

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LAND APPLICATION NO. 74 OF 2021**

*(Arising from HC. Of Tanzania at Mwanza in Land Appeal No. 13 of 2020, original Land Application No. 32 of 2012 in the District Land and Housing Tribunal for Mwanza at Mwanza.)*

**KASELELE MAKWIM'HUMU COMPANY LTD.....APPLICANT**

**versus**

**DOMINIC A. MUNISI.....RESPONDENT**

**RULING**

**17<sup>th</sup> & 30<sup>th</sup> August, 2021**

**RUMANYIKA, J.:**

Following judgment and decree of this court (Manyanda, J) of 02/07/2021, the application is brought under Sections 47(2) of and 5(1)(c) of the Land Disputes Courts Act and the Appellate Jurisdiction Act Chapters 216 and 141 RE 2019 respectively. It is supported by affidavit of Mathias Kaselele Makwi of Kaselele Makwim'humu Company Ltd (the applicant) whose contents essentially Mr. Maligisa Okela learned counsel adopted during the hearing. Mr. Dominic A. Munisi (the respondent) appeared in person.

When the application was, by way of audio teleconference called on 17/08/2021 called on for hearing, I heard them through mobile numbers 0755 632 766 and 0754 224 039 respectively.

Mr. Maligisa learned counsel submitted that the points for which intervention of the Court of Appeal of Tanzania was sought were; **One**, whether it was proper for the tenant respondent a withholding agent of Tanzania Revenue Authority (the TRA) to deduct 10% from the house rent due, **Two**, whether this court properly evaluated the evidence on record and **Three**, whether the respondent breached the tenancy agreement.

The learned counsel argued point numbers one and three combined that pursuant to S. 82(1) (a) of the Income Tax Act Cap 332 RE 2019 the applicant was obliged to surrender the 10% to the TRA but the respondent objected only basing on the fact that there was no such term of the tenancy agreement and that one alone constituted a noble point of general importance by way of appeal determinable by the Court of Appeal of Tanzania. That is all.

The seemingly layman respondent had no comment leave alone submissions.

The central issue is whether the instant application it raised a noble point and issue of general importance determinable by the Highest fountain of justice (case of **British Broadcasting Corporation v. Erick Sikujua Ng'imaryo, Civil Application No. 138 of 2004 ( CA) unreported**). The answer is no. Actually with regard to the issue of withholding Tax, in no uncertain terms the provisions of S. 82(1) (a) of The Income Tax Act Cap. 332 RE 2019 equally they vested the obligation both to principles and agents in this case the tenant and land lord. Now that the obligation to pay tax was a statutory creature, parties could not have, by all means agreed to suspend it or something. The issue of one breaching the tenancy agreement or the judge improperly evaluating the evidence therefore it was neither here nor there without running risks of rehearing the appeal or usurping powers of the Court of Appeal in disguise anyway.

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

Right of appeal explained.

**S.M. RUMANYIKA**

**JUDGE**

**29/08/2021**

The ruling delivered under my hand and seal of the court in chambers this 30/08/2021 in the absence of the parties.



**S.M. RUMANYIKA**

**JUGDE**

**30/08/2021**