

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

LAND APPEAL NO. 54 OF 2020

(Arising from Land Application No. 309 of 2019 of the District Land and Housing
Tribunal for Mwanza dated 25th September, 2020 by Mayeye, Chair)

MARY THADEOAPPELLANT

VERSUS

JAMES KIZITO JOHN 1ST RESPONDENT

DAVID CHARLES MARWA2ND RESPONDENT

JUDGMENT

13 & 23/04/2021

RUMANYIKA, J.:

With respect to house on Plot No. 49 "O" Uhuru street Mwanza City according to an agreement with effect from 1/1 – 31/12/2019 (Exhibit "P1") rented by James Kizito John (the 1st respondent) to Mary Thadeo (the appellant) for shs. 3,000,000/= the appeal is with respect to judgment and decree dated 25/9/2020 of the District Land and Housing Tribunal for Mwanza (the DLHT) where the appellant lost the war and battle.

The 3 grounds of appeal may boil down to 2 as they revolve around points:-

1. That the DLHT chairman erroneously overlooked the assessors' opinion.
2. That having had recognizing the 1st respondent as agent of David Charles Marwa (the respondent) the DLHT chair improperly evaluated the evidence.

Messrs Mathias Mashauri and Samwel Kazenga learned counsel appeared for the appellant and 2nd respondent respectively. Basing on the DLHT's records, where as he was, by way of publication served but never appeared, equally here his appearance was dispensed with hence only with respect to him (the 1st respondent) the exparte judgment.

From the records, but in a nutshell the evidence would read as follows:-

Pw1 Mary Thadeo stated that as she desired one, and the room was available, for the period w.e.f 1st January – 31/12/2019 on such terms and conditions her and the 1st respondent they executed tenancy agreement for an annual rent of and she paid it ie. shs. 3,000,000/= (copy-exhibit "P1") as it was witnessed by one Miraji Hussein Kapalangabo muchas for some reasons the owner 2nd respondent he was away in custody at Butimba prison therefore the 1st respondent took charge as supervisor thereof only

with respect to the rented premises on 26/8/2019, son of the true owner (2nd respondent) served her a notice to give vacant possession (Exhibit "P2"). That she complained to the local authorities but in vain. That indeed on 5/9/2019 she was evicted (being locked out) and she lost gains of shs. 100,000/= daily which now she claimed plus refund of the rent and shs 240,000/= being costs of the case having had reported it to police and local WEO all in vain.

Pw2 Miraji Hussein Kapalangabo supported pw1's case essentially. According to him also having had witnessed the tenancy agreement so pw3 one Erick James at the time with respect to the disputed premises supervisor of the appellant business.

Dw1 David Charles Marwa stated that the disputed premises belonged to one Charles Marwa Warioba his father who purchased the house on 21/11/2017 from one Emmanuel Kazinja for the time being the latter being licensed it to the 1st respondent only that as the father was for some reasons away in prison and having visiting the premises from the document he Dw1 he noticed that the 1st respondent had changed title in the latter's favor and rented it. That as the 1st respondent now avoided him, accordingly he reported the case to the local authorities and served a

month notice to tenants/ occupants of the day to vacate and they complied in September, 2019 much as he had no contract whatsoever with the appellant.

Dw1 (Dw2) Charles Marwa Waryoba supported Dw1's evidence and further stated that he purchased the disputed premises in 2017 as he was led and introduced to the vendor by the 1st respondent a broker/go between now the mere licensee thereof nor did he (Dw1) consent to the appellant's purported tenancy much as the said 1st respondent could not be traced further. That is all.


The issue is not whether the 2nd respondent owned the disputed premises but rather whether, with respect to exhibit "P1" by any stretch of the imagination the latter was privy to contract. The answer is no!

The all fours of exhibit "P1" speak louder and clear. Not only the 2nd respondent he wasn't one who executed the contract, but also having had that paused, the 1st respondent executed it not for or agent thereof, but as the sole owner of the house I suppose. It is very unfortunate that it bothered not the appellant to ask for a sufficient identity much as no local leaders had witnessed the purported tenancy agreement. With respect to the house, as said by Dw1 and Dw1 cum Dw2 the 1st respondent might

have been the licensee thereof yes, but he assumed the title once a licensee always a licensee! Leave alone the allegations that quietly he had converted the house to his own name. There is no wonder he took on heels to date. I would therefore conclude it adversely that by so doing the 1st respondent just ran away avoiding consequences of his own wrongs.

Having had no basis upon which to fault the trial DLHT's findings and orders, I would, as hereby do dismiss the appeal with costs. It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE
22/04/2021

The judgment delivered under my hand and seal of the court this 23/4/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE
23/04/2021