

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. LAND APPLICATION No. 84 OF 2021

ENOCK MARWA HARUN CHACHA

(as attorney of Gimonge Marwa)**APPLICANT**

VERSUS

HALPHAN ALLY**RESPONDENT**

RULING

07th October, 2021

TIGANGA, J.

The applicant, Enock Marwa Harun Chacha moved this court under section 95 of the Civil Procedure Code [Cap 33 RE 2019] under certificate of urgency asking for an order for temporary injunction restraining the respondent Halphan Ally, his agent or any one working under his instruction and/or authority from building, entering, harassing, threatening and or interfering the occupation of the disputed property located at Isamilo, within Nyamagana District, Mwanza Region pending hearing of Appeal. He also asked for costs of the application to be in the course and any other/further orders as this court may deem fit and just to grant. The reasons for this application as can deciphered from the affidavit filed in



support of the application are that, Land Appeal No. 42 of 2018 before the District Land and Housing Tribunal for Mwanza which originated from Land dispute No. 59 of 2017 before Isamilo Ward Tribunal in which appeal the applicant was the appellant, appealing against the respondent who was the respondent, the same was decided in the favour of the respondent.

Following that defeat the applicant asked for copy of judgment and later filed an appeal to the High Court which he lodged with the District Land and Housing Tribunal as required by law since the matter/dispute originated from the Ward Tribunal. He proved that by annexure A - 3 to the application which is the receipt of payment of court filing fees.

That being the case, he had to await for a case file to be prepared and sent to the High Court and during the pendency of the case file transfer from the District Land and Housing Tribunal the High Court, he decided to move this court under section 95 of the Civil Procedure Code [Cap 33 R.E 2019] asking for temporary injunction order.

With this application, I noted the following anomalies which I called upon the applicant to address me.



One; the provision of section 95 of the Civil Procedure Code provides for inherent powers of this court to make such orders as may be necessary for the end of justice or to prevent abuse of the process of the court. **Two** that, the proceedings for which the orders for temporary injunction is sought, originates from the Ward Tribunal in which the provisions of Civil Procedure Code do not apply.

Three, even if we assume for the sake of argument, that the provision of Civil Procedure Code applies to the provision of this nature, then there is specific provisions which are section 68 (c) of the same law read together with order XXXVII Rule 1 of the same Civil Procedure Code (not section 95 of the Civil Procedure Code) and that temporary injunction order which are issued pending suit, not appeal or intended appeal. **Four;** that the matter was a fit case in which the applicant would have applied for stay of execution rather than temporary injunction.

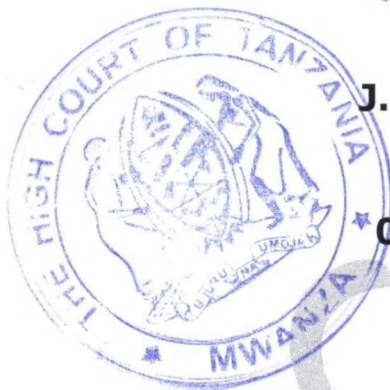
On address, the applicant conceded to the irregularities in the application and asked the court to struck out the same with an order waving the costs, so that he can file the proper application.



On consideration of the above I find the application to be untenable on the grounds elaborated above. I thus dismiss the application (instead of striking out as asked) with no order as to costs.

It is accordingly ordered.

DATED at **MWANZA**, this 07th October, 2021




J. C. TIGANGA

JUDGE

07/10/2021