

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

CIVIL APPEAL NO.131 OF 1999

TINO R. SEMPENBA APPELLANT
VERSUS
C. M. TEMBARESPONDENT

J U D G M E N T

LUANDA, J:

The Appellant in this appeal one TINO R. SEMPENBA is appealing against the decision of the Housing Appeals Tribunal. In its decision the Housing Appeals Tribunal upheld the finding of the Dar es Salaam Regional Housing Tribunal in favour of C. M. Temba (hereinafter referred to as the Respondent) in that the Appellant to vacate the suit premise situated at Kimara Matangini; that he should pay TShs.226,000/= being arrears of rent from November, 1995 to November, 1997; that he should pay water and electricity bills in the sum of TShs.9,800/= and TShs.79,505/55 respectively plus costs.

In his memorandum of appeal the Appellant through the services of ^Mr. Mkongwa, Learned Counsel raised four grounds, namely.

- (1) That the counsel for the Appellant abandoned key grounds of appeal in grounds No.2, 4, 6 and 7 without permission or consultations with the Appellant.
- (2) Had the Learned Honourable Chairman considered grounds 2, 4, 6 and 7 in the memorandum abandoned by the Appellant's advocate it would have not arrived at the judgment as it did.
- (3) The Learned Honourable Chairman erred in law by making a decision that the

Appellant should pay electricity and water bills while the Respondent had not pleaded them and they do not form part of the judgment of the Regional Housing Tribunal.

- (4) The Learned Honourable Chairman erred in law by not taking into consideration the fact that the Respondent raised rent without following the proper procedure as laid down in the Rent Restriction Act, 1984.

Mr. Lyasenga, Learned Counsel who represented the Respondent supported the finding of both the Trial Dar es Salaam Housing Tribunal and the Housing Appeals Tribunal.

In a nutshell the background of the matter is to the following effect:-

The Respondent is the owner of the house situated at Kimara Matangini. He rented the house to several tenants, inter alia, the Appellant.

It is the finding of the trial Tribunal that the Appellant was not in good terms neither with his Landlord the Respondent nor his colleague tenants. Instance were given that the Appellant was not paying rents as and when they are due. He was quarrelling with his colleague tenants several times. Having satisfied that the allegations were established the Trial Tribunal ordered the Appellant to vacate the suit premises, pay arrears of rent, pay electricity and water bills. The Respondent was also condemned to pay costs. Dissatisfied with that finding, the Appellant appealed to the Housing Appeals Tribunal. The Housing Appeals Tribunal dismissed the appeal, hence this appeal. I propose to deal with the first and second ground together. These two deals with abandonment of some grounds namely 2, 4, 6, and 7 by

an advocate at the Housing Appeals Tribunal.

Mr. Mkongwa submitted that the abandonment was done without the consent of the Appellant. He went on to say that that weakened the appeal. Mr. Lyasenga strongly objected saying the Housing Appeals Tribunal had already decided the matter.

Let me state from the outset that these grounds have no merit at all. The advocate for the Appellant one Mr. Jundu voluntarily abandoned the mentioned grounds. And Mr. Jundu was representing the Appellant. If Mr. Jundu did it without his consent and he feels it was owing to the abandonment of those grounds and lost the appeal in the Housing Appeals Tribunal, the proper course to take is either to sue him in a court of law or forward a complaint to the Advocates committee for disciplinary action. These cannot be grounds of appeal. The two grounds, therefore are devoid of merits.

I now turn to the third ground. Mr. Mkongwa submitted that electricity and water bills were not part of the pleadings. He went on to say any other relief goes with rent and not otherwise. Mr. Lyasenga supported the finding. He said payment of electricity and water bills is part and parcel of the tenancy agreement.

I have gone through the record, indeed the electricity and water bills were not pleaded in the application. Not only that, it was not made as one of the issues. In upholding the finding of the Trial Housing Tribunal, the Housing Appeals Tribunal stated, I quote:-

"As was submitted by Mr. Jundu we agree that this non payment of bills for the said utilities was not pleaded in the pleadings but that

it cropped up during the hearing of the case. However, we feel that may not be applied as a technicality to deny the respondent Landlord of what was due while other tenants had paid for those utilities. The Appellant cannot be left to have enjoyed the use of those utilities without paying for them."

(underscoring mine)

But in the record the Respondent didnot say anything regrading this issue. He did not say how much the Appellant was required to pay. The only available version on record is that of Damian Lubuva (PW3) when he was answering a question posed by Mrs. Mwakibinga one of the Trial Tribunal member. PW3 said, I quote:-

"We wrote the letter because he is not paying the bills on ground that he has a case."

The record doesnot indicate how mus he was required to pay and for which period. The issue is whether that amount to hearing of the issue of utilities.

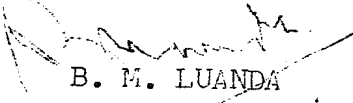
As a general rule relief not founded on the pleadings will not be given (see Gandy v Caspair (1995) EACA 1 EACA 139) This is so because the whole purpose of pleadings are to give the parties to a case a fair notice of the case that it has to meet and also to arrive at the issues to be determined by the court or the tribunal as in this case.

I am very much aware that a court of law or tribunal, may base its decision on unpleaded issue if it appears from the ~~course~~ followed at the trial the issue has been left to the court for decision (see ODD JOBS v MUBIA (1970) EA 476.) But in the instant case the issue was neither pleaded nor framed. Further it was not contested at all. I am wondering where the Trial Tribunal got the figure. That to my view does not amount to hearing as held by the Housing Appeals Tribunal. The rule in ODD JOBS case supra which is an exception to the general rule to pleadings is not applicable in this case. It is my considered view that to decide an issue which is unpleaded and yet uncontested causes injustice on the party of the defendant. It amounts to condemning someone for a matter which is not aware. This is not proper.

With respect to the learned Housing Appeals Tribunal Chairman he is wrong in saying the issue of utilities was contested. The Respondent himself is to blame in not including the matter in the application. So loss should fall where it lies. I find no merit on this ground.

Finally is failure to follow the procedure in raising rent. Mr. Mkongwa did not say what the procedure was. He simply cited the Rent Restriction Act 1984. But the Appellant was all along paying the alleged increase rent. If he thought the procedure in increasing rent was not followed, the course open for him was to file an application in the Dar es Salaam Regional Housing Tribunal for Assessment. This ground is also devoid of merits.

In the final analysis, therefore save ground number three, the appeal is dismissed with costs.



B. M. LUANDA

JUDGE

19/4/2001

Judgement read over in the presence of Mr. Ntimizi, Advocate for Mr. Mkongwa, and the Respondent in person.

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B. M. LUANDA

JUDGE

19/4/2001