

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB -REGISTRY

AT IRINGA

LAND CASE APPEAL NO. 38 OF 2023

(Originating from the judgment of the District Land and
Housing Tribunal for Iringa at Iringa in Application No 66 of 2023)

MICHAEL CHARLES SANGA APPELLANT

VERSUS

ANSELEM MAKINGI RESPONDENT

JUDGMENT

Date of last Order: 25/03/2024
Date of Judgement: 30/05/2024

LALTAIKA, J.

The Appellant herein **MICHAEL CHARLES SANGA** is dissatisfied with the decision of the District Land and Housing Tribunal for Iringa at Iringa (the DLHT) delivered on 26th September 2023. He has appealed to this Court by way of a Memorandum of Appeal containing the following grounds:

1. *THAT, the trial tribunal erred in law and in facts to decide in favor of the respondent based on the weak and contradictory evidence adduced by the respondent in evaluating and analyzing the evidence in records, hence reached the said decision.*
2. *THAT, the trial tribunal erred in law and fact by ignoring the evidence adduced by the Appellant herein.*
3. *THAT, the trial tribunal erred in law by entertaining the matter which was not first adjudicated by Ward Tribunal as required by the law.*

A factual backdrop necessary to connect the dots and appreciate the reasoning in this appeal is, at this earliest stage, considered imperative. The Appellant is a trained accountant and an entrepreneur in his early 30's. The Respondent, on the other hand, is a property owner in his early 60's and, for purposes of this appeal, a landlord.

The Appellant has been one of the Respondent's tenants at a facility located at the Makorongoni Area within Iringa Municipality allegedly since 2019. Nevertheless, records indicate that the landlord-and-tenant relationship between the duo has not been a smooth one. It appears each party had reported the other to the police at least once before the landlord chose the DLHT as the appropriate venue for resolving their grievances.

On the 25th of August 2023 the Respondent (then Complainant) knocked on the doors of the DLHT claiming, among other things, that the Appellant had not paid his rent to the tune of TZS 2,200,000. After a few adjournments, the parties appeared for a hearing at the DLHT on the 14th of September 2023.

Records of the DLHT show that whereas the "landlord" enjoyed legal services of Mr. Mkwata, learned Advocate, the "tenant" appeared in person, unrepresented. After the trial and having been convinced that the allegations levelled against the tenant had been proved on a balance of probabilities, the trial tribunal adjudged in favour of the landlord namely the current Respondent. It proceeded to order the Appellant to clear unpaid rent to the tune of TZS 300,000/= per month from March 2023 to the date he vacated the premises as ordered. The Appellant is strongly dissatisfied with the decision of the DLHT hence this appeal.

When the appeal was called for hearing on the 19th of February 2023, neither party had legal representation. A decision was made to argue the appeal by way of written submissions. To that end, the following scheduled was ordered: (i) Filing of the Appellant's written submission 4/3/2024. (ii)

Filing of the Respondent's reply 18/3/2024 (iii) Filing of Appellants rejoinder if any 25/3/2024 (iii) Fixing the date of judgement: 25/3/2024.

I take this opportunity to register my commendations to the parties (and their undisclosed legal aid providers/ document drafters) for complying with the court order spotlessly. The next part of this judgement is a summary of the submissions by both parties.

On the first ground of appeal, the Appellant submitted that it was his view that the trial chairperson had misdirected himself and had relied on weak and contradictory evidence that had not been properly analysed and evaluated before the decision. He pointed out that the Respondent, then (SMI), had testified that according to the lease agreement, the rent was TSH 300,000/= per month. Conversely, the Appellant's Written Statement of Defense stated that the lease agreement had a consideration of TSH 250,000/= per month. The Appellant emphasized that there was no lease agreement issued to him by the Respondent with a consideration of TSH 300,000/= per month, nor was any such agreement tendered and admitted as evidence.

The Appellant argued that since this was a lease agreement matter, it could have been proved by documentary evidence, which was not tendered. Consequently, the Appellant contended, the trial tribunal had erred in law and fact by deciding in favour of the Respondent based on weak and contradictory evidence that had not been properly evaluated and analysed.

Regarding the second ground of appeal, the Appellant argued that his evidence during the trial was not considered by the trial tribunal. He pointed out a discrepancy between his statement and that of the Respondent regarding the rent amount and payments made. The Appellant claimed that his significant evidence was not cross-examined by the Respondent during the trial, implying its acceptance. He referred to a case where the failure to cross-examine was considered as admission.

Similarly, the Appellant contended that his evidence was not considered at all by the trial tribunal, and if it had been, the tribunal would not have reached the erroneous decision. Again, he invited the court to re-evaluate and analyze his evidence, citing a previous case where such re-evaluation had been deemed necessary.

Concerning the last ground of appeal, the Appellant argued that the dispute had not been referred to the ward tribunal before being determined by the trial tribunal, as required by law. He emphasized the mandatory nature of this requirement according to the Land Dispute Courts Act, citing a precedent where this requirement had been upheld.

In conclusion, the Appellant prayed for this Court to find merit in his appeal, nullify the judgment, decree, and proceedings of the trial tribunal, and award costs.

The Respondent, on his part, responded to the Appellant's submissions as follows: Regarding the first ground of appeal, he argued that the Appellant failed to identify any contradictory evidence from the record. Without such identification, the Respondent averred, it was difficult for the tribunal to ascertain if the contradictions were substantive. Additionally, the Appellant did not specify which facts or evidence the trial tribunal misdirected itself on. Concerning the analysis and evaluation of evidence, he contended that the trial tribunal properly performed these tasks and arrived at a correct decision.

On the Appellant's claim that there was no lease agreement issued with a consideration of TSH 300,000/= per month and that no such agreement was tendered as evidence, the Respondent forcefully argued that the evidence on record indicated that the parties were landlord and tenant who typically signed a lease agreement every six months.

After the expiration of the previous contract, the Respondent claimed, the Appellant did not pay rent for another six-month term, resulting in no document being signed. He argued further that the Respondent's testimony during cross-examination confirmed this. Furthermore, the Respondent informed the Appellant of the rental price increase to TSH 300,000/= per month for the current term. The trial tribunal found the Respondent's testimony credible, as there were no contradictions or improbable evidence.

Regarding the second ground of appeal, the Respondent averred that this evidence was indeed cross-examined by the Respondent's counsel during trial. He claimed further that the Appellant's failure to produce witnesses to support his claim led the tribunal to infer that such witnesses would have contradicted his testimony.

Addressing the third ground of appeal, the Respondent contended that the dispute was indeed referred to the ward tribunal, but mediation failed, prompting the ward tribunal to inform the trial tribunal. The Respondent was in agreement with the Appellant that the purpose of the law was to encourage mediation but argued that the absence of a certificate did not invalidate the proceedings if mediation was attempted and failed.

In his rejoinder submission, the Appellant addressed various points raised by the Respondent. Firstly, the Appellant countered the Respondent's claim that he failed to identify contradictory evidence and misdirected facts from the trial tribunal's decision. The Appellant stated that he had indeed pointed out contradictory evidence and invited the Court to re-evaluate all evidence presented in the trial, emphasizing that not all the Respondent's evidence was certain. He referred to this Court's opinion that re-evaluating the evidence was necessary for the appellate court as stated in the case of **YOHANA JUMA MSEMULE VS THE REPUBLIC** CRIMINAL APPEAL NO. 89 OF 2023.

Secondly, the Appellant addressed the Respondent's assertion regarding the lease agreement process. He argued that the Respondent's testimony

lacked legal logic, as it is not standard practice for a landlord to receive rent before offering a lease agreement to a tenant. The Appellant maintained that the evidence presented was weak and contradictory.

Next, the Appellant contested the claim that he continued to conduct business on the landlord's property after the lease agreement expired. He argued that without a contract, there was no basis for such a claim, and if proven, it could only constitute trespass, not accrued rent.

The Appellant also rebutted the assertion that he was informed of changes in rent amount, stating that there was no further contact between him and the Respondent, and therefore, he could not have been informed about any changes. Furthermore, the Appellant addressed the Respondent's reliance on criminal cases, arguing that they were not relevant to the current matter, which pertained to civil disputes.

Regarding the issue of witnesses to prove payment, the Appellant argued that his own testimony should have sufficed, but it was ignored by the trial tribunal. The Appellant also disagreed with the Respondent's claim that his evidence was more substantial due to his age, stating that the standard of proof had not been met.

In response to the submission about the dispute being referred to the ward tribunal, the Appellant emphasized the need for documentation to prove such mediation efforts, citing the requirement for a certificate of non-settlement. The Appellant further disputed the adequacy of a letter from the ward tribunal as proof of mediation, arguing that without a certificate, there was no evidence of mediation. Finally, the Appellant reiterated the necessity of following procedural laws, stating that substantive justice should not override mandatory procedural requirements, citing relevant case law to support this argument.

I have dispassionately considered the rival submissions in the light of the grounds of appeal. I have also taken a keen interest in the records of the trial tribunal with the intention of re-evaluating the evidence adduced. I have no doubt that the issues raised in the matter at hand coupled with my observation of the parties when they appeared before me albeit briefly, raise legitimate concerns about the proceedings and the decision reached by the trial tribunal.

I must admit that the rather scanty proceedings and the inadequacy of the entire records made it hard for this court to decide the way forward.

Some crucial issues must be decided at the trial and a reasoned judgement/decision be provided to pave the way for either upholding the said decision or otherwise. The Court of Appeal of Tanzania (the CAT) in **Mkulima Mbagala v. Republic Crim. App. 267 of 2016** had stated as quoted below on what a reasoned judgement is made of:

*"For a judgement of any court of justice to be held to be a reasoned one, in our respectful opinion, it ought to contain an objective evaluation of the entire evidence before it...In short such an evaluation should be a **conscious process of analyzing the entire evidence dispassionately in order to form an opinion as to its quality before a formal conclusion is arrived at.**" (Emphasis mine)*

Let me say also albeit in passing that I had to adjourn the delivery of this judgement, initially scheduled for the 30th of April 2024, to this day (30th May 2024) because I thought may be the trial tribunal's records had been tampered with. I thought so because, I came across a statement in the impugned judgement of the DLHT to the effect that the appellant had breached a contract. Lo and behold! I searched everywhere in my digital files for the said contract but in vain. I told the parties herein to bear with

me as I needed additional information to make an informed decision. A month later, having perused the physical file of the trial tribunal, I have the necessary tools (and insights) to accomplish the task.

I am alive to the settled position of the law that an order for a retrial arises when the appellate court finds out that the judgment of the trial court is defective for leaving contested material issues unresolved and undecided which error or omission renders the said judgment a nullity and incapable of being upheld. See, **Stanslaus Rugaba Kasusura & Attorney General vs Phares Kabuye** [1982] T.L.R. 192. In the next paragraphs I will explain, in simple words, why I think the timeless wisdom of the erstwhile Court of Appeal for Eastern Africa in **Fatehali Manji v. Republic** [1966] E. A. 341 on reasons for ordering a retrial serves the day.

First, the discrepancies in the lease agreement terms, particularly regarding the rent amount, were left unresolved. The Appellant's assertion that no lease agreement with a consideration of TSH 300,000/= per month was issued or tendered as evidence is significant. The failure to produce such crucial documentation casts doubt on the entire judgement of the trial tribunal and makes it incapable of being implemented.

Secondly, the Appellant's argument that his evidence was not properly considered by the trial tribunal also raises concerns on whether the impugned judgement can be considered a reasoned judgement as per the case of **Mkulima Mbagala v. Republic (supra)**. The failure to adequately address the Appellant's evidence could potentially result in an erroneous decision, as argued by the Appellant.

Thirdly, regarding the issue of whether the dispute was referred to the ward tribunal as required by law, there appears to be a dispute between the parties. While the Respondent contends that mediation was attempted and failed, the Appellant disputes the adequacy of evidence presented to support this claim. At this juncture, the learned trial Chairman should have taken a pause and order the Ward Tribunal to furnish records if any rather than simply assuming a statement from the bar could be relied upon.

Premised on the above, and considering the arguments presented by both parties and the issues raised, it is prudent to order a retrial of the matter. A retrial will ensure that all relevant evidence is properly evaluated, procedural requirements are adhered to, and justice is served. By way of a recap, the

art and craft of evaluating evidence, which is not peculiar to lawyers or courts involves evaluating, among other things:

- (i) *The source of the evidence (where it comes from, who took over from who and who has tendered it in court)*
- (ii) *The nature of the evidence (whether primary or secondary)*
- (iii) *How the evidence compares with the rest of evidence in the same transaction/matter (whether there is corroboration)*
- (iv) *How current is the evidence (whether it is still valid, or another evidence makes it redundant),*
- (v) *The scope of the evidence (whether it proves a specific or a general item, direct versus circumstantial aspects)*
- (vi) *What the evidence suggests (inference)*
- (vii) *Whether the evidence is a part of common knowledge or new scientific/technological findings.*

(See generally Damaska, Mirjan **Evaluation of Evidence: Pre-Modern and Modern Approaches** (Cambridge: Cambridge University Press 2019).

In the upshot, the decision of the trial tribunal delivered, and consequential orders thereof is hereby nullified. I hereby order that Land Application No 66 of 2023 of the DLHT for Iringa be retried with the following directives: **one**, the trial tribunal should dispassionately evaluate, analyze, and consider the evidence tendered as the basis for arriving to a just

decision. **two**; the trial tribunal should write a reasoned judgement paying particular attention to brevity, clarity, and simplicity.

It is so ordered.



E.I. Laltaika
E.I. LALTAIKA
JUDGE
30.05.2024

Court

Judgement delivered under my hand and the seal of this Court this 30th day of April 2024 in the presence of both the Appellant and the Respondent.



E.I. Laltaika
E.I. LALTAIKA
JUDGE
30.04.2024

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.



E.I. Laltaika
E.I. LALTAIKA
JUDGE
30.04.2024