

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

P.C. CIVIL APPEAL NO. 117 OF 2004

*(From the Decision of the District Court of Bagamoyo Civil
Revision No. 2 of 2004 E. H. Malekela, PDM)*

IBRAHIM MOHAMEDAPPELLANT

VERSUS

AZIZI RAISRESPONDENT

J U D G M E N T

A.Shangwa,J.

This is an appeal against the decision of the District Court of Bagamoyo in Civil Revision No.2 of 2004 in which the said Court dismissed the appellant's application for revision of the decision of the Primary Court of Mwambao in Civil Case No.22 of 2003 in which the said Court ordered that the appellant should vacate the Respondent's house.

There are four grounds of appeal that have been raised by the appellant. These are as follows :

1. That having found as a fact that there was no prayer for eviction in the original suit, the District Court erred in law in holding that the eviction of the appellant was proper in law.
2. That, having evicted the appellant and exercised distress on the appellant the District Magistrate erred in law in holding that at this moment the District Court can do nothing in regard to the unlawful orders.
3. That, the District Court erred in law in holding by way of obiter that the Primary Court has jurisdiction to hear and determine matters between landlord and tenant in a rent restriction area.
4. That, having found as a fact that the appellant was staying on humanitarian grounds, the District Magistrate grossly erred in law in allowing the

claim of Tshs 54,000/= being electricity charges consumed by the appellant.

Mr. Mpoki, Advocate who represented the appellant in this case prayed this Court to allow this appeal and quash the judgment and set aside the orders of the lower Courts. On the other side, Mr. Mwakajinga , Advocate who represented the respondent prayed this Court to dismiss this appeal with costs for lack of merit.

In the process of resolving this appeal, I have examined the Primary Court's record and I have found that what the respondent Azizi Rais was claiming from the appellant Ibrahim Mohamed is shs 49,000/= being charges for electricity consumed by the appellant who was residing in his house at Bagamoyo and a claim of shs 5,000/= which he paid as fine for late payment of the said charges.

It appears from the record of the Primary Court that on 3/4/2003, the appellant admitted the respondent's claim and promised to refund him a total of shs 54,000/= by 28/5/2003 and to vacate his house on the said date. Thereafter, the trial Primary Court Magistrate H. A. Chigollo, ordered that payment should be made in Court on 30/4/2003. Apparently, the appellant did not abide to his promise and did not comply to the Court's order.

On 2/6/2003, the respondent went to the Primary Court and complained that the appellant had not vacated his house. On that date, the coram shows that the appellant was present in court and that he told the Court that he had not yet secured another house to live in. The Court was not satisfied with his answer. It ordered that he should give vacant possession of the respondent's house by 9/6/2003 failure to which he will be evicted.

It appears that the appellant did not comply with the Primary Court's order. On 18/7/2003, the Primary Court Magistrate wrote a letter to the division secretary of Dunda division ordering him to evict the appellant from the respondent's house. The said secretary complied with that order and evicted him from the respondent's house.

Let me now consider the merits of this appeal. First of all, I wish to say that the District Court did not hold that the eviction of the appellant by the Primary Court was proper. What it held is that the Primary Court's order to evict the defendant is a nullity as it had not been pleaded by the respondent. The appellant is therefore wrong in faulting the District Court for something that it had not done. I find therefore that the first ground of appeal has no basis.

However, I do not think that the District Court was correct in stating that the Primary Court's order to evict the

appellant is a nullity. This order was properly issued by the Primary Court against the appellant for his failure to vacate the respondent's house after he had promised to do so by 28/5/2003.

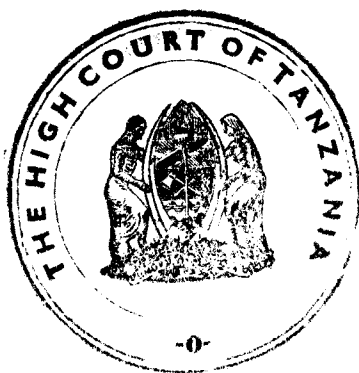
Secondly, I do not think that the District Court erred in holding that as the appellant had already vacated from the respondent's house there was nothing to be revised in the Primary Court's decision. Indeed, there was nothing to be revised in the said decision . It is common knowledge that the Primary Court's order to evict the appellant is an appealable order. Instead of appealing against the said order, the appellant applied for its revision by the District Court. I find that it was wrong for him to apply for revision of an order which is appealable. Thus, the second ground has no basis as well.

Thirdly, there is no evidence to prove that the relationship between the respondent and the appellant was that of landlord and tenant. The respondent was not claiming for rent or vacant possession against the appellant as his landlord. He was simply claiming for electricity charges from the appellant for the electricity he consumed while residing in his house. This means therefore that the question as to whether the Primary Court had jurisdiction to entertain the matter in a rent restriction area does not arise. I therefore find that the third ground of appeal has no merit.

Fourthly and lastly, the District Court did not err in allowing the claim of shs 54,000/= arising from the electricity charges and penalty due to the respondent because the appellant admitted that claim and even promised as to when he will pay it. It is on record that he breached his promise. It is quite surprising that despite the fact that he was residing in the respondent's house on

humanitarian grounds as pointed out by Mr. Mpoki for the appellant on the fourth ground of appeal, he did not bother to settle the claim for electricity charges of electricity consumed by him while he was residing there. Thus, the fourth ground of appeal has no merit as well.

Finally, I agree with Mr. Mwakajinga for the respondent that this appeal has no merit and I hereby dismiss it with costs.



A. Shangwa
A. Shangwa, J.

24/5/2006.

Delivered in open Court this 24th day of May, 2006.

A. Shangwa
A. Shangwa,

JUDGE

24/5/2006.