

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND APPEAL NO. 12 OF 2020**

(Arising from the decision of the District Land and Housing Tribunal of Geita District at Geita in Land Case No. 35 of 2018)

**SLIVESTER BUJIBU ..... APPELLANT**

**VERSUS**

**CHARLES MAEMBA ..... RESPONDENT**

**JUDGMENT**

08/07 & 31/08/2020

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal is against judgment and decree of 19/06/2017 of Geita District Land and Housing Tribunal (the DLHT) with respect to decision of Bangwe ward tribunal (the w/t) dated 23/03/2018 squary concurrent to the DLHT's whereby as against Charles Maemba (the respondent), Sylivester Bujibu (the appellant) was, as a tenant ordered; **(i)** to give vacant possession, **(ii)** to pay Shs. 231,000/ being seven (7) months' rent arrears (Shs. 33,000/= per month) **(iii)** Shs. 50,000/= being compensation for a door and Shs. 60,000/= for a table.

As rephrased, 4 grounds of appeal revolve around one point mainly:- the DLHT improperly evaluated the evidence on record.

Messrs. Mathis Mashauri and Elias Hezron learned counsel appeared for the appellant and respondent respectively.

When the appeal was called on 08/07/2020, due to global outbreak of the Corona Virus Pandemic, and both were agreed, by way of Audio Teleconferencing (0755456122 and 0767545654) respectively vide my order of 08/07/2020 the learned counsel were granted leave to argue the appeal by way of written submissions.

Having complied with the scheduling order, the learned counsel submitted thus;

Mr. Mathias Mashauri learned counsel in a nutshell he submitted that one having had on balance of probabilities not proved that the appellant was a tenant thereof, but if anything a mere licensee, the DLHT therefore erred both in law and in fact (the provisions of Section 110(1) (2) of the Evidence Act Cap 6 now R.E. 2019 and the case of **D. B. Shapriya & Co. Ltd V. Meko General Traders & Another**, Civil Appeal No. 197 of 2016 (HC) at Dar es Salaam, unreported referred much as, if at all the respondent had produced no copy of the lease agreement executed by them, written acknowledgment of receipt of the 1<sup>st</sup> six month rent alleged paid by appellant or even proof of payment of property levy by respondent. That the consequential award of Shs. 341,000/= was unfounded and unjustified therefore against weight of the evidence on record.

Mr. Elias Hezron submitted that the appeal lacked merits because in his evidence and it was supported by Masoud Maemba on the balance of probabilities the respondent had proved existence of the tenancy agreement and the rent arrears however oral the contract might be. Moreover, Mr. Hezron submitted that in essence the appellant should not have been

granted extension of time because looking at all the facts of the appeal there was not even a single point of illegality. That as long as this court (Madeha, J.) was misled, the instant appeal was time barred therefore liable to be dismissed.

The evidence on records, but very briefly it reads:-

The respondent stated that he owned six commercial rooms around and with effect from January, 2017 out of it he leased a room to the appellant for Shs. 33,000/= per month only that the latter defaulted between August - December, 2017 inclusive of the months. That he reported the case to the local chair and he served one a notice/reminder on 30/01/2018 all in vain only that the appellant denied liability as the latter he disputed the name and he had a counter claim. One Masoud Maemba supported the respondents' case. That is all.

The appellant also is on record having testified but he disputed existence of any tenancy agreement between them, but with respect to the premises only with effect from 2017/2018 indefinite licensee of the respondent until such time that the latter needed back the room much as between them, there had been no written tenancy agreement or something only that as it had transpired to the respondent that the two shared a woman it was no longer at case hence the land dispute.

The issue is whether the respondent's case was proved on the balance of probabilities. The answer is yes. Between them, there may have been no written tenancy agreement yes but as he paused and testified, on that one with effect from year 2017 the appellant and respondent may have been of

indefinite licensee and licensor relationship yes, but the alleged appellant's counter claim which fact the latter did not sufficiently counter leave alone attempt to or proof of. This court therefore is entitled to draw adverse inference that between them the parties had a contractual relationship namely a tenant and landlord. Needless to say about the door and table that the appellant is in the course alleged to have taken with him and he had it in his evidence that all the time he occupied and used a door less room.

The devoid of merits appeal is dismissed with costs. Decision and orders of the DLHT are, for avoidance of doubts upheld. It is so ordered.

  
**S. M. RUMANYIKA**

**JUDGE**

**25/08/2020**

The judgment is delivered under my hand and seal of the court in chambers this 31/08/2020 in the absence of the parties.



  
**S. M. RUMANYIKA**

**JUDGE**

**31/08/2020**