**Ladak v Registrar of Buildings**

**Division:** High Court of Tanzania at Dodoma

**Date of judgment:** 23 February 1973

**Case Number:** 2/1973 (50/74)

**Before:** Kwikima Ag J

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*[1] Civil Practice and Procedure – Inherent jurisdiction – Injunction, grant of – Threatened eviction by*

*landlord for non-payment of rent before assessment of standard rent – Civil procedure Code*, *s.* 95 (*T*)*.*

*[2] Landlord and Tenant – Owner of acquired building – Tenancy protected by Rent Restriction Act*

(*Cap.* 479) (*T*) – *Rent Restriction – Acquisition of Buildings Act* 1971, *s.* 7 (*T*)*.*

*[3] Injunction – Tenant’s threatened eviction by landlord for non-payment of rent before assessment of*

*standard rent – Injunction granted – Civil Procedure Code*, *s.* 95 (*T*)*.*

**Judgment**

**Kwikima Ag J:** The applicant was in this case the owner of the premises before the respondent acquired them under the Building Acquisition 1971 (hereafter referred as the Act.) The applicant seeks to move the court to invoke its inherent power to prevent the respondent abusing court process, by evicting him from the premises. In urging the court to act as he prays, the applicant relies on s. 95 of the Civil Procedure Code which reads: “95. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” It is the applicant’s contention, undisputed by the respondent, that this is the only way open to him since no suit touching his dispute with the respondent has been filed in court. He cannot therefore seek an injunction otherwise than under the procedure he suggests. I think he is right and I will now proceed to examine the application on its merits. In his submission counsel for the applicant argued that the building was wrongly acquired. He said that under s. 6 (1) of the Act the building, which was unrented and wholly occupied by the applicant and his sons, ought not to have been acquired. To this end the applicant has petitioned the Commissioner for Lands as well as the Buildings Acquisitions Appeals Tribunal for redress. Decisions on these petitions are still pending. In the meantime the Assistant Registrar of Buildings has demanded arrears of rent to the tune of Shs. 20,000/- at the rate of Shs. 1,000/- per month from the time when the building was acquired under the Act. It is the applicant’s defence that such demand is premature on account of the pendency of the rulings on his petitions and on account of the rent tribunal having fixed no standard rent for part of the premises occupied by the applicant. It is the applicant’s main contention that the eviction threatened by the respondent is abusive of court process because such eviction is only possible by order of court as by s. 7 (2) of the Act specified. In reply the respondent admits that the applicant has indeed petitioned. He does not agree, however, that the building was wrongly acquired. His reply is that the premises were occupied by a corporate person as well as the two sons of the applicant who were self-supporting and therefore not the applicant’s dependants. The occupancy by these sons exposed the building to the rigours of the Act. And, although the acquisition of the building may still be in dispute, the building now belongs to the respondent and rent is therefore due. The rent demanded is not exhorbitant because the portion occupied by Natex is rented at Shs. 1,000/-. The respondent admitted that the rent was arbitrarily fixed and that it is not the standard rent as defined under 2 (1) of the Act. When I adjourned the application in order to write this ruling, I ordered that the threatened eviction should await my decision. Having carefully gone through the provisions of the Act, I am not certain that I should reject the application. Both parties agree that the applicant occupies part of his acquired building. His case therefore falls under s. 7 (2) of the Act which provides that: “Where an owner elects to occupy a portion of the building as a tenant of the Registrar, the provisions of the Rent Restriction Act 1962, shall apply to the parties in the same manner as they apply to tenant and a landlord. . . .” If these words are taken in their ordinary sense and meaning, and there is no reason to assume that they have any hidden meaning, the applicant can only be evicted by court order, whatever the amount in arrears he may owe the respondent. For, according to the Rent Restriction Act (Cap. 479) s. 11 A (1) (*b*): “All claims, proceedings or other matters of civil nature arising out of this Act or any of the provisions thereof and in respect of which jurisdiction is not specifically conferred upon the Tribunal shall be commenced in the court and the court shall have jurisdiction . . . (*b*) to make orders upon such terms and conditions as it shall think fit, for the recovery of possession and for the payment of arrears of rent . . . which orders may be applicable to any person . . . being at any material time in occupation or possession of any premises.” It can be gathered from the provisions just cited that since the applicant occupies a part of his acquired building, the respondent can neither recover arrears of rent from him nor evict him without filing a suit in court and obtaining judgment for the purpose. That would, I think, settle this dispute, except for the respondent’s argument that in his intended action he relied on s. 12 of the Act. It would be injudicious to conclude this ruling without alluding to this defence. The section reads:

“12. All premises in respect of which the Registrar is landlord within the meaning assigned to that term . . . shall be exempt from all provisions of that Act which operate so as to confer upon a tenant a statutory tenancy upon the determination of his contractual tenancy where the contractual tenancy is determined by reason of non-payment of rent on the due date or non-compliance of any other term of the tenancy.” It is the respondent’s argument that the applicant should be evicted under this section on account of his being in arrears. On the face of it this argument is quite attractive but I would reject it for two reasons. Firstly I would point out that because no standard rent has been fixed by the Rent Tribunal as by law required, the appellant cannot legitimately be said to be in arrears until such time as the standard rent is fixed. Secondly, to my mind the Act creates a third category of tenant besides the two categories of contractual and statutory tenant under the Rent Restriction Act. Such a tenant is the former owner whose terms are provided for under s. 7 of the Act. The law is quite clear about him. Such tenant unlike the tenant who contracts with the respondent is governed by the Rent Restriction Act. I would therefore, with considerably humility and respect, reject the respondent’s defence that s. 12 of the Act really applies to the applicant. Accordingly, I would grant the application and order that the applicant enjoy quiet possession of the premises until such time as the respondent shall, in accordance with the law, seek and obtain a court order to evict him.

*Order accordingly*.