

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 46 OF 2004

AMIRALI M. GULAMALI)
PRATAP G. RUMAIYA)..... APPELLANTS

VERSUS

MOHAMED AMEIR AL-HINAI RESPONDENT

RULING

Oriyo, J.

The appeal originates from a decision of the Housing Appeals Tribunal (HAT) delivered on 13/2/2004. It was promptly filed in this court on 1/3/2004. This court is being asked to set aside the decision of HAT and order a fresh trial of the original application at the Regional Housing Tribunal (RHT).

In view of the establishment and jurisdiction of a new hierarchy of courts over land disputes I felt it wise to first determine whether this court is vested with jurisdiction to determine the appeal before me. Since parties are represented by counsel, I thought it would be prudent to hear their views on the matter. In that connection, parties have made their submissions in writing.

The appellants are represented by a firm of advocates, M/S Marando, Mnyele & Co. Advocates and the respondent is represented by another firm of advocates, M/S Kato, Kashonda & Mnguto Advocates.

The current legal perspective was submitted by the appellants in that THE COURTS (LAND DISPUTES SETTLEMENT) ACT NO. 2 OF 2002 (Cap. 216, Revised Edition) became operational on 1/10/2003. It was stated that although the Act abolished some land Tribunals including RHT and HAT; there is a saving provision which allows the abolished tribunals to continue to transact business pending at the commencement date. Similarly matters pending in the general registry of this court were allowed to proceed. However, the appellants submitted that there is a ***lacuna*** in the law because it does not provide for the fate of parties aggrieved by decisions of RHT and HAT made subsequent to the commencement date. It is the appellants views that the legislature must have intended that appeals from such decisions be handled in the same manner as if Act No. 2/2002 above had not become operational. It is further submitted that to hold otherwise will lead to serious injustices to affected litigants. The appellants ended their submissions by praying that this court upholds that this appeal is properly before the court and that this court has jurisdiction to determine it.

The respondent concurred with the appellants in a one line submission as follows:

"The respondent concurs with the appellant and submits that the appeal is properly before the court and pray that the Honourable Court hold so."

The legal perspective is as submitted by the appellants. Perhaps just to add to it that the saving provision, SECTION 54 of the Courts Act, provides for a period of 2 years limitation to finalise the pending proceedings or appeals. SECTION 54 (3) states:

"All proceedings or appeals under this section shall be concluded within the period of two years from the date of commencement of this Act."

For those proceedings and/or appeals which remain not yet concluded within 2 years; the law takes care of it under the provisions of SECTION 54 (4) as follows:-

"Where the High Court or the Magistrate's Court fails to hear and conclude the proceedings or appeals within the period specified in subsection (3), the Chief Justice may, upon application by the Registrar extend the

time to such other time as he may determine."

A similar provision covers proceedings and appeals which remain not concluded in the tribunals; as the case at hand; under SECTION 54 (5) of the Act.

Let me hasten to state here that this appeal is not covered by either of the above provisions of Section 54 because it was not "pending" in this court on the commencement date.

It is trite law that an appeal is a creature of statute. There must be a law which confers this court with jurisdiction over this appeal which was filed after the date of commencement of Act 2/2002. It was not pending on the commencement date. As correctly submitted by the appellants; there is no such law, for the time being; there is a ***lacuna***.

In the absence of any legislation enabling appeals such as the one at hand to be determined by this court; aid is sought in the intention of the legislature. After providing for a two year period to finalise pending matters, was it the legislators intention to forsake those aggrieved by decisions made within those two years? On the contrary, the provisions of SECTION 54, in particular subsections (4) and (5); is testimony that the legislators intended to ensure that

each litigant was afforded an opportunity within 2 years to finalise the litigation. Subsections (4) and (5) of Section 54 further provide that if the pending litigation is not finalized within two years; the specified authorities are empowered to extend such time. It is obvious from the provisions of Act 2/2002, in particular the provisions of SECTION 54; that it was the intention of the legislature not to leave any aggrieved litigant forsaken and without remedy during the transitional period.

For the reasons stated, I find that this court has jurisdiction to determine the appeal before it.

Accordingly ordered.

K.K. Oriyo

JUDGE

6/10/2005

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