

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LAND APPEAL NO. 19 OF 2020**

(Arising from a Decision of the District Land and Housing Tribunal of Mwanza District at Mwanza in Land Case Appeal No. 77B of 2018)

**JUMA OMARY.....APPELLANT**

**VERSUS**

**JUSTUS LUTATINA.....RESPONDENT**

**JUDGMENT**

**01 & 13/10/2020**

**RUMANYIKA, J**

The appeal is with respect to exparte judgment of 23.03.2018 the decision of 23/03/2018 whereby Mwanza District Land and Housing Tribunal (the DLHT) refused Juma Omary (the appellant) extension of time and application for setting aside the exparte judgment. Unlike the appellant who had services of Mr. Reagan Charles learned counsel, Justus Lutatina (the respondent) appeared in person.



The grounds of appeal revolve around points: - (i) that the DLHT erred in fact not holding that in fact the appellant was not duly notified (ii) that the appellant was prematurely served by publication.

Mr. Reagan Charles learned counsel submitted; **one**, that as a matter of fact the appellant had not been aware of the appeal until at the execution stage. **Two**, that service by publication was uncalled for because the respondent knew the appellant's physical address and therefore the substituted service it should have come next to service by affixation but no reasons were assigned for the prematurely substituted service. **Three**, contrary to the law the applicant hadn't been notified of the date for the exparte judgment (case of **Comaf Crush Coy. Ltd V. Arrow Government Ltd** (1992) TLR 121).

The issue is whether refusal by the DLHT of the application for extension of time and setting aside the exparte judgment was proper. The answer is yes for the following reasons; (a) Like the DLHT held, having lost the war and battle in the trial ward Tribunal the applicant may have successfully applied and was granted stay of execution pending determination of appeal therefore aware of the appeal and probably the subsequent impugned judgment yes, rightly or wrongly and without reasons the DLHT may have skipped the first two modes of service thereby jumping onto service by publication yes, but the moment the service was made vide Mwananchi Local Newspaper issued and dated 24/07/2017, and this fact essentially it was not disputed by the appellant, the issue of the appellant having not been duly served it should not even have been raised. I think the issue of substituted service by publication for that matter being

of last resort it was only for law convenience therefore not intended to defeat justice. For the purposes of service therefore I don't think that there was amongst the three one inferior mode of service to the other.

The devoid of merits appeal is dismissed with costs. It is so ordered.

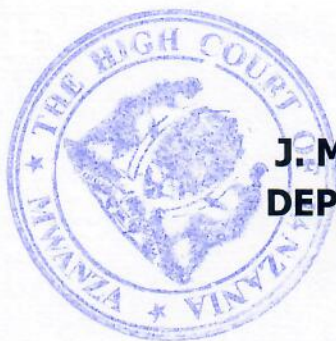
Right of appeal explained.



  
**S. M. RUMANYIKA**  
**JUDGE**  
**5/10/2020**



The judgment is delivered under my hand and seal of the court in chambers this 13/10/2020 in the absence of both parties who were notified.



A handwritten signature in blue ink, appearing to read "J.M. Karayemaha", is written over the official stamp.

**J. M. KARAYEMAHA**  
**DEPUTY REGISTRAR**  
**13/10/2020**