

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 14 OF 2021

(Arising from the Decision of the High Court of Tanzania at Mwanza by Hon. A.Z. Mgeyekwa J, dated 17th day of December, 2020 in Land Appeal No. 48 of 2020)

MARIAM MAGEGEAPPLICANT

VERSUS

TATU IBRAHIM SELEMAN1st RESPONDENT

TAUSI JUMA2ND RESPONDENT

EXPARTE RULING

30/04 & 05/05/2021

RUMANYIKA, J

The application is for leave with respect to judgment and decree of this court (my sister Mgeyekwa, J) dated 17/12/2020 refusing one an order setting aside exparte judgment, for the applicant to lodge an appeal to the Court of Appeal Tanzania. It is brought under Section 47 (2) of the Land Disputes Courts Act Cap 216 RE. 2019 and supported by affidavit of Mariam Magege (the applicant) against Emmanuel Ibrahim Seleman and

Tausi Juma (the respondents) Mr. Emmanuel Paulo learned counsel appeared for the applicant.

When the application was, by way of audio teleconferencing called on 30/4/2021 I heard only the applicant's counsel through mobile number 0746866374 much as pursuant to my order of 20/4/2021 Mr. S. Mhoja learned counsel for the respondents was proven served on 22/4/2021 but defaulted. With my order of 30/4/2021 therefore, the respondents' appearance was dispensed with hence the exparte judgment. The ground of appeal reads;

"That the honourable chairperson erred in law and fact by failing to consider that there had never been effective service of summons to the appellant as required by the land dispute courts (The District Land and Housing Tribunal) Regulations GN 174 of 2003 and hence the appellant was denied the right to be heard owing to the fact that the appellant had frequent visits to her tenants living in the disputed house"

Mr. Emmanuel Paulo learned counsel submitted, on the three points upon which pursuant to paragraph 9 of the supporting affidavit leave was sought; **(1)** whether it was proper for this court to hold that in the District Land and Housing Tribunal for Mwanza (the DLHT) the applicant was duly

served **(2)** whether this court was right for the purposes of service having had relied on provisions of the Civil Procedure Code Cap 33 RE. 2019. Instead of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, GN. No. 174 of 2003 **(3)** whether this court was right in holding that the applicant did not apply for extension of time to set aside *ex parte* judgment.

The bottom line and issue is whether on the face of it the 3 points, or any one of the points raised any point of general importance by way of appeal worth to be determined by the Court of Appeal of Tanzania (case of **Mariam Mula Latifhussein & 2 Others V. Mohamed Hatibu Mbwana**, Civil Application No. 5 of 2014 (unreported) much as I will neither re- hear the appeal nor on that one, usurp jurisdiction of the highest fountain of justice. Moreover, I will, in terms of which appeal should and which one should not go to the Court of Appeal of Tanzania run no risks of reducing this court to a mere conduit pipe.

The 1st and 2nd points need not detain me because it is service on the applicant only that counted. Whether it was done under the Civil Procedure Code or the Land Disputes Court's (The District Land and Housing Tribunal) GN No. 174 of 2003 it was immaterial leave alone on that one if one of the

registrations provided a fallback position. After all for some reasons according to records physical service/service by affixation may have been proved futile yes, but the applicant did not sufficiently dispute or tell the court that service by publication more so through Mwananchi Local Newspaper of 16/8/2019 it was inferior means or no longer good mode of service. Especially where the applicant alleged not having had been aware of the case until late in the day and after the execution process was carried out what a coincidence! I think upon lapse of time in order to avoid endless litigation and or abuse of the court process, unless, for setting it aside, exparte judgment debtors had assigned very strong reasons, courts should reluctantly grant such applications.

With regard to point no 3, with greatest respect to the learned counsel I would hold that the point was both improper and uncalled for because actually the applicant's failure to apply for extension of time it formed no basis of the court refusing to set aside the said exparte judgment much as also, before Mgeyekwa, J that one it wasn't the applicants ground of appeal. In other words even if I passed the point as raised there is no way the Court of Appeal of Tanzania would fault the judge on a matter that had never been placed before her.

In the upshot, the devoid of merits application is dismissed with costs. It is so ordered.

Right of appeal explained.


S. M. RUMANYIKA

JUDGE

01/05/2021

The ruling delivered under my hand and seal of the court in chambers this 05/05/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

05/05/2021