

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO.47 OF 1992

AHMED J. DHIRANI APPLICANT

Versus

GULAM HUSSEIN RESPONDENT

JUDGEMENT

MWAIKASU, J.

This is an appeal against the ruling of the lower court, (Mtotelela, SRM) dated 30/9/92, whereby the application by the appellant for the Respondent to show cause why he should not obey the order of that court dated 20/5/92, (Matui, PRM), to restore the applicant on the premises known as Royal Guest, was dismissed. In dismissing such application the presiding learned magistrate based his decision on the ruling of that Court (Matui, PRM) dated 11th Feb. 1991 and one dated 25/9/90 together with the judgement of this court in Misc. Civil Appeal No.3 of 1991, (Mkwawa, J.) that arose from the ruling of Matui, PRM dated 25/9/90, which appears to have upheld such ruling. That, however, was an error because what the applicant/appellant was seeking was the enforcement of such court's order (Matui, PRM) dated 20/5/92 following appellant's application for review of an earlier order of that court (Matui, PRM) dated 11/2/91 which had ordered eviction of the appellant. It is by his order dated 20/5/92 that the learned presiding magistrate (Matui PRM) ordered as follows:

"Court: It appears the Respondent misled this court into issuing the eviction order for there is no decree for vacant possession consequently I rescind the eviction order and order that the applicant be restored in the suit premises forthwith."

It is such order for which enforcement was sought, and once in his ruling dated 30/9/92, the learned presiding magistrate (Mtotelela, SRM) ought to have considered and based his ruling. It appears that the learned magistrate did misdirect himself when he did, due to lack of clarity when counsel for the Applicant presented such application. For it is clear from the record of the lower court that apart from making reference to the order of Matui PRM that had rescinded the earlier eviction order

and restored the tenancy of the appellant in the suit premises, following appellant's application for review, there was no mention of the date of such order.

Be as it may, I am satisfied that the complaint in the appellant's memo of appeal, as also represented before this court by Mr. Kashumbugu, counsel for the appellant, that the learned presiding Resident Magistrate (Mtolela, SRM) had erred in law in considering the decision of Matui (PRM) of 11/2/91 and 25/9/90, when what was at issue was the non-compliance of the said Matui's order of 20/5/92, which re-instated the appellant into the premises, is founded.

I accordingly allow this appeal with costs, with an order that the lower court proceed to consider the appellant's application for enforcement of such court's order dated 20/5/92 and come to an appropriate order. in accordance with the law.

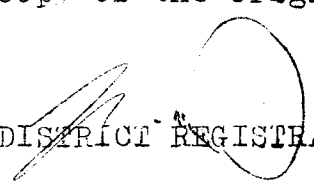
R.J. Mwaikasu
Judge

Dated 6/11/95
At Dar es Salaam.

Order: Judgment to be notified and read over to the parties by the District Registrar, High Court, DSM Zone, at the earliest convenient date.

R.J. Mwaikasu
Judge
7/11/95

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


DISTRICT REGISTRAR