IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

MISC. CIVIL APPEAL NO. 3 OF 1996

(From the decision of the Housing Appeals Tribunal at Dar es Salaam - Housing App.No. 104\94)

1. M. G. MOHAMED
2. S. V. RAMCHANDAN
3. VISHAL ENTERPRISES
4. KOTAK TRADING CO. .....APPELLANTS

VERSUS

THE REGISTERED TRUSTEES OF IBAADH MOSQUE...RESPONDENTS

J U D G E M E N T

KALEGEYA, J.

The Appellants, S. V. Ramchandan and Kotak Trading Company hereinafter to be styled as 2nd and 4th Appellants respectively, were among four Respondents in Application No. 648\93 before the Dar es Salaam Regional Housing Tribunal in which the present Respondents, The Registered Trustees of Ibaadh Mosque, were the Applicants. The Application was for vacant possession. Mr. Kwikima, Advocate, who represented the Applicants and who filed the Application, for reasons not disclosed, was thereafter replaced by Mr. Maftah, Advocate. The latter noting some defects applied for leave to amend the application which act trigered on a heated tussle between parties and which has gone all the way up to the Housing Appeals Tribunal and now to this court and still subsisting todate (1998) since 1993. In that preliminary debate, dissatisfied with the Regional Housing Tribunal's decision, the four Appellants (two others being M. G. Mohamed who appeared as 1st Respondent and Vishal Enterprises who was the 3rd Respondent) appealed to the Housing Appeals Tribunal where their appeal having been dismissed charged ahead and appealed to this court hence this judgement.

Just for clarity: subsequent to the filing of the present Appeal, the 1st Appellant decided to withdraw his appeal while the 3rd Appellant entered into a compromise with Respondents, and, that's how we came to remain with only the 2nd and 4th Appellants.

All along, Mr. Maftah, Advocate, represented the Respondents (The Registered Trustees of Ibaadh Mosque) while Mr. Raithatha, Advocate, represented the 2nd and 4th Appellants.

In order to have the issues fully appreciated a background to this Appeal is necessary and it is as follows:

One Mohamed Suleman Nassor Lemki, now deceased, was the owner of plots Nos. 97 FLU II Mosque street and 1462\94 FLU II Indira Gandhi Street, Dar es Salaam. On these plots erected are the Ibaadh Mosque and the shop premises occupied by the Appellants. Starting from 1987, Ahmed Al-lomki, Executor of the Estate of the late Mohamed Suleiman Nassor Lemki authorised the Respondents (The Registered trustees of the Ibaadh Mosque) to collect rent from Appellants including preservation and maintenance of the premises, and indeed since then till 1993 when the conflict errupted the Appellants paid their rentals to Respondents. In or about 1993 the Respondents felt need of expanding their mosque for what they called "a surge in members of worshippers". The expansion entailed constructions which would affect premises occupied by the Appellants. They (Respondents) proceeded and issued a two months' notice to the Appellants to vacate. As would be expected the appellants did not move. The Respondents then instructed Mr. Kwikima, Advocate, who filed an application already referred to. As the contents thereof and subsequent prayer to have the same amended form the nucleus of the contentions it will do less harm (if any) than good if

reproduced in whole as I hereby do:-

" APPLICATION

The applicants states as follows:-

1. The applicants are the registered trustees charged with the running and maintenance of the Dar es Salaam IBAADH MOSQUE situate at the corner of Indira Gandhi and Mosque Street in Dar es Salaam. The properties in the Mosque is vested in the applciants who are in this application represented by M. H. A. Kwikima, Advocate, P.O. BOX 280, TABORA.

2. The respondents occupy four portions of the outbuildings to the mosque abutting to the main building on the plot aforesaid. Their address of service is c\o IBAADH MOSQUE, Dar es Salaam.

3. The surge in numbers of worshippers has rendered the mosque so inadequate that plans have had to be prepared for expansion necessitating complete demolition, redisgn and building afresh. The portions occupied by the respondents are affected in this exercise with a view to increasing rentable area to generate more revenue for the up keep of the house of workship.

4. Although the applicants have indicated this to the respondents, the latter blatantly refuse to vacate, thereby blocking the redevelopment envisaged and thus preventing IBAADH Muslims from worshipping under their Imam due to gross inadequacy of space in the present mosque. Hence this application.
The respondents continue to block redevelopment thus preventing more Muslims to congregate in the mosque at Dar es Salaam within the jurisdiction of the tribunal.

WHEREFORE the applicants pray for ruling and order against the Respondents for:

(i) Vacant possession of the suit premises
(ii) Costs
(iii) Other or further relief as may be".

This Application is not very clear as to when it was filed because the usual space, on the application, where such particulars are usually indicated is blank and writings on a copy of the Receipt No. B3\795027 on record are not legible save for a

rubber stamp which indicates 8\12\93. All the same however the matter was first mentioned by the Regional Housing Tribunal on 14\1\94. The 3rd respondents then filed their defence on 17\5\94 while the 1st, 2nd and 4th did the same on 15th June, 1994. Meanwhile on 14th June the Respondents, this time represented by Mr. Maftah, Advocate, had filed a chamber application praying for leave to amend the application. Again, as was the case with the application itself the contents of what the amendment intended to effect should be laid bear. These pointers are contained in one of the Trustee's affidavit - Swalehe Issa, whose relevant part is as under -

"I, **SWALEHE ISSA**, Muslim, adult, affirm and state as follows:-

1. That I am one of the Registered Trustees of the applicant above named, conversant with the matter I am about to depose.

2. That having been advised by my advocate in respect of the earlier application, I humbly make an application to amend the application as follows:-

(a) Paragraph 1 New address has been substituted.

(b) Paragraph 2 plot number have been added to identify the premises. Tenancy relationship between the applicant and the respondent has been added to give the Tribunal Jurisdiction.

(c) Paragraph 3 has been renumbered as 5.

(d) Paragraph 4 has been renumbered as paragraph 7.

(e) Paragraph 5 has been deleted.

(f) Paragraph 3,4,6,8,9 and 10 have been added in the amendment as new paragraphs for the following reasons:-

3. (a) Paragraph 3 has been added to create landlord and tenant "rent" relationship.
(b) Paragraphs 4,6 and 8 have been added to give reasons for requiring possession.
(c) Paragraphs 9 and 10 have been added to creat Jurisdiction to the Tribunal".

Challenging Mr. Maftah's prayer to amend the application in which he argued that the Tribunal is legally empowered to give that leave under Rule 8 of the Regional Housing Tribunal Regulations, and that in any case the amendment would not creat injustice to any party, the Appellants joined hands and preliminarily, very strongly objected to the said prayer advancing arguments (orally and by counter affidavits) encompassing observations already made in their defences and which included that

(i) the Applicants (Respondents) had no cause of action as they were not the landlord but rather simply charged with collection of rents and that as the first application disclosed no cause of action it is a nullity and thus a nullity cannot be amended. (citing Auto Garage Ltd versus Motokov (No.3) 1971 E.A 514).

(ii) that they should have been given the statutory notice of six months as prescribed under s. 25 (1) of the Rent Restriction Act.

(iii) that the 1st and 2nd (Appellants) should have been given alternative reasonable or suitable accomodation upon the landlord proving that he wanted the premises for his own use and not business.

(iv) that failure to indicate that 3rd and 4th (Appellants) are limited liability Companies result in non-existent parties being sued.

(v) that in absence of tenant\landlord relationship the tribunal would have no jurisdiction on such matter.

(vi) that under the law an amendment which changes a cause of action as this one or introduces a new one cannot be allowed.

(vii) that the proposed amendment does not give the particulars.

(viii) the proposed amendment is not made in good faith as the original application was based on a non-existing title.

(ix) that the requisite fees were not paid.

I should pose here and make one important observation: in 1994, that is after the filing of the application the Registered Trustees of Ibaadh Mosque managed to secure ownership of the disputed premises.

In a brief ruling the Regional Housing Tribunal decided in favour of the Respondents by simply holding that as the proposed amendments have not yet been filed they could not be challenged.

The tribunal observed and concluded "how will the Tribunal know if the intended amendment will not have cause of action without seeing it first? The amended application has to be seen first ..... if there is any attack it can be raised. It is by way of granting leave to amend the application .....when we can know the contents of the said amended application". It stressed that the law permits the Tribunal to grant leave to amend at any stage of proceedings.

Unimpressed by that ruling the Appellants found themselves at the door of the Housing Appeals Tribunal brandishing almost similar grounds advanced before the Regional Housing Tribunal though seemingly unprofessionally drafted for they are repeatitive and disorganised. Again, for clarity let their very wording paint the picture,

"Being aggrieved and dissatisfied with the order and ruling made on 6th October, 1994 by The Regional Housing Tribunal of Dar es Salaam (sitting at Dar es Salaam), the appellants hereby appeal against the same on the following, amongst other, grounds:-

1. The Regional Housing Tribunal of Dar es Salaam (hereinafter called "the Tribunal" should have dismissed the applications for amendment because:-

(a) On the date the main application was filed 1993 in the Tribunal by the Respondent above-named, the Respondent was not the landlord of the premises occupied by the above-named appellants. Hence the Respondent had no cause of action against any of the appellants and the Tribunal should have either dismissed the application or rejected the application without proceeding to hear the Respondent's application to amend the main application.

(b) There was not sufficient evidence before the Tribunal that the Respondent was the owner of the whole building in which the suit premises were situated. Hence the Tribunal should have dismissed the Respondent's application to amend the application.

(c) The Tribunal should have dismissed the application because:-

(i) on the day the main application was filed by the Responded, there did not exist between the parties the relation of Landlord and tenant;

(ii) the main application and chamber application was filed by the Respondent against non existing Respondents (now appellants) and hence both the applications were a nullity and could not be amended.

3. The tribunal should have held that because the main application filed by the Respondent was a nullity, it could not be amended.

4. The tribunal should have rejected the application of The Registered Trustees of Ibaadh because prescribed court fees were not paid when the main (first) application was filed.

5. The application for amendment should have been dismissed because:

(a) The proposed amendments wholly displaced the original application;

(b) The proposed amendments introduced different cause of action;

(c) The claim of the Respondent, when the main application was filed, was based on a title which never exsisted.

(d) When the applicants filed the Original\Main application, the applicants were only the agent of the landlord and an agent had no cause against any of the appellants.

(e) The main application did not disclose any cause of action against the first and second appellants.

(f) As far as the 3rd and 4th appellants are concerned the alleged landlord had not given the statutory notice as required by section 25(1) (e) of the Rent Restriction Act, 1984. Hence the application of the Respondent for possession as premature and\or bad in law".

The Housing Appeals Tribunal also dismissed the Appellants' pleas. After quoting Regulation 8 of the Regional Housing Tribunals Regulations, 1990, it held (again for clarity let me quote the relevant part of that decision).

".....the RHT was correct in granting the application. The rest of the matters that have been raised in the Appeal such as:-

1. Whether at the time the application was filed in December, 1993, the applicant was a landlord.

2. Whether the amendment was that of a nullity.

3. Whether there existed a cause of action before April, 1994.

4. That there had not been paid government revenue for the filing of the application.

5. That an agent who is charged with a duty of running and maintaining a premises cannot sue on behalf of a landlord etc were matters which had to await the trial because there had to be adduced evidence to prove or disprove those matters.

Most of those matters referred to us in this appeal, touch on the main application and they cannot be satisfactorily dealt with at a stage of preliminaries. For example whereas Mr. Kesaria and Mr. Raithatha, wish at this stage that the Tribunal believe that at the time of filing the application in December 1993, the applicant as a person charged with the running and maintaining of the mosque, he was a mere agent, who was in law, incompetent to make the application because he had no title, Mr. Maftah on behalf of the applicant\respondent, argues that their clients' title was registered ever since 8.1.1993. This therefore, requires to be heard and determined by way of evidence and not by mere preliminary objection.

In the instant case, before us, we see no reason why we should interfere with what the RHT decided to allow amendment of the pleadings since it has not been shown to us by the appellant, that the RHT "proceeded upon wrong materials or upon a wrong principle" (underlining is mine). On the other hand, the appellants have not shown that by the RHT freely allowing the amendments to the original application any injustice has been or is going to be occassioned. Alternatively, had the respondents\appellants sensed that there would have been occassioned injustice by the RHT allowing that those amendments be done, by the applicant\respondent, then, they ought to have prayed for costs. They did not. We are satisfied that by the R.H.T. allowing the applicant\respondent to effect the amendments, neither did the applicant\respondent proceed on wrong materials or on wrong principles and nor was there occassioned any injustice to any of the respondents\appellants".

The Appellants still dissatisfied appealed to this court in again a lenghthy, repeatetous memorandum covering almost 4 pages. With great respect to the learned Counsel who drafted it, the same is tainted with similar defects as displayed in the memorandum of Appeal to the HAT (Housing Appeals Tribunal). In order to enable other people to share with me the observation that it is tainted with defects, even at the danger of making this ruling unnecessarily long let me reproduce it in full.

" Being aggrieved and dissatisfied with "Ruling" delivered on 17th October, 1995 by the Housing Appeals Tribunal sitting at Dar es Salaam, the Appellants hereby appeal against the same on the following, amongst other, grounds:

(1) The Learned Chairman and the members of the Housing Appeals Tribunal erred in law in not reading their "Ruling" in full. The Chairman had just said "Appeal dismissed. No order as to costs". Attached herewith is a copy of letter dated 18\10\95 addressed to Housing Appeals Tribunal by R. C. Kesaria.

(2) The Housing Appeals Tribunal after hearing the parties was required (by Rule No. 40 Part IV of the Housing Appeals Tribunal (Appeals) Rules, 1987 to pronounce judgement. In its "Ruling" the Learned Chairman and members of the Housing Appeals Tribunal failed to give deliberation on each ground of Appeal and the Housing Appeals Tribunal erred in not giving reasons for not accepting and\or not considering each ground of Appeal. It erred in not delivering judgement.

The Housing Appeals Tribunal failed in not finding that:-

(a) On the date when the Original Application was filed the Registered Trustees of Ibaadh Mosque were not the Landlord of the suit premises. Hence it had no right to file the said application.

(b) In the Original Application filed by the Registered Trustees of Ibaadh Mosque, and even in the amended application filed by the above named respondent it is stated that the Trustees of Ibaadh Mosque were "charged" with maintenance and running of Dar es salaam Ibaadh Mosque". No where in the said two Applications the Applicants had claimed to be the Landlord of the suit premises. Hence substitution of the Applicant from agent to that of Landlord was not proper and lawful. Hence the Housing Appeals Tribunal should have allowed the appeal before it with costs.

(3). The Housing Appeals Tribunal erred in its interpretation of Rule 8 (Amendment) of the Regional Housing Tribunal Regulations, 1990.

(4). The Learned Chairman and the members of the Housing Appeals Tribunal erred in law in not applying their mind and deliberating on grounds Numbers 3, 4 and 5 of the Petition\Memorandum of Appeal lodged in the Housing Appeals Tribunal sitting at Dar es Salaam.

7. The Housing Appeals Tribunal should have found that the Regional Housing Tribunal of Dar es Salaam erred in granting the Respondent's Application to amend its application because:-

(a) the permitted amendments introduced a different cause of action.

(b) The claim of the Respondent (when the respondent filed the Original Application) was based on a title which never existed.

(c) At the time when the main application was filed in 1993 by the Respondent, the Respondent was only an agent of the Original Landlord. The Housing Appeals Tribunal should have found that the Respondent above named as such agent was not competent to file an application for possession. The Housing Appeals Tribunal should have found that only the Landlord (and not the agent of the landlord) was entitled to apply for an order for vacant possession.

(d) The Housing Appeals Tribunal should have found the main application and the Chamber Application filed in The Regional Housing Tribunal (sitting at Dar es Salaam) failed to disclose any cause of action against the Appellant's and should have allowed the appellant's Appeal in the Housing Appeals Tribunal.

(e) The Housing Appeals Tribunal should have applied its mind to ground number 5 (f) of the Memorandum of Appeal lodged in the Housing Appeals Tribunal and thereafter it ought to have examined the record to find out if the 3rd and 4th Appellants tenancy was lawfully determined. It should have found that the Respondent had not pleaded that the tenancy of the third and fourth appellants was duly determined. Hence the Appeal should have been allowed.

The Housing Appeals Tribunal should have found the Registered Trustees of Ibaadh Mosque had not terminated the tenancy of the third and fourth defendants having done so the Housing Appeals Tribunal should have found that the application for possession of premises against the third and\or fourth defendnat was premature and should have dismissed the application for possession.

8. The Housing Appeals Tribunal should have found that the appellant Vishal Enterprises Ltd was a separate legal entity from M\s Vishal Enterprises, and that the Original Application was filed against a non existing person and was bad in law.

9. The Appellants pray for the following reliefs:-

(a) This Appeal be allowed with costs.

(b) The Ruling of the Regional Housing Tribunal and the Judgement\Decree\Determination or Decision of the Housing Appeals Tribunal be set aside and the application of the Registered Trustees of Ibaadh Mosque be dismissed.

(c) The Appellant should have costs of this Appeal, the costs of Appeal in the Housing Appeals Tribunal and the proceedings in the Regional Housing Tribunal of Dar es Salaam.

(d) Any other relief that may just, equitable and proper".

That is our memorandum! With greatest respect, being a product of professional people the memo could have been better drafted, condensed and points of contention clearly displayed.

Before this court, in their joint written submission and represented by Mr. Raithatha, the 2nd and 4th Appellants argued that the issues before this court were whether HAT erred in allowing Respondent to amend the application

(a) on the issue of jurisdiction

(b) on the issue of no cause of action, and, also whether statutory notice could be given by Respondent (agent) to have Appellants vacate the premises. They reiterated almost what is repeatedly displayed in the quoted memorandums - that the tribunal had no jurisdiction nor was there a cause of action as the Respondents were mere agents and not landlord and there should have been a statutory notice. In the written submission they never touched ground (1) and (2) (alleged failure to read the judgement). Other grounds not referred to at all are (3) - that HAT erred in interpreting Rule 8 of the Regional Housing Tribunal Regulations, 1990; 4 (that

grounds 3, 4 and 5 in the memo to HAT were not deliberated upon); 5 (alleged violation of Rule 41 (1) of the Housing Appeals Tribunal (Appeals) Rules 1987 vide GN 249 of 1990.

Responding, Mr. Maftah, Advocate, argued that by merely saying "Appeal allowed" or "dismissed" and not reading the whole judgement is not fatal provided the judgement is there - that it saves time and occasions no injustice; that under s. 3(1) of the rent Restriction Act any person including the Respondents could be taken to be a landlord but that in any case this question should have been a matter of evidence; that Rule 8 empowers the Tribunal to order for amendments; that grounds 3, 4 and 5 were in respect of merits and demerits but that nevertheless the HAT dealt with them; that failure to indicate that 3rd and 4th Appellants were limited companies is not fatal nor an incurable irregularity; that the case of Auto Garage Ltd vs Motokov (No.3) (1971) E.A. 514 in which O.VII CPC was interpreted and a finding made that a plaint which does not disclose a cause of action should be thrown out is no longer good law for GN 228 of 1971 amended the relevant order and now O.VII, Rule 11.

"(c) allows amendment to be made (cited H. J. Stanley and Sons Ltd versus D. T. Dobie and Company (Tz) Ltd 1974 LRT 51), adding that in any case even if the amendment didn't exist the Tribunal is not bound by the provisions of the CPC; that the question of notice was prematurely brought in as it is a question of evidence and lastly that "in equity it is fairer and more consonant with justice to allow a claim to be determined on merits rather than be defeated by a technicality".

In reply Mr. Raithatha reiterated what was submitted earlier expanding however that the Tribunal was bound to determine the question of jurisdiction first and that Rule 8 or O. VII, Rule 11 CPC can apply only if the Tribunal had jurisdiction.

I have quoted at length all that I consider relevant in this matter not because of my incapacity to summarise the same but considering the nature of the contentions presented I believed that this is the best way to clarify the different positions by the contending parties.

Now let us turn to the Appellants memorandum of Appeal which is akin to a written submission [one of the reasons which made me quote it in full]. This four paged memorandum cum submission could have been reduced and better arranged by removing repeatetions, mix-ups and zeroing on relevant grounds. A greater part of it is fit for submissions when expounding on the relevant deserving areas of complaint. In effect therefore the grounds of appeal could conveniently be compressed as follows:-

- firstly, that the HAT did not pronounce the judgement as required under Rule 40 of the Housing Appeals Tribunal (Appeals) Rules, 1987 (GN 249\90) (this would cover the present ground one; the first and last sentences of ground 2); secondly, that the HAT erred in its interpretation of Rule 8 of the Regional Housing Tribunal Regulations, 1990 (this would cover the current ground 3); thirdly, that the HAT did not deliberate on some of the grounds of Appeal, and where it did, it did not state the ingredients of a judgement as required under Rule 41 (1) of the Housing Appeals Tribunal (covering the 2nd sentence of grounds 2; Grounds 4 and 5); Fourthly, that the HAT erred in allowing for the amendment of the application because the Respondet\Applicant not being a landlord had no legal capacity to apply for Appellants' vacant possession and therefore the Regional Housing Tribunal had no jurisdiction; and lastly, that failure to indicate that the 3rd and 4th Appellants are limited liability companies was fatal as the application was filed against non-existing parties.

I will start with the complaint against the HAT's failure to deliver the judgement.

The Tribunal's record shows that the ruling was delivered in the presence of Messrs Kesaria and Raithatha who then registered their intention to appeal. On its face value therefore the 'judgement' was delivered. However, for the sake of argument, if the situation is as alleged by Appellants, with respect to Mr. Maftah, while appreciating the "need to save time principle", simply stating "Appeal allowed" or "appeal dismissed" cannot be in line with the clear provision of Rule 40 of the Housing Appeals Tribunal (Appeals) Rules, 1987 (GN 249\90) which provides,

> "The Appeals Tribunal after hearing the parties or their agent and referring to any part of the proceedings to which reference may be considered necessary, shall pronounce judgement in public (in a room where it ordinarily hears appeals) either at once or on some future date of which notice shall be given to the parties or their agents". (emphasis mine).

To pronounce a judgement cannot be taken to simply mean stating whether a party has lost or won. Pronouncing a judgement means reading it out. It becomes more obvious that "pronouncing judgement" is not merely stating

"Appeal dismissed or allowed" when one looks at both Rules 40 and 41(1) of the HAT (Appeal) Rules. Rule 41(1) defines what amounts to a judgement to be pronounced under Rule 40. Rule 41(1) states,

> "The judgement of the Appeals Tribunal 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; and at the time it is pronounced be signed and dated by the Chairman or the Registrar who shall certify it".

It is clear therefore that merely stating "Appeal allowed" or "Appeal dismissed" would not have brought out the above elements of the judgement and obviously cannot be said to have been pronounced.

While I do appreciate that, generally, parties are not interested in the legal jargons and recital of authorities and facts, or even the reasoning behind a particular finding, for, the majority are only interested in the final results, pronouncing a judgement is a necessary requirement imposed by law and has to be followed. However, while failure to read out the whole judgement is legally wrong I cannot subscribe to Appellants' contention that it is an incurable irregularity going to the roots of the Ruling so as to turn it into a nullity. The complaint here is simply that the judgement was not read over to the parties: it would have been different if it were that such failure occasioned some kind of injustice to the Appellants which is not the case in this matter.

Next, I will deal with the complaint regarding HAT's failure to deliberate on certain grounds of appeal and that where it did, allegedly failed to comply with Rule 41 (1) of the Rules.

The relevant part of the Ruling is already quoted above. Generally, there is truth in the complaint, for, as vividly displayed in the Ruling, the HAT simply quoted Rule 8 of Regional Housing Tribunal Regulations and concluded that the Regional Housing Tribunal was justified to grant leave to amend. Regarding the other grounds, it lamped them together in the following words,

> "The rest of the matters that have been raised in the appeal such as ..... were matters which had to wait the trial because there had to be adduced evidence to prove or disprove those matters".

The only question is whether those grounds were justifiably so baptised.

As already indicated, the HAT discussed only the relevance and applicability of Rule 8. It concluded that the Regional Housing Tribunal did not proceed on wrong material or principle or cause in-justice in deciding as it did. The Appellants complaint on this point is not justified for this point was fully considered - the fact that after considering the matter HAT arrived at a finding not supported by them is a different issue.

On the other hand, the complaints that other grounds were not considered cannot be said to be without base. I can only observe that I don't go with the HAT that they could not be dealt with at a preliminary stage. Some yes, but others cannot await production of evidence, and, indeed they were put up in the Appellants' defences. I am only in agreement with the HAT, that the following matter should not have been raised as preliminary point for it could have been argued in the main application. This is -

(a) That 3rd and 4th Appellants were not given the statutory 6 months' notice as prescribed under s. 25(1)(a) of the Rent Restriction Act, 1984. This would have been discussed during the RHT's deliberation on whether or not conditions for vacant possession have been met. Indeed this complaint was prematurely argued before the RHT.

The rest however could not have waited for the main hearing because preliminary points, which are points of law, should be argued first as they could finally determine the rights of the parties saving time and unnecessary expenses.

Although the RHT is not bound by the Civil Procedure Code its guidance cannot wholly be run away from. O. XIV, Rule 2 CPC provides a procedure to be followed when preliminary points are raised. It states,

> "where issues of both law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined".

Though not couched as mandatory the ruling practice has been to determine the prelininary points first. Light on this can be shed by focusing on commentaries by India's learned Authors when dealing with the law which is in pari materia with ours.

Chitaley & Rao, 6th edition, page 2589, states,

> "where issues of law going to the root of the case and capable of being decided without evidence arise, the court is bound to try those issues first".

Also, see A.I.R. 1939 Lah. 158 - 41 P.L. R. 615 where it was held,

> "where a preliminary point like the non - furnishing of a cause of action is raised, it would be advisable for the court to frame an issue on that point and decide it before deciding the other issues, as the parties would in most cases be saved useless expense and at the worst the issues would be more clearly determined".

The HAT cannot be right to say, for example, that an objection regarding non - payment of fees can wait arguments during production of evidence, for, as rightly argued by the Appellants a case or an application is filed upon payment of necessary fees unless for reasons recognised under the law the same are waived. Even Regulation 3 (1) of the Regional Housing

Tribunal Regulations is very categorical on this as it provides,

> "Any proceeding before the Tribunal shall commence by an application filed by an applicant or his agent, on payment of approriate fees"

Indeed without payment of fees there would be no application, for, the situation created then is as if it was not filed at all. To say that this would await production of evidence is tantamount to proposing the opposite:- that, is whether or not fees are paid an application would be properly before the Tribunal. Fortunately for the Respondent however, if Appellants had bothered to counter-check with the relevant registry, they would have noted that fees were duly paid vide ERV B3\795027 (whose date of issue, as already observed at the beginning of this judgement, is not legible but the rubber stamp thereon is 8\12\93).

Again, the argument regarding whether 3rd and 4th Appellants were rightly entitled, being limited companies, as the HAT ought to know, could not have awaited the production of evidence. Indeed these being legal entities should have been so reflected. The Regional Housing Tribunal should have considered this preliminary point. This defect notwithstanding however I am not pursuaded that this one would have entitled the RHT or the HAT to throw out the application. These are some of the envisaged defects intended to be cured by Regulation 8 of the RHT Regulations where the Tribunal even suo moto, could order amendment to meet the ends of justice. HAT could still order the same on appeal (see Rule 43 of the HAT's Rules - could make any order which ought to have been ordered but was not).

Lastly on this complaint, I should outrightly say that the rest which were not considered concern the locus standi of the Appellants. I should unreservedly reiterate that the manner the Appellants launched their objections, drew up their memo of

Appeal contributed a lot, first, to the finding made by the RHT and subsequently the HAT. The objections were not concise and to the point right from the start as was the case with the memo of Appeal to the HAT and even to this Court (all the relevant documents already quoted above speak for themselves). I am saying so because even before the application by the Respondent to amend was made the preliminary points should have been clearly put up by Appellants to encompass, those for, non-payment of fees, suing non-existing entities, and thirdly, whether the Applicants (Appellants) could be interpreted to fall under the meaning of Landlord within the definition of s. 3 of the Rent Restriction Act, 1984.

Upon the Respondent's raising the application to amend the Appellants would have added another issue, that is, whether the amendment would introduce a new cause of action, and if so, whether legally the RHT could grant the leave sought. Armed with such clear issues the rest of the arguments would have fallen under them in a form of supporting arguments (as already observed) instead of the way they were confusingly presented. I am convinced that faced by such precise issues none of the Tribunals could have left any un-answered. That said, as I have already indicated, the HAT erred (and so did the RHT) in not considering some of the matters, and further erred in concluding that all of them could not be argued at a preliminary stage.

Let me now turn to the other remaining 3 grounds of Appeal as I have paraphrased them above. I will start with what I termed the 5th ground: concerning wrong entitling of 3rd and 4th Appellants. On this I can only say that I have already disposed it when I was deliberating on matters deserving to fall under preliminary objections. I need not repeat myself. We then have only two other grounds (second and fourth) which I am convinced can be discussed together: the allegation that the HAT

misinterpreted Regulation 8 and, in upholding the RHT's leave to amend.

Again, as I have done all along, it is pertinent to reproduce the **proposed amended Application** against which the Appellants collected all their arsenals and attacked. It will be noted that this **proposed amended Application** was not before the RHT although by the time the HAT dealt with the Appeal it was already on record. Thus the RHT was somehow disadvantaged for it had only the "pointers" of what the amendments were expected to be. These "pointers" are contained in Swalehe Issa's affidavit quoted at the beginning of this judgement. The **"proposed amended application"** states as follows:-

"

AMENDED APPLICATION

The applicant above-named state as follows:-

1. The Aplicant are the Registered Trustees of Ibaadh Mosque, changed with maintenance and runing of the Dar es Salaam Ibaadh Mosque situate at the corner of Indira Gandhi\Market Streets and Mosque street Dar es Salaam. The address of the Applicant is in the Care of Zakaria Maftah, Advocate, Aggrey Street, P.O. BOX 2373, Dar es Salaam..

2. The Respondents are tenants of the Applicant and occupy four portions of the building on Plots Nos. 97 Flur II Mosque Street and 1462\94 Flur II Indira Gandhi Street. Their address for service is in the Care of Ibaadh Mosque Dar es Salaam. Annexed and marked 'A' are Titles to the said Plots.

3. The Respondents occupy the said building (hereinafter called "the Premises") and paying rent to the Applicants. Annexed and marked 'A' - A4' collectively are bank pay in slips paying rents to the Applicants account at the National Bank of Commerce Kichwele Street Branch.

4. The Applicants claim possession of the premises from the Respondents with a view of enabling the Applicant to rebuild\construct, a new modern complex for worship and shops for the public. Annexed and marked 'A5 - A6 are architectural drawings to which the Applicant shall crave leave to refer.

5. The surge in numbers of worshippers has rendered the mosque so inadequate that a number of worshippers have to use arcades\corridors of the mosque at the time of worshipping. Annexed and marked 'A7' collectively are photographs showing the worshippers on arcades during the time of prayers.

6. That building plans have been prepared for building expansion, necessitating complete demolition, re-designing and building a-fresh. The premises occupied by the Respondents are also affected in this exercise. The aim is to increase rentable area of more shops and offices to generate more income for the upkeep of the building. Annexed and marked 'A5 - A6' collectively are architectural drawings of the proposes new building.

7. Although the Applicant have indicated this plan to the Respondents, the latter have blatantly refused to vacate, thereby blocking the Applicant from developing the envisaged building. Annexed and marked 'A8' collectively are notices to vacate.

8. The refusal to vacate and give way to a new building not only give hardship to worshippers but also prevent development of the city and rendering the building of more shops and offices in the city for the public good. The delay to build, would cause the Applicant to suffer from high construction costs which keeps on rising day after day, a detriment to the Applicant. The Respondents are not ready or may not be ready to recoup the extra construction costs to the Applicant at all.

9. The Applicant repeats that he requires possession of the premises to enable the recons-truction or rebuilding thereof to be carried out, and the Applicant is ready to grant to the Respondent a new tenancy of the reconstructed or rebuilt premises or part thereof.

10. The premises are situate in Dar es Salaam within the jurisdiction of the Tribunal.

WHEREFORE, the Applicant pray for ruling and order against the Respondent for:-

(a) Vacant possession of the suit premises;
(b) Costs;
(c) Any other order as the Tribunal may deem fit".

With that we are now in better position to deliberate whether or

not the HAT erred in upholding the RHT's Order granting leave to amend the application.

Regulation 8 of the RHT Regulations provides,

> "The Tribunal may at any stage of the proceedings, either on its own motion or on the application by any party order the amendment of the pleadings, subject to such ordrs as to costs".

The RHT allowed the amendment by simply reasoning that the proposed amendment was not before it and that as the Tribunal is empowered to grant leave it should grant the same and if there is any objection it can be raised thereafter. While I don't accept the line of reasoning used I have no quarrel with the order given. The RHT had the "pointers" of the proposed amendment at its disposal. Of course these pointers were not very clear and this points to another crucial matter which Tribunals and parties should always address themselves on. When seeking leave to amend the best way is to have the proposed amended document ready for scrutiny instead of leaving the opposite party and Tribunal guessing. In this situation however, instead of observing as it did, if it felt that the pointers were not sufficiently informative, the RHT should have ordered for clarification or presentation of the proposed amendment. This is a shortfall on this decision.

On the other hand the HAT concluded that the RHT did not tread on wrong materials or principles and that no injustice was occassioned. Here I should register my disagreement with HAT's observation, for, as was the case with the RHT, it is tantamount to saying that any application to amend must be allowed. This cannot be because once the laws or regulations provide that an application can be made for the doing of something it is presumed that the applicant should assign reasons which would be considered by the tribunal before deciding whether or not to grant the application. Granting of the same cannot be automatic

as this would set in ungovernable situations if not chaos. The RHT's decision not being based on the reasons assigned for the application for amendment the HAT's finding that the RHT did not tread on wrong materials or principles cannot be supported. Looking at it from the other angle which right materials and principles did the RHT employ which in turn were approved by the HAT? There are none. In other words as much as they did not decide on the other preliminary objections, the two Tribunals did not discuss the reasons advanced for the application to amend.

However, I should hastily add that the above notwithstanding, Regulation 8 does not set any conditions which should guide the RHT in granting or refusing leave to amend.

On the basis of the above finding what should this court do? We have found that the Tribunal did not decide on the reasons advanced for the application to amend and so are other preliminary objections. Can this court on appeal make a decision on them instead. I have carefully considered the issue and have concluded that this court can. I am fortified in this stand by Rule 43 of the Housing Appeals Tribunal (Appeals) Rules and s. 43 (1) of the Rent Restriction Act, 1984 as amended. If the HAT can make any order or decision which the RHT was supposed to do but did not (Rule 43), can the legislature have intended to confer upon the High Court less powers? The answer must obviously be no. In any case s. 43(2) of the said Act does not limit this court's powers in anyway for it provides,

> "On such appeal as in subsection (1) aforesaid, the High Court may make such order as it thinks proper including any directions as to costs of proceeding before the Tribunal".

The proviso to s. 43(1) provides for appeals against the Tribunal's decision on point of law or law mixed with facts.

I now proceed to answer the preliminary objections as follows.

The one concerning non - payment of fees has already been disposed of - the fee was clearly paid. And so is the one regarding 3rd and 4th Appellants as being wrongly entitled. This one however is curable and a proper order will shortly be made. The issue regarding failure to issue a 6 months statutory notice to 3rd and 4th Appellants has already sufficiently been answered: that it could only be considered in the main hearing. We thus remain with the issue of amendment of the application and the Respondents locus standi which, in my considered view, can conveniently be grouped under only two issues, namely,

(a) whether by the time they filed the application the Respondents could be interpreted to fall under the definition of Landlord as defined under s. 3 of the Rent Restriction Act, and if the answer is the negative,

(b) whether the RHT could legally grant the Respondents leave to amend the application after acquisition of the ownership by registration.

Upon full consideration of the submissions made I have to answer the 1st issue positively. Although the Appellants vigorously insist that Respondents were mere agents for collection of rents hence could not be regarded as Landlords for the purposes of the RHT's jurisdiction I am on all fours with Mr. Maftah that the Rent Restriction Act, 1984, broadly defines the term 'landlord' to include an 'agent'. This is what I see in the following definition under s. 3 (1).

- " 'Landlord' includes, in relation to any premises, any person, other than the tenant, who is or would be but for the provisions of this Act, entitled to possession of the premises and <u>any person from time to time deriving title under the original Landlord,</u> and any person deemed to be a landlord under s. 4 or s. 5". (emphasis mine).

Facts undisputed establish that since 1987 not only did Respondents collect rents but also were charged with the duty of **maintenance of the premises**. For all this time the Appellants dealt with no one else except the Respondents on all matters concerning the premises they were renting. Call them agents or something else but their powers did not end with the collection of rents but also had to maintain the premises and naturallly maintaining premises would include its protection which cover repossession where circumstances dictates and if legally permisible. I am convinced that the Respondents fall under the category of "any person from time to time deriving title under the original landlord" envisaged under s. 3 (1) of the Rent Restriction Act, 1984. I conclude that the Respondents could file an application for vacant possession as they did and this disposes as well the argument that the first Application had no cause of action.

Having answered the first issue affirmatively there is little to be said on the second issue because the main quarrel of the Appellants centred on the locus standi of the Respondents. Imbedded in it however was an argument that an amendment which changes wholly a cause of action cannot be allowed. I would simply answer this by moving together with Mr. Maftah that the authority cited by Appellants (Auto Garage Ltd vs Motokov (1971) EA 514) is no longer the law of the land for O.VII, Rule 11 (c) of the Civil Procedure Code was amended vide GN 228 of 1971 to take care of this and expressly states that a pleading which discloses no cause of action can be amended with leave of the court (see also H. J. Stanley and Sons Ltd versus D. T. Dobie and Company (TZ) Ltd 1974 LRT 51). That apart, even if it were still the law, again as rightly submitted by Mr. Maftah, Regulation 11 of the RHT Regulations would have provided a remedy for clearly empowers the RHT to depart from it. The said Regulation provides,

> "The Tribunal shall not be bound by the provisions of the Civil Procedure Code, 1996".

In conclusion, I should say that the RHT could rightly grant leave to Respondents to amend the application as per the proposed amended Application even if the Respondents' status had not changed by Registration of the premises into their own name. Though based on different grounds, and save for the defects here and there which were fully discussed, I am satisfied that the two Tribunals' finding that the Respondents could amend their Application in terms contained in the "proposed amended Application" was sound and proper. And in view of the finding that the 3rd and 4th Appellants being separate legal entities should be so designated the Respondents are directed to effect the necessary amendments on the proposed Amended Application to cure this anomaly.

Appeal dismissed with costs.

(L. B. Kalegeya)
JUDGE

Delivered today on 19th October, 1998 in the presence of Mr. Raithatha and Respondent.

(L. B. Kalegeya)
JUDGE