

IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: MBAROUK, J.A., LUANDA, J.A. And JUMA, J.A.)

CIVIL APPEAL NO. 66 OF 2015

AMANI GIRLS HOME.....APPELLANT
VERSUS
ISACK CHARLES KANELA.....RESPONDENT

**(Appeal from the decision of the High Court of Tanzania,
(Labour Division) at Mwanza)**

(Wambura, J.)

Dated the 26th day of February, 2014
In
Revision No. 24 of 2012

RULING OF THE COURT

25th & 27th May, 2016

MBAROUK, J.A.:

When the appeal was called on for hearing on 25th May, 2016, it transpired that the respondent had earlier on 17-8-2015 filed his notice of preliminary objection containing one point and thereafter on 23-5-2016 filed his supplementary notice of preliminary objection containing four points, but the basic one which we think will dispose of this appeal is as follows, namely:

"1. That, the appeal is incompetent because the record of appeal is missing the following documents,

(a) The proceedings of the High Court in Revision No. 24 of 2012 as mandatorily required under the provisions of Rule 96(2(c) of the Court of Appeal Rules, 2009.

(b) The decision of CMA by E.F. Urassa, Arbitrator, dated 26-9-2011, which set aside the previous award dated 30-7-2010 including its correction order dated 19-10-2010."

In this appeal, Ms. Agripina John, the appellant's Manager appeared on behalf of the appellant; whereas the respondent appeared in person unrepresented.

At the hearing, the respondent mainly adopted his points of objection and on her part, Ms. Agripina readily conceded to the objections raised by the respondent.

On our part, having looked at the record of appeal, we have found out that neither the proceedings of the High Court in Revision No. 24 of 2012 nor a copy of the decision of CMA dated 26-9-2011 were included in the record of appeal. The omission to do so is fatal and contrary to the requirements of Rule 96(2) and 96(2(c)) of the Court of Appeal Rules, 2009 (the Rules).

Rule 96(2) of the Rules provide as follows:

*"(2) For the purposes of any appeal from the High Court in its appellate jurisdiction, **the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (1)** and shall contain also the following documents relating to the appeal to the first appellate court –*

- (a)*
- (b)*
- (c) **the record of proceedings***
- (d)*
- (e)*

(f)"

(Emphasis added.).

Having established that such an omission as fatal, it renders the appeal incompetent. For being incompetent, we hereby strike out the appeal with no order as to costs as this case arose from a labour dispute. It is so ordered.

DATED at MWANZA this 26th day of May, 2016.


M.S. MBAROUK
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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




J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL