

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

CIVIL APPLICATION NO. 2 OF 2015

CHARLES MALESA.....APPLICANT

VERSUS

1. PRAVIN SHAN

**2. S. L. ISANGI AUCTION MART &
COURT BROKER @ BINGWA WA
MINADA TANZANIA**

..... **RESPONDENTS**

**(Leave to file an application for revision out of time against the
verdict and subsequent execution proceedings in the
High Court of Tanzania at Mwanza)**

(Sumari, J.)

dated 5th day of September, 2014

in

Land Case No. 28 of 2014

RULING

4th & 8th June, 2015

MUSSA, J.A.:

In the High Court of Tanzania, at Mwanza, the respondent sued the applicant under Order XXXV Rule 1 (f) of the Civil Procedure Code (CPC), claiming vacant possession over landed property comprised on Plot No. 249, Block "DD" situate at Igogo, within the city of Mwanza.

Upon being served, the applicant failed to seek leave to defend the suit and, accordingly, the trial court (Sumari, J.), entered judgment for the respondent on the 5th September, 2014. Thereafter, the appellant took no

further step, till on the 6th February, 2015 when he preferred the Notice of Motion at hand.

At the hearing before me, the applicant was represented by Mr. Mathew Nkanda, learned Advocate, whereas the first respondent had the services of Mr. Salum Magongo, also learned Advocate. Mr. Magongo was also holding brief for the second respondent who was reportedly bereaved. Counsel informed the Court that he was duly instructed by the second respondent to proceed with the hearing.

The learned counsel for the applicant fully adopted, the Notice of Motion, the accompanying affidavit, as well as the written submissions in support thereof. On his part, the learned counsel for the respondents similarly adopted the respective affidavits in reply as well as the written submissions to counter the application.

Having dispassionately considered the rival submissions, it is, in the first place, noteworthy that the matter giving rise to this application was preceded by way of a summary procedure in terms of Order XXXV of the CPC. To that extent, it was open for the applicant to apply to the court

which made the decree to have the same set aside under the provisions of Rule 4. Since the matter was a land dispute, the applicant could have just as well opted to prefer an appeal in terms of section 47 (1) of the Land Disputes Court Act, Chapter 216 of the revised laws.

To say the least, even if the present application is allowed, the intended application for revision will eventually be untenable in law on account that the applicant had a right to pursue an appeal. That being the position, the present application is of no practical utility. Besides, in his affidavit, counsel has not assigned any reason for the delay in mounting the application in time and, as such, no good cause has been shown.

In fine, thus application is dismissed with costs.

DATED at **MWANZA** this 5th day of June, 2015.

K. M. MUSSA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL