IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM.

MISC CIVIL APPEAL NO. 6 OF 94

FATUMA ALLY.....APPELLANT

VERSUS

ABOUD SALIM AL-AMRY.....RESPONDENT.

JUDGEMENT.

RUBESHI, J.

This is an appeal filed by FATUMA ALLY against the decision of the Housing Appeals Tribunal delivered on 24.3.94 on the following grounds:

that the learned Deputy Chairman erred in law and infact in reducing the rent fixed by the trial Tribunal from Shs. 10,000/- per month to Shs 2,000/- which was assessed way back in 1988

that the Deputy Chairman demonstrated manifest bias and prejudice against the appellant and in favour of the Respondent/tenant by even rejecting the tenant's offer to pay Shs 6,000/- per month

that the Deputy Chairman misdirected himself in ignoring the fact that the trial tribunal physically inspected the suit premises. Which is commerial cum residential, i.e, shop premises with three bedrooms with the usual facilities ...and that the rent fixed of ten thousand was not excessive

The Deputy Chairman, sitting as an appellate Tribunal failed to warn himself of the danger of interfering with the Trial Tribunal findings of fact which were not so unreasonable as to require his intervention

the Deputy Chairman misdirected himself in ignoring the fact that the sum of Shs. 2,000/- rent as fixed in 1988 when the purchasing power of the shilling was stronger as it is in 1994.....

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the Deputy Chairman failed to give cogent reasons for rejecting the trial Tribunal's finding of fact that the appellant/laudlady did not give her consent to the renovation of the suit premises nor did she agree to bear the costs

the Deputy Chairman failed to give serious consideration to the fact that the said renovations included 'iron doors' and 'grilled door' at the reargate which were comparatively expensive and were only needed by Respondent tenant to protect his valuable possessious i.e, costly appliances,shop goods and expensive funiture.. An ordinary tenant would have been satisfied with an ordinary wooden door

the Deputy Chairman, misdirected himself in failing to take into account the fact that the renovations which cost Shs. 120,540/- in 1992 when the purchasing power of the shilling was weaker than it was in 1988, when the rent of shs. 2,000/- was fixed, would result in the Respondent/tenant occupying the suit premises for over 5 years without paying any rent, if the landlady appellant is ordered to refund these costs. Appellant landlady would not have put herself in such a difficult situation

the learned Deputy Chairman erred in law and in fact in reversing the trial Tribunal's order as to who should bear the cost of the said renovations. He failed to realise, with due respect that, after occupying the suit premises for five years, as stated herein in para 8, without paying any rent, the situation would be absurd, if out of fair wear and tear, the respondent/lenant decides to 'repeat the exercise'... again without the appellant/landlady's consent Respondent/tenant according to learned Deputy Chairman's chain of reasoning would be entitled to another five years occupation of the suit premises without paying any rent

the decision of the Deputy Chairman is not supported by evidence as a whole, and if left to stand, would undoubtedly result in a miscarriage of justice

In arguing the appeal, Mr. Muganda appearing for the appellant, combined grounds i, 2, and 3 and subumitted that the trial Tribunal after visiting the suit premises fixed the standard rent at Shs. 10,000/- and the respondent/tenant had agreed to pay Shs. 6,000/- per month. Mr. Muganda

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further submitted that the Appeals Tribunal erred in law in rejecting the assessment of rent carried out which was reasonable and justifiable in the circumstances of the case. That the Deputy Chairman erred in law in reversing it.

As for grounds no 4 and 5 Mr. Muganda submitted that the Deputy Chairman of the Tribunal erred in law in interfering with the trial Tribunal's finding of fact.

On grounds 6,7 and 8 Mr. Muganda submitted that the Deputy Chairman erred in not accepting as a fact, the fact that the appellant never gave the Respondent consent to carry out the renovations and this entitled to a refund. That Section 35 of the Rent Restriction Act places a duty on the Landlord "to keep and maintain premises in state of good structural repair" Therefpre argued Mr. Muganda the appellant had no duty to instal iron grills and other repairs the respondent deemed appropriate for the suit premises. That the renovations were carried out to secure the business of the respondent and were carried out without the permission of the appellant. He finally submitted that the appeals tribunal erred in holding that the repairs were the duty of the appellant and that the respondent be compensated.

Miss Mtulia, from the Tanzania Legal Corporation, appeared for the respondent countered as followes.

In responding to grounds 1, 2, and 3 Miss Mtulia submitted that in accordance to Section 12 (1) (b) of the Rent Restriction Act, 1984, the Regional Housing Tribunal is empowered to determine or assess from time to time the standard rent, either suo motu or through an application. That in this instance neither party applied for re-assessment of the standard rent while the appellant was increasing rent illegally. The respondent further argued that the trial Tribunal acted ultra vires in setting the standard rent without basing their decision on the findings of the valuation survey on the material conditions of the premisess.

Miss Mtulia for the Respondent rejected the contention that there was anybias in favour of the respondent as the landlord cannot increase rent - the power to do so is vested in the Regional Housing Tribunal. She

She submitted that the Tribunal's decision was just and fair after considering the relevant law and evaluating the nature of the premises. That the Appeals Tribunal can interfere in the findings of the trial tribunal as per Section 42 of the Rent Restriction Act and took into account the rate of inflation.

Miss Mtulia argued grounds 6,7,8 and 9 together by submitting that the appellant had actually agreed with the respondent to refund the costs of renovations carried out since she could not afford to carry out the renovations herself. That the premises being for residential cum commercial in the Kariakoo area, it was necessary that such precaution be taken toinstal the grill gates. That in 1988 the security of the area was not as bad as in 1994 and the appellant/landlady as a prudent landlady should indeed keep the premises in accordance with the modern trends. And that it was for her benefit as well as the tenant and it is in interest of Eqully that the tenant be refunded his money where the appellant out of any reason has failed to fulfil her legal obligations.

In conclusion, Miss Mtulia submitted that the decision of the Regional Housing Tribunal failed to provide clear grounds for its decision and was not supported by evidence and therefore the decision of the Appeals Tribunal be upheld.

I have considered the arguments put forward by counsels in support of their clients cases. I propose to deal with grounds 1, 2 & 3 first. The law, Section 12 (1)(b) of the Rent Restruction Act 1984 empowers the Regional Housing Tribunal to determine or assess standard rent either through an application or in its own volition. In this particular case there was no application to that effect and the Regional Housing Tribunal after visiting the suit premises went ahead to fix a Shs.10,000/= rent per month without proper update valuation being done on the premises. The figure of Shs.10,000/= was proposed by the Tribunal as sufficient [illegible]

to "meet the justice of the case." This in my view, was speculative and arbitrary. As correctly stated, in my view, by the appellate tribunal, the issue before the Regional Housing Tribunal was not on assessment of rent. The fact that the respondent then appellant was prepared to pay Shs.6,000/= rent per month that to me was a mere counter offer in respouse to the proposal of Shs.10,000/=. The Appellate Tribunal acted correctly in not endorsing the Shs.10,000/= per month rent, which assessment was not backed up by a valuation survey. There was therefore no bias in that regard.

As regards grounds 4 and 5. The appellate tribunal did not say that the Shs.2,000/= rent p.m fixed in 1988 was the correct valuation rent for the premises. My understanding of that judgement is that since the 1988 rent was fixed, no application for re-assessment of the rent has been made and until that is done the 1988 rent of Shs.2,000/= would continue to hold. Indeed, the Shs.2,000/= rent for the suit premises appears to be on the lower side but the proper procedure must be adhered when matters of re-assessment of rent are at hand; vis section 17 (6) to (9) of the Rent Restriction Act.

On renovations and refund grounds 6, 7, & 8. I find myself inclined to agree with the appellate tribunal that some of the renovations carried out by the respondent cannot be properly termed repairs. Indeed they have now become part and parcel of suit the premises such that if the respondent tenant were to vacate, he would not remove or detach any of the fixtures and renovation materials. In that event I feel it is only fair that the appellant refunds the expended sum of Shs.120,540/= to the respondent. The appellant may not have expressly consented to the renovations being carried out but equally I think she stands to gain from the same, and I doubt whether she is prepared as of now to have the fixtures detatched.

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All said and done, I find the judgment of the appellate tribunal in line both in fact and in law and I cannot fault it. I uphold it and dismiss the appeal with costs.

A. G. BUBESHI
JUDGE
18/3/96

Delivered to parties:
Miss Mtulia for Respondent
also help for Muganda
for appealant.