

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 71 OF 2005

(Originating from Housing Appeals Tribunal of Tanzania in Housing
Appeal No. 46 of 2004)

**THE REGISTERED TRUSTEES OF
MANYEMA MOSQUE APPELLANT**

VERSUS

AFRICARRIERS LTD RESPONDENT

J U D G M E N T

Shangwa, J.

In this case, the Appellants who are the Registered Trustees of Manyema Mosque are appealing against the Order of the Chairman of the Housing Appeals Tribunal Mr. M.G.C. Kajeri dated 11/1/2005 in Housing Appeal Case No. 46 of 2004 in which their Appeal against the decision of the Regional Housing Tribunal arising from Application No. 253 of 2001 was dismissed summarily. The Appellants raised

one ground of appeal namely that the Chairman of the Housing Appeals Tribunal erred in law when he failed to afford them an opportunity to be heard before dismissing their appeal summarily.

It was contended by learned counsel for the Appellants Mr. Maige that in dismissing the Appellants Appeal summarily, the said chairman wrongly applied the Provision of Rule 24 (1) of the Housing (Appeals) Rules, 1987 as an alternative to hearing. He said that it was not proper for the said chairman to go into the merits of the four grounds of appeal and dismiss it without hearing the Appellants, and that by so doing, the Appellants were denied their right to be heard.

In the alternative, counsel for the Appellants contended that Rule 24 (1) of the Housing Appeals Tribunal (Appeals) Rules, 1987 is violative of Article 13 of the Constitution of the United Republic of Tanzania which provides for the right

to be heard. For this reason, he called upon the court to hold that Rule 24 (1) of the Housing Appeals Tribunal (Appeals) Rules, 1987 is null and void. He prayed this court to set aside the decision of the Housing Appeals Tribunal and suggested that since both the Regional Housing Tribunal and the Housing Appeals Tribunal are no longer in existence, this court may do what the Housing Appeals Tribunal would do, that is, to hear and determine the appeal which was rejected by it.

In reply, learned counsel for the Respondent Mr. Mustafa Chandoo submitted that in dismissing the appellant's appeal summarily, the chairman of the Housing Appeals Tribunal exercised his powers conferred on him by law. He contended that as the said Chairman dismissed the Appellants' appeal summarily under powers conferred on him by law, it cannot be said that he erred in law. In

support of his contention he referred to Rule 24 (1) of the Housing Appeals Tribunal (Appeals) Rules, 1987.

Furthermore, counsel for the Respondent submitted that the Appellants' prayer to declare Rule 24 as null and void for being violative of Article 13 of the Constitution of the United Republic of Tanzania is untenable as a single judge has no jurisdiction to declare the provision of any law null and void even if it infringes the Basic Rights. He said that in cases where Basic Rights have been infringed, the aggrieved party has to file a petition under the Basic Rights and Duties Enforcement Act, 1994 [Cap. 3 R.E. 2002] and the matter will be heard before a bench of three judges.

It was also submitted by counsel for the Respondent that this court cannot step into the shoes of the Housing Appeals Tribunal and determine this appeal as prayed by the Appellants because there are no submissions that were made by them in respect of their grounds of appeal.

Personally, I have read the Order of the Housing Appeals Tribunal in which the Appellants' appeal was dismissed summarily and I have found it to be unjustifiable. At page one of his decision, the chairman of the Housing Appeals Tribunal made the following observation and I quote: **"From my reading of the pleadings, the evidence from both parties, both the judgment and decree on the one hand and the four grounds of Appeal on the other hand, I find that there is variance between the two".**

In my view, variance between the judgment and the grounds of appeal or between the decree and the grounds of appeal does not form the basis for dismissing the appeal summarily. This is because such variance does not affect the merits of the appeal. In cases where there is variance between the judgment and decree on the one hand and the grounds of appeal on the other hand, the best thing to be

done by the appellate body is to order for amendment of the grounds of appeal but not to dismiss the appeal summarily. An appeal may be dismissed summarily where the evidence on record is so watertight to such an extent that it cannot succeed at all.

In this case, the Chairman of the Housing Appeals Tribunal was wrong in dismissing the Appellants' appeal summarily without having been satisfied that the evidence on record is so watertight to the extent that it could not succeed even if it were to be heard. It means therefore that he dismissed the Appellant' appeal injudiciously.

Due to the fact that the Chairman of the Housing Appeals Tribunal dismissed the appeal summarily under powers conferred on him by Rule 24 (1) of the Housing Appeals Tribunal (Appeals) Rules, I agree with counsel for the Respondent that he did not commit any error in law. However, in doing so, he acted injudiciously.

On whether or not Rule 24 (1) of the Housing Appeals Tribunal (Appeals) Rules, 1987 is violative of Article 13 of the Constitution of the United Republic, I agree with counsel for the Respondent that this is not a suitable case in which the Constitutionality of Rule 24 (1) of the Housing Appeals Tribunal (Appeals) Rules 1987 can be questioned. Generally speaking, I agree with counsel for the Respondent that a single judge of the High Court has no jurisdiction to declare the provision of any law null and void and that such jurisdiction can only be exercised by a full bench of three judges of the High Court.

On whether or not this court can step into the shoes of the Housing Appeals Tribunal which is no longer in existence and determine the appeal which was lodged by the Appellants before it and dismissed summarily, I agree with counsel for the Respondent that this Court cannot do so. I agree with him because in the exercise of its appellate

jurisdiction, the powers of this court are only limited to determining the grounds of appeal lodged before it. Therefore, this court cannot constitute itself as a Housing Appeals Tribunal, hear both parties and determine the grounds of appeal which were lodged before that Tribunal. This being the position, the Appellants have to lodge their appeal to the Land Division of the High Court which is competent to deal with the same.

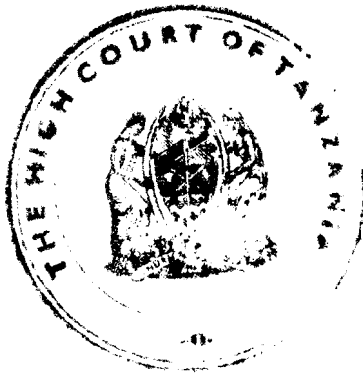
Now, as the Appellants' appeal before the Tribunal was dismissed injudiciously by the Housing Appeals Tribunal, I hereby set aside the Tribunal's order dated 11/1/2005 in which the Appellants' appeal was so dismissed. Consequently, I allow this appeal and order that each party should bear its own costs.


A. Shangwa

JUDGE

26/6/2007

Delivered in open court this 26th day of June, 2007 in the presence of Mr. Maige, Advocate for the Appellant and Mr. Adelaide for Mr. Chandoo for the Respondent.




A. Shangwa

JUDGE

26/6/2007