

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 24 OF 2022**

*(Arising from the Judgment and Decree of the District Land and Housing Tribunal for Ilala District at Mwalimu House 6<sup>th</sup> Floor before Hon. M. Mgulambwa Chairman dated 20<sup>th</sup> December 2021, in Land Application No. 163 of 2017)*

**ZENGO DAUDI NZIJE ..... APPELLANT**

**VERSUS**

**FAUSTINE MSEMAKWELI ..... RESPONDENT**

**JUDGMENT**

Date of last Order: 13.06.2022

Date of Judgment: 17.06.2022

**A.Z. MGEYEKWA, J**

At the centre of controversy between the parties to this appeal is a parcel of land. The material background facts to the dispute are not difficult to comprehend. They go thus: the appellant lodged a complaint at the District Land and Housing Tribunal for Ilala in Land Application No. 162 of 2017 against the respondent. The parties had a contractual relationship; the appellant was the respondent's tenant. The appellant

complained that the respondent has breached the contract therefore he decided to lodge an application before the Tribunal seeking the Tribunal order to restrain the respondent not to evict him from the suit landed property and order parties to effect the new contract. The appellant claimed that the parties entered into a one-year contract on 1<sup>st</sup> December, 2008 and later they renewed their contract whereas the appellant constructed frames, and the costs incurred were deducted every month for 8 ½ years starting from 1<sup>st</sup> December, 2008 but he was served with a notice to vacate the premises on 30<sup>th</sup> June, 2017.

On his side, the respondent denied all the claims against him. He testified to the effect that the contract ended in 2017 and the appellant was notified that the contract came to an end. The District Land and Housing Tribunal determined the matter and decided in favour of the respondent. The appellant was ordered to vacate the suit premises and pay the rent areas to a tune of Tshs. 120,000/=.

Believing the decision of the District Land and Housing Tribunal for Ilala was not correct, the appellant lodged a petition of appeal containing three grounds of appeal as follows:-

- 1. That the trial Chairperson erred in law and facts by failing to consider the exhibits annexed to the application.*

- 2. That the trial Chairperson erred in law and fact by failing to put into consideration the appellant's losses emanated from the contract.*
- 3. That, the trial Chairperson erred in law and fact by failing to state the findings on the issues and reasons for the decision.*

When the matter was called for hearing on 20<sup>th</sup> May, 2022, the appellant enlisted the legal service of Mr. Ngasa Msuya in person and the respondent did not show appearance. The Court acceded to the appellant's proposal to have the matter disposed of by way of written submissions. The appellant filed his submission in chief on 31<sup>st</sup> May, 2022. The respondent filed his reply on 8<sup>th</sup> June, 2022 and the respondent filed his rejoinder on 13<sup>th</sup> June, 2022. Both parties complied with the court order.

In his submission, Mr. Msuya started to submit on the first ground, he contended that examining the judgment of the District Land and Housing Tribunal and its proceedings it is clear that the trial Chairperson had acted contrary to Order XX Rule 4 of the Civil Procedure Code Cap.33 and Regulation 19 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations of 2003. It was his submission that the judgment and proceedings show that the appellant had complied with Regulation 14 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations of 2003 and sections 63, 64, and 118 of the Evidence Act,

Cap.5 by tendering document or exhibits related to TANESCO electrical bill. He added that the appellant also tendered the total loss emanated from rotten meat to support his claims and the same were admitted without any objection.

Mr. Msuya went on to submit that surprisingly the Chairperson in his judgment did not consider the exhibits tendered by the appellant during trial instead the Chairperson based her decision on oral evidence without acknowledging any exhibits.

Arguing for the second ground, the appellant complained that the parties had a tenant agreement which in his view was a contractual relationship, however, the Chairperson did not consider the fact that when a contract is breached or terminated the parties should be restored to their previous position in order to avoid the parties to suffer loss. To support his submission he referred this court to section 77 of the Law of Contracts Act, Cap. 345.

Mr. Msuya complained that the respondent was required to show cooperation on how to compensate the appellant for all losses; the loss occurred due to a cut of electric power since the default was caused by the respondent. He further claimed that the respondent did not consider

the big loss suffered by the appellant including the loss of his business, the money which he used to repair the disputed premise. He added that the appellant had to repair the premise and a builder was called to testify at the tribunal but the Chairperson did not put weight on his evidence.

As to the third ground, the learned counsel for the appellant was brief and focused. He submitted that the Chairperson erred in law and facts by failing to analyse the findings on the issue and failure to state the reasons of her decision. The learned counsel for the appellant submitted that the standard requirement of writing a judgment is provided under Regulation 20 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations of 2003. Mr. Msuya submitted that in analyzing the judgment the same was required to contain a brief statement of facts, findings on the issues, decision, and reasons for the decision.

The learned counsel went on to submit that going through the whole judgment of the tribunal shows that the tribunal Chairperson failed to state her findings concerning the facts and evidence adduced by the parties. He added that the Chairperson reached a decision without deploying the reasons which led her to make such a decision. Mr. Msuya valiantly argued that in the said circumstances the judgment is null and void in the eyes of the law.

On the strength of the above submission, the learned counsel for the appellant urged this court to allow the appeal, and set aside the whole proceedings, judgment, and decree of the District land and Housing Tribunal for Ilala dated 20<sup>th</sup> December, 2021 with costs.

In his submission against the appeal, the respondent's counsel began by tracing the genesis of the matter and also submitted on a point of law with regard to the memorandum of appeal. He argued that the appeal was required to prefer in a form of a Memorandum of Appeal while the appellant has lodged a Petition of Appeal.

On the first ground, the learned counsel submitted that the appellant has misdirected himself since the appellant's documents lacked credibility since the same missed the name to whom the consignment of rotten meat was delivered. He added that the appellant's name was not written in TANESCO electric bills, the same was written by Vendeline E. Maro. It was his submission that the appellant failed to prove his case to the required standard and he failed to convince the tribunal. To support his submission he referred this court to section 110 of the Evidence Act, Cap.6.

Submitting on the second ground, the respondent's counsel argued that the respondent came out forcefully and defended the District Land and Housing Tribunal decision as sound and reasoned. He claimed that the

respondent did not breach or terminated the contract rather the 8 ½ years contract ended on 30<sup>th</sup> June, 2017 and there was no any other contract between the parties. He went on to submit that the respondent had no any interest to renew the contract even if the appellant had not paid Tshs. 360,000/= from the expired contract. The respondent invokes the Court's jurisprudence in the case of **Ally Abdallah Rajab v Saada Abdallah Rajab** (1994) TLR 132. Stressing on the point of the burden of proof he argued that the appellant has failed to prove his case. The learned counsel for the respondent contended that the appellant claimed that he incurred loss because his rotten meat and fish were worth Tshs. 10,000,000/=-, however, he failed to prove his allegations.

As to the last ground, the respondent's counsel was brief. He submitted that Chairperson analysed the evidence on the record as required by the law. He added that the decree was dated as per Order XX Rule 7 of the Civil Procedure Code Cap.33.

On the strength of the above submission, the learned counsel for the respondent beckoned upon this court to dismiss the appeal with costs and uphold the decision of the District Land and Housing Tribunal.

In his rejoinder, the appellant's Advocate reiterated his submission in chief. He valiantly opposed the preliminary objection raised by the respondent while the same was already been addressed by this court and the court dismissed the preliminary objection. He submitted that the appellant was a credible witness. He insisted that exhibit P3 was a crucial document to prove that the respondent's child's name appeared on the electricity bill and the respondent is the one who caused the loss for failure to cooperate with the connection of the electricity to the building. He claimed that the day when the electricity was cut off he incurred huge loss. Stressing on the point of composing a judgment, he stated that the tribunal's judgment has no findings and reasons for the decision.

In conclusion, the learned counsel for the appellant urged this court to allow the appeal and set aside the proceedings, judgment, and Decree of the District Land and Housing Tribunal for Ilala with costs.

Having heard the submission of both learned counsels for and against the preliminary objections, the issue for determination is *whether the appeal*. I will address each ground of appeal separately as they appear.

On the first ground, the appellant is complaining that erred in law and fact for failure to consider the exhibits annexed by the appellant. I have



read the District Land and Housing Tribunal for Ilala proceedings and found that an electric bill (Exh.P3) related to TANESCO and three receipts (Exh.P4). I have perused the tribunal proceedings and noted that the said receipts were admitted without any objection. The receipts mentioned the kilos of fish and their price, however, the said receipts did not show the name of the person to whom the receipts were issued to. Therefore the claims of rotten meat and fish were not proved. I do differ with the learned counsel for the appellant that the Chairman in his judgment analysed the documentary evidence and noted that the same were mere documents. Therefore, the Chairperson's analysis was proper in that the appellant's documentary evidence did not add any weight to his testimony. Therefore, this ground is demerit.

With respect to the second ground, the appellant complained that the parties had a contractual relationship, however, the Chairperson did not consider the fact that. Records show that the appellant and respondent entered into a one-year contract on 1<sup>st</sup> December, 2008 and the contract ended on 1<sup>st</sup> December, 2009. Then the parties agreed to extend the contract for 8 ½ years. Counting the 8 ½ years from 1<sup>st</sup> December, 2009 the contract ended on 30<sup>th</sup> June, 2017. The respondent issued a notice of terminating the contract to the appellant therefore he cannot claim that

the respondent breached the contract. Thus the same could not be restored to its previous position. Therefore, this ground is demerit.

On the third ground, the Chairperson failed to give findings on the issues and reasons for the decision. In my firm opinion, every Chairperson, Magistrate, or Judge has his own style of composing a judgment. However, what matters is for the court to observe and abide by the format of writing a judgment. As it was set under Oder XXXIX Rule 31 which provides that:-

*"31 The Judgment of the Court shall be in writing and shall state:-*

- (a) The points for determination;*
- (b) The decision thereon;*
- (c) The reasons for the decision; and*
- (d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

In the instant case, the important ingredients of a judgment are observed. I have read the judgment of the District Land and Housing Tribunal it is well composed. The Chairperson pointed out the issue for determination, the facts of the case and the issues for determination were analysed. The Chairperson also stated the reasons for her decision and

ended up dismissing the application. Therefore this ground of appeal is demerit.

In the upshot, I find nowhere to fault the finding of the District Land and Housing Tribunal for Ilala. I, therefore, proceed to dismiss the appeal with costs.

Order accordingly.

Dated at Dar es Salaam this date 17<sup>th</sup> June, 2022.

A circular blue ink stamp of the High Court of Tanzania, Land Division. The outer ring contains the text "THE HIGH COURT OF TANZANIA" at the top and "LAND DIVISION" at the bottom, separated by two stars. The center features the national coat of arms of Tanzania. To the right of the seal, the text "A.Z. MGEYEKWA" is written above "JUDGE" and "17.06.2022". A small handwritten mark is above the name.

A.Z. MGEYEKWA  
JUDGE  
17.06.2022

Judgment was delivered on 17<sup>th</sup> June, 2022 in the presence of Mr. John Msuya, learned counsel for the appellant.

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