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IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

CIVIL APPEAL NO. 13 OF 1997

(From Original Application No.430 of 1992
of Regional Housing Tribunal and from
Housing Appeals Tribunal No.31 of 1996)

NULU LIGALWIKE APPELLANT

VERSUS

- | | | |
|-------------------------|---|-------------|
| 1. SELEMANI SAIDI MATAR | Y | RESPONDENTS |
| 2. HALFANI NASSORO | Y | |

J U D G M E N T

BUBESHI, J:

This appeal has been filed by the appellants after being dissatisfied with the decision of the Housing Appeals Tribunal which had reversed the findings of the Regional Housing Tribunal. The appellants were being represented by Mr. Lukwaro, learned counsel while Mr. Maftaha, learned counsel appeared for the respondent. Mr. Lukwaro filed four grounds. These are that:-

the Appeals Tribunal erred on law and fact to reduce the standard rent set by the Regional Housing Tribunal and making its own assessment and thereby ignoring the valuation report

the Appeals Tribunal erred on the law in setting the effective date as being the date of the judgement of the Regional tribunal instead of the date of the valuation report the Appeals Tribunal erred on the law in directing that TShs.413,000/= should be rounded to the respondent where part of it has already been deducted by way of rent.

the Appeal Tribunal erred to grant costs to the respondents.

On 18/6/1996, the Vice Chairman of the Regional Housing Tribunal had ordered that the present appellants pay rent amounting to TShs.40,000/= p.m, effective date 1/4/92 for the property situate at No.794, Mahunda Street, Tandika, Dar-es Salaam. This assessment was based on the valuation report dated March, 1992 - which report stated that the replacement cost of the property was TShs.3,420,000/= with annual rent out 14% ie, TShs.480,000/=. The appellants were to deduct costs incurred in renovation on appeal, the Appeals Tribunal set aside the standard rent of TShs.40,000/= and fixed the same at TShs.25,000/= pm. Further the Appeals Tribunal ordered the respondent to refund the appellants TShs.413,000/= incurred as construction costs; and that the effective date was ordered to be 20/1/95, the date the tribunal delivered its judgement.

Mr. Lukwaro for the appellant submitted that the Appeals Tribunal erred to depart from the findings of the RH Tribunal without assigning any reasons. He added that as the valuation Report was accepted by the RHT, and the respondents did not challenge it, then was erroneous on the part of the Appeals Tribunal not to go along with the findings of the RH Tribunal on the issue of standard rent.

On the effective date of the new standard rent, Mr. Lukwaro submitted that if the respondents had not paid rent since January, 1992 and valuation done in March, 1992 then it was only fair that the respondents pay the standard rent from the date of the valuation report. He stated that the judgment of the RH Tribunal was delivered on 24/12/96 - a difference of four years, then the appellant is entitled to the fair rent that was assessed from March, 1992.

On the refund of TShs.413,000/= Mr. Lukwaro submitted that as the appellant had stated that all the money had been used for construction purposes, the respondents were not entitled to the refund ordered.

As to costs, Mr. Lukwano submitted that the respondents were not entitled to costs. On the strength of the submissions made, Mr. Lukwano prayed for their appeal to be allowed with costs.

Mr. Maftaha for the respondents submitted that the decision of the Appeals Tribunal was proper in that each case had to be decided on its own merits. He added that the Tribunal was not bound to follow the valuation Report. According to Mr. Maftaha, the Appeal Tribunal gave reasons why it fixed the rent at TShs.25,000 pm instead of TShs.40,000 pm.

As to the award of costs, Mr. Maftaha submitted that costs are normally awarded to the winner unless the court decide otherwise. He prayed for the appeal to be dismissed.

I have considered the oral arguments put forward by counsel for either side. Did the Appeals Tribunal give any reasons why it decided to depart from the findings of the trial Tribunal? I think yes. The RHT had assessed the standard rent to be TShs.40,000 p.m which figure was obtained from the valuation report. The findings of the valuation report are not binding on the Tribunal. The rate of TShs.40,000 was the valuers maximum and negotiable rent. Indeed if this was the maximum and negotiable, was the RHT bound to stand by it? I think not. If it was the maximum, the Appeals Tribunal acted correctly to set it aside and fix standard rent at TShs.25,000 pm.

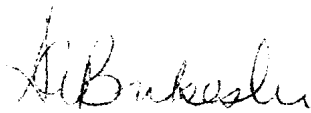
As to the effective date, the Appeal Tribunal was of the opinion that the new rent start to operate from the date of the judgment and not on the date of the valuation report. On this I entirely agree with the Appeals Tribunal decision, as the new standard rent cannot operate retrospectively. The new standard rent it to be effective from 20/12/95, the date the trial Housing Tribunal delivered its judgment.

On the refund of TShs.418,000 being claimed by the respondents. The AHT had ordered the appellant to refund the respondents unless this amount can be defrayed from monthly rents, if the respondents are still occupying the premises. Whether such an amount had been used for construction costs, surely who benefitted. Is it the landlady of the tenants? I think it is the appellant. If that be so the decision of the AHT regarding this refund is in my view fair and I would uphold it.

As to cost ordered by the Appeals tribunal, the respondents are entitled to costs as they won on appeal. I see nothing wrong with that order.

In the upshot I would dismiss the appellants appeal with costs too.

Delivered before
Mr. Lukwarc for
Appellant and in
absence of Respondent


A. G. BUBESHI
JUDGE
2/8/2000