IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND REVISION NO. 05 OF 2018

(Arising from Land Application No. 560 of 2017 of the District Land and Housing Tribunal for Mwanza at Mwanza)

ELIFARIJI K. LIMA ..... 1ST APPELLANT

SUMA MGAYA ..... 2ND APPELLANT

ALLY KITINO ..... 3RD APPELLANT

DOSSA LUKINDO ..... 4TH APPELLANT

NOEL ALLAN NYAMUBI .....5TH APPELLANT

VERSUS

THE BOARD OF TRUSTEES OF THE NATIONAL

SOCIAL SECURITY FUNDS (NSSF)..... RESPONDENT

EXPARTE RULING

19/09/2018 & 15/01/2019

RUMANYIKA, J.:

Application under Section 43 (1) (b) and (2) of the Land Disputes Courts Act Cap 216 RE 2002 is for revision of this court, of the dismissal order by the District Land and Housing Tribunal for Mwanza the (DLHT) of 31.01.2018. It is supported by affidavit of Andrew Innocent Luhigo. Whose contents, Mr. Luhigo learned counsel for the applicants adopted during the hearing.

When the application was called on for hearing on 19.09.2018, though duly served the respondents entered no appear. Save for a notice of absence and therefore prayed for adjournment. Which, pursuant to my reasons and order of 19.09.2018 I refused. I dispensed with their appearance. Hence the exparte ruling.

Mr. Luhigo learned counsel submitted that the impugned order was made only in abstract. Case having been dismissed summarily (i.e without the DLHT going onto merit part of it). Purportedly there wasn't triable issues. What a serious point of illegality **(Case of Ngoni Matengo Cooperative Market Union Limited V. Ally Mohamedi Othman** (1958) EA 577). Not only matter was prematurely dismissed, but also, the applicants were denied right to be heard. The application be granted with costs, records be ordered and accordingly remitted to the DLHT. Stressed Mr. Luhigo. That is it.

The issue is whether the impugned order summarily dismissing the matter amounted to denial of right to be heard of the applicants. At least the following were, by common sense and logic undeniable facts:-

One; w.e.f June, 2016 and for a term of 2 years, the applicants and respondents had tenants and landlords relationship (probably renewable).

Two; the tenancy agreement could be terminated by a three (3) months' notice at the option of either party. With exception of breach by parties of terms and conditions thereof.

Three; the respondents served them and the applicants were in receipt of the written three (3) months notices of termination.

Four; by itself, the said 3 months notices was cause of action.

It follows therefore that the question is not whether there was cause of action. But rather whether there was good cause of action. I understand that in order for them to avoid pre judgments, courts need not casually or prematurely determine the very fundamental question. With the long settled principle of law that legal issues are framed from the pleadings and therefore cause of action, there cannot be legal issue (s) without a clearly established cause of action; the provisions of law governing cause of action and legal issues may logically apply **mutatis mutandis.** Therefore no legal issues can be built on no cause of action.

In other words with the said mutual agreement, either party had option to vacate/terminate it. Like the respondents did upon serving the other party a three (3) months' notice. For ease of reference it reads:-

> **Art 16 – The lessee or lessor shall when desirous of terminating the lease for any other reasons other than default of the terms of this lease ..... give three months Notice of Termination of the lease in writing to the Lessor or Lessee or in lien of the Notice the lessee/ lessor shall pay three (3) months rent to the Lessor/ Lessee.**

Meaning that very clearly the 3 months the notice was in writing, the reason given was for the respondents undertaking change of use of the disputed houses/premises. The issue of default of terms of the tenancy

should not have raised. In other words the moment they executed the tenancy agreement they knew and had reasons to know that whether or not on expirely of a term of 2 years renewable contract, all was to terminated on issuance and reception of a three 3 month notice of termination. By signing the tenancy agreement, the applicants volunteered and or assumed the risks. Whether or not the former were desirous and ready to proceed is immaterial. Once a lessee always a lessee. Whether or not applicants had alternative accommodation immaterial. There couldn't therefore in the case be good cause of action thefore legal and triable issues. I shall have nothing to fault the DLHT's Chair. Decision and orders of the DLHT are, for avoidance of doubts upheld. The devoid of merits application is dismissed with costs. Ordered accordingly.

Right of appeal explained.

S.M. RUMANYIKA
JUDGE
06/01/2019

Delivered under my hand and seal of the court in chambers this 15th day of January, 2019 in the presence of Mr. Luhigo advocate for the applicants and Mr. Rashid Gewa, Operation Officer from NSSF.

O.H.KINGWELE
DR
15/01/019