

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LAND APPLICATION NO. 65 OF 2021**

*(Arising from judgment of the High Court of Tanzania at Mwanza in Land Appeal No. 103 of 2016 Hon. Ismail, J) dated 2<sup>nd</sup> September, 2020, originating from Land Application No. 172 of 2013 in the District Land and Housing Tribunal)*

**SAMSON HERMAN.....APPLICANT**

**Versus**

**LUDOVICK MICHAEL MASAWA.....RESPONDENT**

**RULING**

**30<sup>th</sup> July & 11<sup>th</sup> August, 2021**

**RUMANYIKA, J.:**

With respect to the costs awarded to Samson Herman (the applicant) judgments and decree of the District Land and Housing Tribunal for Mwanza at Mwanza (the DHLT) and that of this court (Ismail, J) dated 27/05/2016 and 1/9/2020 respectively also the ruling of this court (Mashauri, J) of 27/4/2021, the application for extension of time within which one to file an application to file a bill of costs it was brought under S. 14(1) of the Law of Limitation Act Cap 89 RE 2019. It is supported by affidavit of Samson Herman whose contents his advocate one Mr. D. Mtete adopted during audio teleconference hearing on 30/07/2021. Ludovick

Michael Masawe (the respondent) appeared in person. I heard them through mobile numbers 0765822187 and 0785662102 respectively.

Mr. D. Mtete learned counsel in a nutshell he submitted that as, with respect to Land Application No. 172 of 2013 in the DLHT herein, the subsequent Land Appeal No. 103 of 2016 and Misc. Land Application No. 99 of 2020 the applicant had lost the wars and battles throughout with costs, no doubts the applicant's bill of costs was now time barred because the matter had been pending in court until 27/4/2021 latest (paragraphs 1-4 of the supporting affidavit) referred. That is all.

In reply, the respondent submitted that indeed with respect to the impugned judgment and decree of this court dated 02/09/2020, an application for extension of time within which one to lodge a notice of appeal and leave to appeal to the Court of Appeal of Tanzania (the CAT) crumbled on 27/05/2021 yes, but yet again the applicant had Application No. 99 of 2020 in the CAT. That is all.

The issue is whether the applicant has assigned a sufficient ground for extension of time. The answer is yes for one main ground: - that, although having had lost the battles the respondent had right to appeal, if he wished to exhaust the entire vertical hierarchy yes, but yet still the

applicant was entitled to the costs much as the latter was in occupation of the disputed Plot No. 137 Block 'H' Nyakato – Mwanza. It was settled principle of law that costs followed events but for multiplication of the matters that seemingly all the time had occupied the applicant. It is very unfortunate, according to records that for a couple of say 8 years now, though in a different form still the dispute persisted in other words the applicant had not fully enjoyed fruits of his decree for that long. I think were, in its considered opinion the court was satisfied that given the cumbersome procedure in civil litigation an adverse party had only employed it as a sword (not as a shield), his right of appeal shall be looked at critically. It is trite law that a notice of appeal, leave alone an application for extension of time or appeal itself was no bar to execution of the decree (Order XXXIX rule 5 of the Civil Procedure Code and the case of **ER Mutaganywa vs Ahmed Yaladin & Others** (1995)) (HC).

The devoid of merits application is granted with costs. It is so ordered.

Right of appeal explained.

  
**S.M. RUMANYIKA**  
**JUDGE**

**31/07/2021**

The ruling delivered under my hand and seal of the court in chambers this 11/08/2021 in the absence of the parties.



  
**S.M. RUMANYIKA**

**JUDGE**

**11/08/2021**