IN THE HIGH COURT OF TANZANIA
AT SONGEA

DC CIVIL APPEAL NO. 3 OF 2007

(FROM CIVIL CASE NO. 12/2005 OF THE RESIDENT MAGISTRATE COURT AT SONGEA)

NIA NJEMA FOUNDATION .....APPELLANT

VERSUS

CHAIRMAN MAHANJE SACCOS LTD.....RESPONDENT

8/11/2007 HEARING CONCLUDEN
18/3/2008 JUDGMENT DELIVERED

JUDGMENT

L.M.K. UZIA,J.

The appellant, Nia Njema Foundation was dissatisfied with the decision of the Resident Magistrates of Songea, at Songea, for that reason the appeal was filed to this court.

The grounds of appeal are six, and are hereby summarized as follow:-

1. That the learned Trial Magistrate erred in law and in fact by holding that the respondent did not destroy the items of the appellant whilst the evidence adduced by the appellant before the court sufficiently proved that

the respondent destroyed their items the act amounted to trespass to their properties.

2. That the learned Trial Magistrate erred in law and in fact by failing to consider the fact that the Defendant issued 7 days notice to the appellant to vacate the building and that before the said 7 days notice could expire, the Respondent authorized renovation of the building and in due course they destroyed the appellants properties.

3. That the learned Trial Magistrates erred in law and in fact when he failed to consider the fact that seven (7) days notice issued by the Respondent to the appellant was not a valid notice recognized by the law which was supposed to be issued to the letter.

4. That the learned Trial Magistrate erred in law and in fact by holding that the appellant had no properties which he complained of being destroyed by the Respondent, simply because he failed to show to the

court the scraps of the said properties, whilst Pw3 in his affidavit testified that the remains of the destroyed properties were all taken by the person sent by the respondent on 24th/8/2005 using a motor vehicle Reg. No. TzS 7666 Model Canter which was driven by one MATINDA, hence it was impossible for the Appellant to find those scraps.

5. That the learned Trial Magistrate erred in law and in fact by rejecting the pictures and other documentary evidence which were tendered by the appellant before the court to prove the existence of the destroyed properties and how the appellant suffered damages as the donors stopped to give grants and assistance to him due to the dispute between him and the Respondent.

6. The learned Trial Magistrate denied the appellant an opportunity to bring more witnesses who would have testified and proved his case.

Before I discuss the grounds of appeal, I think it helpful to give a brief account of the facts of the case in the trial court.

The Appellant rented the house of the respondent, it was for the purpose of running a day care centre. On 9th/5/2005 the respondent served a notice of seven (7) days to vacate the house. Before the notice was expired, the respondent entered by force in the house and destroyed properties, for example, some of the beds which were used by a woman who cared for the kids were thrown out.

The donors stopped to assist the day care centre because of the problems which arose.

When cross-examined by the defence counsel about the inventory (register book) the appellant failed to produce it, instead he relied on the receipts which indicated that those items were bought from various shops.

The watchman, (Pw2) was more informed about the Items than the appellant, he mentioned among other items as

3 cupboards, boxes of chalk, excise books, counting machines, pictures, maps and manila papers.

When the appeal was fixed for hearing, both counsels opted to submit in writing, the appellant was represented by lawyer from NOLA, Mr.Waryuba learned counsel, represented the respondent.

In his submission, the appellants counsel submitted that, his client was not given time to remove his items in house before renovation. That, the house was facilitated with doors and windows and there were people who were occupying the house, those were not other than, a guardian and a cripple. That the appellant was denied an opportunity to produce receipts and other documentary evidence to prove his case.

On other hand, the Respondents Counsel submitted in court that the appellant was notified before hand that the renovation was to start, he therefore removed his items. In fact there was very little in the house because the house had no doors and

windows therefore no prudent man would risk putting items worth shs. 2,650,000/= in that house; Apart from that, the appellant failed to produce the inventory or any other document supporting his claim that there were some items in that house valued at shs.2,650,000/=, failure to prove that, the appellant failed to prove the claim to the required standard.

Having summarized the learned counsels submission, the issue before the court in this appeal is whether the respondent destroyed the appellants items.

Going by the trial court record, I am far from believing that the alleged items were in the house at that particular time, because, the appellant failed to tell the court, what items were in the house and their value, for example, there was no inventory book in which the items were listed. Apart from that, the appellant failed to mention the items in court during trial. The one who mentioned the type of items found in the house was (Pw2), the watchman. It is very difficult for any prudent

man to believe that a watchman was well versed in than the owner of the project;

It is also inconceivable that the items alleged to have been destroyed were valued at shs. 2,650,000/=, because, the items were not known from the beginning.

I also agree with the respondent's counsel on the issue of tortious act alleged to have been committed by the appellant, that there was no any tortious act which was committed by the respondent, the only issue which came for determination in the lower court was whether the respondent destroyed the appellants items; It would be unjust for this court to entertain tortious claims at this stage of the case because it would amount to resolve an issue which was not considered by the trial court.

From the foregoing, I find the decision of the trial court proper, the appeal is therefore devoid of merit, it is hereby dismissed with costs.

Judge

18/3/2008

Judgment was read in the presence of both parties.

L.M.K. UZIA

JUDGE

18/3/2008.

MMS