

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO. 46 OF 2013

*(Original from the decision of the District Land and Housing Tribunal
of Ilala, Land Application No. 126 of 2008)*

SOPHIA OMARY.....APPELLANT

VERSUS

LIGHTNESS BARUTI.....RESPONDENT

Date of the Last Order: 10/6/2014

Date of the Judgment: 5/9/2014

JUDGMENT

B.R. MUTUNGI, J.

The appellant Sophia Omary has raised three grounds of appeal as against the decision of the District Land and Housing Tribunal of Ilala. The respondent being Lightness Baruti. The grounds of appeal are as hereunder:-

1. That the honourable chairman erred in law and fact by failure to consider the evidence adduced by the appellant on the issue of construction costs compared to what was constructed on the said plot

2. That the honourable chairman erred in law and in fact by proceeding Ex-parte whereby the appellant submitted that she was never consulted in preparation of the valuation report more so her witnesses was never summoned to appear.

3. That the honourable chairman erred in law and in fact for failure to accept the appellant's evidence as the applicant

Wherefore the appellant prays for judgment and decree to the effect that the lower tribunal's decision be quashed.

As the respondent neglected to come to the appeal, the matter proceeded Ex-parte whereby the appellant submitted that she was never consulted in preparation of the valuation report more so her witnesses were never summoned to appeal.

Before I venture into the grounds of appeal let me briefly outline the history leading to the dispute.

Reading from the record it is such that sometime in 1999 the respondent and her husband entered into an agreement in which the appellant permitted the respondent to construct a single storey commercial building, comprising of 3 room, a Bar Counter, store and toilets. This construction was to take place on an open space on the appellant's Land.

Under the said agreement the respondents were to use the premises for commercial purposes and pay half of the agreed monthly rent and return the other half for recovery of the construction costs. The agreed monthly rent was Tshs. 50,000/= and the premises was occupied since May, 2001. The premises were valued at a value of 23,000,000/= in April, 2008. Upon the death of the respondent's husband the appellant alledged that the respondent had sublet the plot to other people, contrary to the agreement. The appellant prayed that the respondent should be evicted from the suit plot and pay arrears of rent. She further prayed that the tenants brought by the respondent be evicted forthwith.

Having heard the evidence from both parties the trial tribunal ruled that the application/suit filed be dismissed and the respondent to proceed with the tenancy until construction costs are recovered.

Starting with the first ground of appeal the evidence that the trial tribunal considered, was the valuation report and the evidence of PW2 and PW3. The valuation report revealed that the construction costs was Tshs. 23,000,000 and the rent paid up to April, 2009 was to a tune of 2,375,00. It follows that the construction costs were yet to be recovered. It is spelt out in the agreement that the same would seize upon full recovery of the construction costs. It follows therefore that it is not right to state that the lower tribunal did not consider the evidence adduced on the issue of construction costs.

As to the second ground of appeal I find that this ground holds no water. I say so as the valuation report was very clear and it was prepared by an expert. One wonders what the tribunal would have done considering that it does not have the valuation experts. The law allows such

professional documents to be used and relied upon in evidence. I further find that this ground also fails.

As to the last ground of appeal I find that indeed the appellant was the first applicant or complainant in this matter and the trial tribunal rejected her evidence but gave reasons. Despite this there was no occasion of injustice as the other two applicants gave evidence.

In view of the foregoing I proceed to uphold the trial tribunal judgment and decree and proceed to dismiss the appeal for lack of merits.

Right of Appeal Explained.

B.R. MUTUNGI
JUDGE
5/9/2014

Read this day of 5TH September, 2014 in presence of appellant.

B.R. MUTUNGI
JUDGE
5/9/2014

