

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 5 OF 2018**

**JOSEPH WILLIAM.....APPELLANT**

**VERSUS**

**ANNA E. SAFFI.....RESPONDENT**

*(Arising from Civil Case No. 35 of 2016 Kinondoni Resident Magistrate's  
Court)*

**JUDGMENT**

*Date of last order: 21/05/2020*

*Date of Judgment: 30/7/2020*

**S.M. KULITA, J.**

The appellant **JOSEPH WILLIAM** who is dissatisfied with the decision of the Resident Magistrate's Court of Kinondoni lodged this appeal with three grounds of appeal as hereunder;

1. That the trial magistrate erred in law and in fact by not including in the judgment the evidence of witness number one who was also the plaintiff.
2. That the trial magistrate erred in law and fact by not awarding damages to the plaintiff due to disturbances caused by the defendant after finding that there was no landlord/tenant relationship.
3. That the trial magistrate erred in fact by not recording and/or not including in the judgment evidence of the plaintiff's witnesses.

Wherefore the appellant prays for the appeal to be allowed, the trial magistrate's decision be quashed and set aside. The appeal was argued by way of written submissions.

With regard to ground one of appeal the appellant submitted that during the hearing at the trial court the defendant (the respondent) alleged that he (appellant) was not paying rent on time. He said that the person who was mentioned as George Saffi, the administrator of estates for the said house was conversant pertaining the matters of the house rented to the appellant, he is also aware of dispute between the respondent and the appellant, but those facts were not recorded in the judgment.

With regard to the second ground of appeal the appellant submitted that the respondent severally caused disturbances to him which led him to institute a suit against her. He stated that such acts affected him in the sense that he could not fully focus in his studies. Also the fact that he consumed a lot of time attending court sessions following the suit he instituted against the respondent the magistrate arrived into the wrong decision that the appellant was not entitled to compensation for the reason that there was no tenant-landlord relationship between him and the respondent.

Arguing on the third ground the appellant submitted that the trial court did not include the evidence adduced by his witnesses to the effect that they saw the appellant's properties damaged by the respondent.

Replying to the appellant's submission with regard to the first ground the respondent submitted that the evidences of all witnesses were taken into account by the trial court in reaching to the decision which was in favour of the respondent. She submitted that the trial court's decision complies with the provisions of Order XX, Rule 4 of the Civil Procedure Code [Cap 33 RE 2002] thus the ground of appeal does not hold water.

With regard to the second ground of appeal the respondent submitted that the appellant failed to prove that there was disturbance which would attract the award of compensation by the trial court.

Replying on the third ground of appeal the respondent submitted that the trial court correctly analysed the evidence by both parties which included the same in its decision. She stated that it is the appellant's witnesses evidence which ended in favouring the respondent hence the judgment was rightly entered in his favour.

From the submissions I hereby determine grounds number one and three of appeal collectively as they are inter-related. I have gone through the evidence on record as well as the judgment of the trial court specifically at page three and four of the typed judgment. Therein I found that the trial court analyzed the testimonies of all plaintiff's witnesses including George Saffi (PW2) and Joseph Saffi (PW3) who testified for the plaintiff's case. Therefore, the appellant's submission that the trial court did not include the evidence of the said witnesses in its decision is not true. The fact that the appellant has failed to prove his allegation against the respondent does not mean that the trial court did not evaluate the evidence of the appellant's side. It should be noted that only

material facts are the ones used to be considered in analyzing evidence. The issue for this matter was whether the appellant's properties were damaged and whether the respondent was responsible. The fact that George Saffi (PW3) has not been mentioned as the administrator has nothing to do with the said issues.

With regard to the issue of awarding damages to the appellant I find the appellant has misconceived for complaining against the trial court for not awarding damages while he was a loser. As the judgment was against him the court could not award him damages.

In view of the foregoing reasons, I hereby dismiss the appeal for lack of merit. Parties to bear their own costs.



  
**S.M. KULITA**

**JUDGE**

**30/07/2020**