

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL APPEAL NO. 6 OF 2021**

(Originating from Civil Case No. 97 of 2016 in the Resident Magistrates Court of  
Arusha at Arusha)

**SNOWCREST HOTEL & WILDLIFE SAFARIS LTD..... APPELLANT**

**VERSUS**

**KARUME JOSEPH MWACHA.....REPOENDENT**

**JUDGMENT**

20.06.2022 & 05.07.2022

**N.R. MWASEBA, J**

Snowcrest Hotel & Wildlife Safaris Ltd, the appellant herein is challenging the order of the Resident Magistrates Court of Arusha which ordered the appellant to be arrested and detained for vandalizing the machines which were to be attached which amounts to a contempt of court contrary to **Order XXI Rule 55 of the Civil Procedure Code**, Cap 33 R.E 2019.

The appellant preferred this appeal armed with six grounds of appeal as they can be depicted from the memorandum of appeal.

On 20.06.2022 when the appeal was called for hearing Mr. Ngeseyan, learned counsel represented the appellant whilst Mr. Elibariki Maeda, learned counsel appeared for the respondent.

Mr Ngeseyan prayed for the appeal to be heard by way of written submission, however, Mr. Maeda submitted to the court that they have decided to concede with the appeal due to the reasons that the appellant has appealed against one respondent while in the main case there were two respondents. The other reason adduced by the counsel for the respondent is that all the grounds of appeal are centered on the right to be heard, that even the ruling appealed for is an interlocutory order which is non appealable. Hence, they concede so that they can restart with the mode of execution ordered on 07.01.2022. he finalized by praying that each party to bear its own costs.

Responding to what was submitted by Mr Maeda, Mr Ngeseyan told the court that he accepts the fact that one cannot treat a company as a civil Prisoner. However, he prayed to be granted costs incurred by the appellant to hire an advocate who appeared before this court.

In brief rejoinder, Mr Maeda contended that ordering a person to be taken as a civil prisoner did not finalize the matter though they are challenging

regarding the right to be heard. So, they prayed for the costs waived since no big efforts has been used by the parties.

Having heard the submissions of the parties and since the respondent conceded to the appeal, the only issue for determination is whether the costs should be awarded or not.

As a general rule, costs are awarded at the discretion of the court and a successful party normally is entitled to costs. **Section 30 (1) and (2) of the CPC** stipulates that:

*"1. Subject to such conditions and limitations as may be prescribed and to the provisions of any law from the time being in force, the costs of, and incidental to, all suits shall be in the discretion of the court and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.*

*(2) Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing."*

The same was decided in the case of **Bahati Moshi Masabile t/a Ndondo Filing Station Vs Camel Oil (T)**, Civil Appeal 2018 (Unreported) where it was held that:

*"It is a general rule that a winning litigant as a matter of right must be awarded costs."*

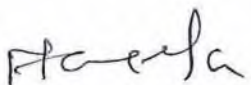
As correctly stated by the respondent's counsel that they had conceded to the appeal at the earliest stage of the case without wasting much time of the parties and the court and no excessive powers was used by the parties to litigate the appeal. Thus, it is imperative for the court to allow the appeal with no order as to costs.

For the foregone reasons, the appeal is hereby allowed and each party should bear its own costs.

It is so ordered.

**DATED at ARUSHA** this 5<sup>th</sup> day of July, 2022.



  
**N.R. MWASEBA**

**JUDGE**

**05.07.2022**