

> "whether the learned trial magistrate misdirected himself in holding that the defence evidence supported the

evidence of PW1”,

this will find its answer when dealing with the other grounds of appeal.

I now move on to the 3rd ground of appeal, that is,

> “whether the learned trial Senior Resident Magistrate erred in holding that the notice dated 1.12.1994 did not terminate the tenancy agreement dated 1.8.1993 in respect of the suit premises.”

I have already held that the tenant in the tenancy agreement was the respondent Suka General Supplies. In that respect, a valid notice for termination of tenancy ought to have been addressed to the tenant Suka General Supplies. But in the instant case it was addressed to Sufei. Sufei as Sufei was not a tenant and the notice which was addressed to him had no effect and could not terminate the respondent’s tenancy. There was also no breach of the tenancy terms as contained in Exh. P7. Had it been properly addressed, there would be nothing wrong with serving it on Sufei as a Principal Officer of the respondent.

Ground No. 4 says:-

> “whether the learned trial magistrate erred in law and in fact in holding that the Regional Housing Allocation Committee did not accord natural justice to the plaintiff”

It is common ground that when the Regional Allocation Committee was attempting to resolve the misunderstanding between Sufei and Biseko and the reallocation of the suit premises to Biseko was acting as a quasi-judicial body. In that respect it was duty bound to observe the principle of natural justice of giving parties an opportunity to be heard. In the instant case, the respondent was not afforded that opportunity. The letter for attendance was not addressed to the respondent Suka General Supplies but to Sufei. The party affected was the respondent, and the letter ought to have been addressed to the respondent. It was up to the respondent to appoint as to who to attend. In that respect, there is nothing to fault the learned Magistrate’s finding on this.

The fifth ground of appeal says”:-

> “The learned trial Senior Resident Magistrate did not direct himself

> properly in holding that the notice dated 1.12.1994 caused inconvenience and interference to the respondent."

This was in respect of a compensation of Shs. 2,500,000/= which the respondent was awarded for the alleged inconvenience and interference caused to the respondent's business and customers following the issuing of the notice of termination of the lease agreement. Going through the record I did not see any piece of evidence suggesting that the notice caused inconvenience and interference to the respondent's business and customers worth Shs. 2,500,000/=. The notice was addressed to Sufei. Sufei was not the respondent.

Secondly, there is nothing suggesting that it was published or displayed in public notice boards or public places or on the wall or door of the suit premises. If Sufei on his own decided to disclose it to his customers who mistakenly thought it was addressed to the respondent, then it is not the appellant's fault.

Thirdly, there is nothing suggesting that the respondent's business dropped as a result of that notice which was not addressed to it.

In that respect, I accept the appellant's learned counsel's submission that there was no ground to support the award of

Shs. 2,500,000/=. That award is hereby quashed.

I have already covered the 6th ground of appeal when discussing the 5th ground of appeal.

Ground No. 7 says:-

> "In view of the evidence on record the respondent did not prove its case on the balance of probabilities."

In view of what I have stated above, it is apparent that save as held in the 5th and 6th grounds of appeal, the respondent otherwise proved its case to the standard required.

Going back to the 2nd ground of appeal, my view is the same as already demonstrated when discussing the issue of partnership and to whom the allocation Exh. P6 and the tenancy Exh. P7 were granted.

Finally, the respondent's learned counsel complained that he was only served with a copy of the memorandum of appeal without a copy of the decree and judgment, and that, this offended ORDER XXXIX Rule 1 (1) of the Civil Procedure

Code 1966, and that the appeal should be struck out. I think the proper cause was to have raised it as a preliminary objection if he thought it was important that much.

In conclusion, save as held in respect of the 5th and 6th grounds of appeal, the appeal is otherwise dismissed with costs.

S.N. Kaji
Judge

16.9.2005.