

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 94 OF 1997

(Original RHT APPL. NO. 167 OF 1995 AND HAT APP.NO. 63\95)

THE REGISTERED TRUSTEE OF TANZANIA IOGT - APPELLANT

VERSUS

1. IOGT INTERNATIONAL)
2. IOGT NTO SWEDEN) - RESPONDENTS

SUMMARY REJECTION ORDER

KALEGEYA, J.

If self efforts can at times be accused of being agents of self defeat the Appellants' actions and inactions in this appeal can only serve as a master piece of a model in this regard. However strenuous this court can try to accommodate the appellant and his appeal the legal elasticity invariably would snatch back to only one conclusion - summary rejection of this appeal as to do otherwise would lead to absurdity. In order to appreciate this finding (and for the benefit of the Appellant) I have to labour through a circuitous history of this appeal up to where it is now even at the danger of making this order unduly long.

Way back in April 1995, IOGT INTERNATIONAL AND IOGT - INTO SWEDEN (as 1st and 2nd APPLICANT respectively) filed an application against PATRICK MWAKYANJALA AND THE REGISTERED TRUSTEES OF THE IOGT TANZANIA (as 1st and 2nd Respondents respectively) before the Dsm Regional Housing Tribunal praying

for orders declaring Applicants as lawful tenants of suit premises and compelling the Respondents to yield to them possession of the said premises; Respondents to jointly and severally pay shs. 500,000/= as monthly mesne profits from the date of holding over to handing over, and costs.

On 25\7\95, the Applicants applied successfully for an exparte judgement against Respondents in consequence of their non-appearance before the Tribunal. This was followed by the Respondents applying to have the exparte judgement set aside which application was rejected in a brief Ruling which, for clarity, deserves to be quoted:

"

Ruling

We entirely agree with the submissions by Dr. Lamwai the learned advocate for the Respondent\Appellant.

The Applicant\Respondents have failed to file the W.S.D. within the prescribed period as per Regulation 4(5) of the Regional Housing Regulations.

The Application is dismissed with costs.

A. F. Ngwala

Chairperson

....."

This was on 18\9\95.

The Respondents could not stomach this. They preferred their appeal to the HOUSING APPEALS TRIBUNAL OF TANZANIA (HAT). On 15\2\96 the Tribunal summarily rejected the appeal for lack of

merit. The rejection order in part reads,

"We have carefully gone through the record of the lower Tribunal as well as all the 12 grounds of Appeal and we see no merit in further hearing this appeal. The decision dated 18th Sept. 1995 is one which ought to have been under challenge and not that dated the 15th July, 1995.

.....
.....
reading through the said grounds of appeal we are left at a loss as to whether the appellant really knows which of the two decisions he is really challenging".

Thereafter it is not clear as to what each of the parties did but we have on record two decisions of this very Court: Misc. Civil Cause No. 2 of 1996 (in which the appearance of the parties remain in the same order as it was before the Appeals Tribunal) and Misc. Civil Cause No. 66 of 1996 (in which The Registered Trustee of Tanzania IOGT is an Applicant while IOGT INTERNATIONAL AND IOGT INTO SWEDEN appear as Respondents).

In Misc. Civil Cause No. 2 of 1966 the Appellants had sought to challenge a ruling of the Housing Appeals Tribunal dated 31\1\96 ordering for deposit of shs. 1,500,000/= as security for the intended appeal which appeal had subsequently been summarily rejected by the HAT on 15\2\96. Hon. Bubeshi J, dismissed this appeal on an interlocutory order as being in-competent by its nature and also on the ground that the main suit had already been determined (summarily rejected on 15\2\96).

Indeed this was akin to chasing the wrong cow as what should have been challenged is the rejection order concerning the main suit.

All in all however, it would seem that one of the Appellants (The Registered Trustees Tanzania IOGT) did not stop there. They tried to seek assistance of other avenues until, possibly on advice, after finding any other possible exist point closed into their face, they decided to make another attempt on appeal, this time though belatedly, against the dismissal order of 15\2\96. Late as they were they had to apply for enlargement of time within which to lodge it. Thats how they came to file Misc. Civil Cause No. 66 of 1996 which was heard by Hon. Kaji, J. I should point out however that this time the 2nd Appellant (The Registered Trustees Tanzania IOGT) was fighting it out all alone. The Court granted the application and ordered "The Applicant to file the intended appeal within a period of 30 days from the date of delivery of this ruling". The order was made on 1\8\97. Emanating from this, the present appeal came to be instituted. It would seem however that the court in dealing with Misc. Civil Cause No. 66 of 1996, Misc. Civil Cause No. 2 of 1996 was not brought to its notice. Be that as it may, after putting up all this tough fight and securing the Courts' leave to file an appeal the Appellant flopped back into the muddy waters of the matter as I will soon demonstrate. And this, to my amazement, when they had the services of a Counsel from Tanzania Legal Corporation!

As is the procedure, a higher Court or Tribunal receives and determines Appeals from decisions of Courts or Tribunals

immediately below thereof. There is no way an appeal can circumvent one stage of an appellate Court or Tribunal to a higher court or Tribunal. Thus an appeal from a Regional appeals Tribunal can not go direct to the High Court without first being heard and determined by the Housing Appeals Tribunal (HAT). In the instant case, the decision of the Regional Housing Tribunal which was appealed against before the Housing Appeals Tribunal and which led to HATs' summary rejection order of 15\2\96 is that of 25\7\95. That appeal was summarily rejected with a note that the ruling which ought to have been appealed against was that of 18\9\95. That advice notwithstanding the Appellants filed and pursued a misconceived appeal in Misc. Civil Cause No. 2 of 1996 already referred to. Here it suffices to say that the Regional Housing Tribunal's decision dated 18\9\95 has never been appealed against. What Hon. Kaji, J, ruled upon (in Misc. Civil Cause No. 66\96) by enlarging time within which to file the appeal, was the decision of the Housing Appeals Tribunal (HAT) dated 15\2\96 and it is this on which the Appellant ought to have preferred the present appeal.

Of course, as I have already said, Hon. Kaji, J was not aware of Appellant's appeal in Misc. Civil Cause No. 2\96 decided by Hon. Bubeshi, J as exemplified in his summary of the facts,

"The Housing Appeals Tribunal rejected the appeal on the ground that the applicant should first have appealed against the decision of the Regional Housing Tribunal

dated 18th September, 1995 which refused to set aside the ex-parte judgement. The applicant was aggrieved. But because of several interactions there between which later were brought to the attention of the Honourable Chief Justice the applicant found itself out of time. Hence this application.....
.....

The applicant was late because it was trying to pursue its right through different channels which unfortunately did not solve the problem. In fact some of them have left this court wondering as to how it was so".

With all this background squarely in its face, and with the aid of lawyers, from TLC, I have failed to understand why the appellant has failed to lodge the very appeal placed in its hands in accordance with law! Even at the danger of making myself liable to a charge of making this order excessively long (I am of the view that if this matter has ever to come to an end the Appellant requires a detailed explanation for guidance) let the whole of his memo. of appeal as lodged in this Court in this appeal speak for itself,

"The appellant above named is dissatisfied with the decisions of Ngwala Chairperson dated 25th July 1995 and 18th September 1995 and the decision of Kajeri Vice Chairman of Housing Appeals Tribunal dated 15th February 1996 appeals to this court on the following grounds;

1. The Chairman below erred in law in entertaining an application which has been filed by a stranger against the protected tenant of NHC without involving the landlord of the suit premises which is the National Housing Corporation.
2. That the trial tribunal acted ultra vires its jurisdiction in entertaining an application which has been filed before it under section 12 of the Rent Restriction Act totally in contravention to S. 4 of GN No. 41 of 1992.
3. That the Chairman of the tribunals below erred in law in entertaining applications of the persons who were purporting to appear by way of power of attorney which did not abide the legal requirements for the said tribunal to presume it to be power of attorney.
4. That the trial tribunal erred in law in admitting an application of IOGT INTERNATIONAL which is not a legal person because it is not registered anywhere in the world and has no power of suing nor being sued.
5. That the trial chairman erred in law and infact in entertaining an applicaiton of IOGT NTO SWEDEN a legal person registered in Sweden but which is not present in Tanzania within the jurisdiction of the Regional Housing Tribunal.
6. That the trial tribunal erred in law in ordering that the applicants be granted possession of the suit premises and

the respondents be evicted without assigning any reason as required by law.

7. That the trial chairman erred in law in granting orders in the interlocutory application which preempt the main application.

8. That the trial chairman erred in law in not informing the appellants the date when the matter was fixed for a ruling of an interlocutory application".

First, as I said earlier, an appeal to a higher court or Tribunal is lodged against a decision of the Court or Tribunal immediate below thereof, and it should be precise as to the decision appealed against. Various decisions of various such lower courts or Tribunals cannot be omnibusly appealed against as was done by the Appellant in the opening statement of the memorandum of Appeal.

Secondly, flowing from the above, Appellant could not appeal to this Court against the ruling of the Regional Housing Tribunal dated 18\9\95 as it has first to be appealed against in the Housing Appeals Tribunal.

Thirdly, even if this Court, for the sake of argument, decides to disregard reference to the ruling dated 18\9\95 it will still be caught in another hurdle:- the grounds of Appeal in entirety make reference to the decision of the Regional Housing Tribunal. It is astounding that none of the 8 grounds of Appeal refers to the Housing Appeals Tribunal's decision dated 15\2\97 against which the Appellant applied and secured leave of this

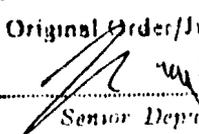
court to appeal out of time after a lapse of 4 months! In fact there is no appeal before this Court worth of being considered. At the beginning of this order I hinted that self efforts can at times be agents of self defeat. The Appellant's string of actions and inactions have ended up earning merely forth and back movements without attaining any positive headway. He has two ways of pursuing his dissatisfaction - either to properly appeal to this court against HAT's order of 15\2\96 or to appeal to HAT against the Regional Housing Tribunal's decision of 18\9\96 (if procedure will permit) none of which can be accomodated in the present appeal in manner it is presented.

For the reason discussed the appeal is summarily dismissed.

AT DAR ES SALAAM
21st August, 1997

(L. B. Kalegeya)
JUDGE

I certify that this is a true and correct copy
of the Original Order/Judgment.


Senior Deputy Registrar
High Court of Tanzania

Dated 25-8- at 97

NB: The last word, inadvertently
used was later reviewed
to read "rejected"