

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

**BUKOBIA DISTRICT REGISTRY**

**AT BUKOBIA**

**MISC. LAND APPLICATION NO. 80 OF 2021**

*(Arising from Land Appeal No. 44 of 2019, of the High Court of Tanzania at Bukoba and Misc. Land Appeal Case No. 1 of 2019 of the Bukoba Resident Magistrate's Court with extended jurisdiction and Land Case Appeal No. 234 of 2014 of Bukoba District Land and Housing Tribunal arising from original Land Case No. 10 of 2014 of Chonyonyo Ward Tribunal)*

**GERVASE KANYANKOLE.....APPLICANT**

**VERSUS**

**LAURIAN THADEO.....RESPONDENT**

**RULING**

**07/03/2022 & 08/03/2022**

**NGIGWANA, J.**

This application was brought by way of chamber summons made under Section 47 (2), (3) and (4) and Section 48 (2) of the Land Disputes Courts Act Cap. 216 R: E 2019, Section 5 (1) Act Cap. 141 R:E 2019, and Rule 45 (a) of the Tanzania Court of Appeal Rules 2009 as amended by G.N. No. 344 of 2019 and Section 14 (1) of the Law of Limitation Act Cap. 89 R: E 2019, where the applicant is seeking for the orders which were coached as follows: -

- 1. This Hon. Court be pleased to extend the time within which to file a notice of appeal to the Tanzania Court of appeal against the ruling given on 2<sup>nd</sup> March, 2021 by the High Court before the Hon. L.G. Kairo Judge.*

- 2. And to enlarge the time under which to apply certified copies of the ruling and drawn orders given on 2<sup>nd</sup> March, 2021 and on 1<sup>st</sup> August 2019 by the High Court of Tanzania at Bukoba and Bukoba Resident Magistrate's court with extended jurisdiction and the whole proceedings of the above-mentioned appeals and suit.*
- 3. This Hon. Court be pleased to extend the time within which to apply for leave to appeal and certification of points of law worth the consideration of the Tanzania Court of Appeal.*

The application is supported by the affidavit of the Applicant. The counter affidavit was duly filed by the respondent resisting the application.

When the matter came for hearing, the applicant had the legal services of Mr. Ibrahim Mswadick, learned advocate while the respondent had the legal services of Mr. Alli Chamani, learned advocate assisted by Mr. Fahad Rwamayanga, learned advocate.

However, before the commencement the hearing, Mr. Ibrahim informed the court that he was recently engaged by the applicant, and that, after going through the chamber summons and affidavit drawn and file by the applicant who is a layperson he discovered two defects; **One**, that the application is an omnibus application in the sense that it contains four (4) prayers catered from different laws. **Two**, that this matter was initially transferred to the Resident Magistrate Court of Bukoba Extended Jurisdiction in which it was registered as Misc. Land Appeal Case No. 01 of

2019 (Arising from DLHT Appeal No. 234 of 2014, Original Civil Case No. 10 of 2014 of Chonyonyo Ward Tribunal).

Following the discovery of the two defects, Mr. Mswadick prayed to the court to withdraw this application so that he can advise his client accordingly.

The prayer was not objected by the respondent's advocates; however, they urged the court to award costs. They made reference to the case of **Mechmar-Corporation (Malaysia) Berhard (in Liquidation) versus Vip Engineering Marketing Ltd and Others**, Civil Application No. 190 of 2013 CAT (unreported) where the Court of Appeal held that a party withdrawing his action is liable for costs as the court may award.

Rwamayaga further said, this application has some history, as it started as Application No. 1 of 2019 but it was withdrawn by the applicant and no costs awarded, and later Appeal No. 44 of 2019 which was dismissed with no costs, hence the present application. He added that, their client has been incurring costs for the acts of the applicant.

In rejoinder, Mr. Ibrahim stated that, the question of costs is in the discretion of the court, and that each case has its own circumstances.

I have well heard and considered submissions of both sides. The two points which led the applicant's advocate to seek leave of the court to withdraw this application are legal points making the application incompetent as stated by Ibrahim Mswadick and supported by the advocates for the respondent.

The mix up of four prayers catering from different laws is irregular. The prayers apart from catering from different laws, were not interrelated thus could not be conveniently combined. see **Jovin Mtagwaba & 85 Others versus Geita gold Mining Ltd**, Civil Appeal No. 23 of 2014 CAT **Mohamed Salmini versus Jumanne Omari Mapesa**; CAT Civil Application No. 103 of 2014.

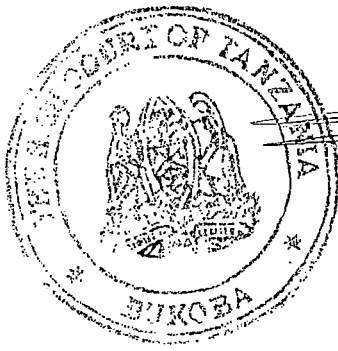
Again, the fact that this matter was initially transferred to the Resident Magistrate Court of Bukoba Extended Jurisdiction, it cannot be said that this appeal is properly before this court. See the case of Alonda **Ekele versus Republic**, CAT Criminal Application No. 1 of 2020 (unreported).

As regard, the issue of costs, I do agree with Mr. Mswadick that the general rule on costs is clear and trite that costs are awarded at the discretion of the court, they follow the event unless the court has good reasons to be recorded by it for deciding otherwise. See **Njoro Furniture Mart Ltd versus Tanzania Electric Supply Co. Ltd. [1995] TLR 205**.

In the matter at hand, I have considered that the two points were raised by the Applicant's advocate right after being engaged, and he did so at the earliest possible stage, that is to say, before the commencement of the hearing of this application, therefore, I order no order as to costs.

In the event, this application is hereby marked withdrawn at request of the applicant through his advocate.

It is so ordered.

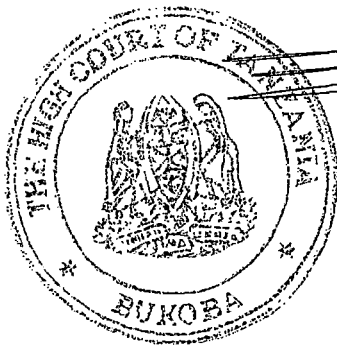


E.L. NGIGWANA

JUDGE

08/03/2022

Ruling delivered this 8<sup>th</sup> day of March 2022 in the presence of the Applicant in person, Mr. Ally Chamani, learned advocate for the respondent, Mr. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C.



E.L. NGIGWANA

JUDGE

08/03/2022