

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

CIVIL CASE NO. 45 OF 2001

VALERIANI ARISENI SHIRIMA PLAINTIFF

- Versus -

HADIJA ALLY DAME DEFENDANT

R U L I N G

MSOFFE, J.

A Notice of objection has been taken at the instance of the defendant. In the Notice four points are canvassed thus:-

1. The suit is bad in law as it is instituted in the Court which has no jurisdiction to entertain landlord and tenant disputes;
2. The suit is bad in law for lack of Court's jurisdiction as it involves a land dispute (i.e. refund for costs of building a house - a house is land) thus contravening section 167 of the Land Act 1999 or Section 62 of the Village Land Act 1999.
3. The suit is bad in law for lack of proper verification, that is, for:-
 - (i) not specifying by reference to the numbered paragraph of a plaint, what is verified of the person's knowledge and what is verified of upon information believed to be true (contravenes Order VI r. 15 (2) of the CPC 1966).

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(ii) not stating the date on which it was signed
(contravening Order VI r. 15 (3) of the CPC 1966)

4. ~~The~~ Plaintiff is "bad in law" as it contravenes Order VII rule 11 (a) and (c) as it does not legally disclose any cause of action against the defendant. That is to say, the lease agreement titled "MKATABA WA UPANGAJI" upon which the plaintiff is based WAS NOT REGISTERED under Cap 334. Thus cannot legally acted upon by the Court.

In support of the first point of objection, Mr. Jundu learned advocate for the defendant, has basically urged that the dispute in the main suit is based on a landlord and tenant relationship and thus triable by The Regional Housing Tribunal by virtue of Section 3 and 12 of The Rent Restriction Act, 1984. On the other hand, Mr. Lundu learned advocate for the plaintiff, has taken the view that what is at stake in the main suit is not a landlord and tenant dispute. Rather, according to him, the suit is based on contract to build a house as averred specifically under paragraphs 3 and 7 of the plaint.

A look at the plaint, specifically paragraphs 3, 4, 5, 6 and 9, will show that what is at stake in the main suit is breach of a lease agreement. It is clear that there was a lease agreement that was to come into force after the plaintiff built business premises on the defendant's land. It is no wonder, therefore, that in the so called "MKATABA WA UJENZI" there are paragraphs like:-

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"1. Mwenye kiwanja amekubali kumruhusu mjenzi kujenga chumba kimoja cha kufanyia biashara katika eneo/kiwanja cha nyumba yake iliyotajwa hapa juu na ujenzi utakapokamilika utafanyika mkataba wa upangaji kwa kodi ya Shs. 20,000/= kwa mwezi ambapo Shs. 10,000/= zitakuwa zikilipwa taslimu na salio la Shs. 10,000/= zitapunguza gharama ambazo mjenzi atakuwa ameingia kutokana na ujenzi huo,"

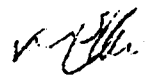
and also:- "4. Mjenzi mwenyewe ndiye atakayekuwa na haki ya kupangiwa chumba hiki mara kitakapokamilika na endapo pakitokea kutokuelewana kwa kiasi kikubwa na ilazimike chumba hicho kupangiwa mtu mwingine basi itakuwa ni lazima kwa mjenzi kufidiwa gharama zake zote na hasara atakazokuwa amekwisha kuingia kutokana na ujenzi huu kwanza".

It is no wonder also that even a close look at the MKATABA WA UPANGAJI dated 10/1/1997 will show that this was nothing but a landlord/tenant relationship. If so, this is where I will agree with Mr. Jundu that the best venue for a matter of this nature will be the Housing Tribunal. I will hasten to say, however, that this does not in any way mean that this Court's jurisdiction is completely ousted to deal with a dispute of the above nature, but in the light of the Court of Appeal decision in the case of Attorney General v Lohay Akonaay and Another 0995 TLR 80, the Housing Tribunal would best be suited to deal with it. In Akonaay's case

it was observed that where the legislature has established a special forum for dealing with a specific matter the civil courts will not normally entertain the matter "unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum".

In view of the position I have taken on the above point of objection I do not have to deal with the others.


I will, and I hereby do, sustain the defendant on the first point of objection and accordingly strike out the suit with costs.


J. H. MSOFFE

JUDGE

29/10/2002

Delivered this 26th day of October, 2002 in the presence of Mr. Jundu for the plaintiff and Mr. Stola holding the brief of Mr. Jundu for the Defendant.


J. H. MSOFFE

JUDGE

29/10/2002

JHM/jn.