

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

**(CORAM: OTHMAN, C.J., KIMARO, J.A. And KAIJAGE, J.A.)**

**CIVIL APPEAL NO. 12 OF 2016**

**BETWEEN**

**MASOUD OMARY MASOUD .....APPELLANT**

**VERSUS**

**JAMAL ABILLAH BAKARI.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania  
at Mtwara)**

**(Mipawa, J.)**

**dated 5<sup>th</sup> day of May, 2011**

**in**

**Land Appeal No. 2 of 2009**

**RULING OF THE COURT**

02<sup>nd</sup> & 4<sup>th</sup> August, 2016

**OTHMAN, C.J.:**

Before the hearing of the appeal on a land dispute concerning Plot No. 43, Block P, Lindi Town, the Court *suo motu* questioned the parties, lay persons and unrepresented by learned Advocates on the competency of the appeal.

The appellant, Mr. Masoud readily conceded that the record of the original proceedings of the Lindi District Land and Housing Tribunal in Land Application No. 18 of 2008 as well as part of the appellate proceedings in Land Appeal No. 2 of 2009 before the High Court and in which the parties had appeared have been omitted in the record of appeal. This he explained may have been a honest mistake in the binding of the record of appeal. It was, he urged, human to err. That as he was intent on pursuing his right of appeal, the Court should exercise leniency.

On his part, the Respondent, Mr. Bakari complained that this was the second time the appellant had brought a defective record of appeal to the Court. That it was high time the successful beneficiaries of the estate of the late Abillah Bakari Mohamed, whom he represented in this Court and the courts below should be allowed to enjoy the fruits of the judgment of the High Court.

Having closely examined the record of appeal and the original record, much as the ruling of the learned Chairman (A. Mapunda) of the Lindi District Land and Housing Tribunal in Land Application No. 18 of 2008 delivered on 31/12/2008 is on the record of appeal (p.203), conspicuously absent are its proceedings from 8/10/2008 to 10/12/2008, where the appellant was

represented by a learned Advocate. Equally omitted in the record of appeal are the proceedings at the High Court from 12/5/2009 to 19/10/2010, during which period the parties had made some twelve appearances before the court. In our settled view, the non-incorporation of the original proceedings of the Tribunal in the record of appeal offends the proviso to Rule 96(2) of the Court of Appeal Rules, 2009 (the Rules) and those of the appellant proceedings at the High Court runs contrary to Rule 96(2)(c). The record of these proceedings constitute essential documents required for the proper determination of the appeal. Their absence renders the records of appeal defective, and the appeal incompetent. Much as this would have been sufficient to strike out the appeal, we have noticed another serious anomaly in the purported appeal, which we are constrained to attend to.

It is on record that the impugned judgment of the High Court (Mipawa, J.) in Land Appeal No. 2 of 2009 was delivered on 5/05/2011. The appellant lodged an application for an extension of time within which to file a notice of appeal to the Court of Appeal, which was granted by the High Court (Kibela, J.) on 26/08/2014. Accorded 14 days from that date within which to file his notice of appeal, the appellant correctly lodged his notice of appeal on 29/8/2014.

As required by section 47(1) of the Land Disputes Courts Act, Cap. 216, R.E. 2002 read together with section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 and Rule 45 (a) of the Rules, the appellant on 23/09/2004 sought from the High Court in Misc. Land Application No. 19 of 2014 leave to appeal to the Court of Appeal against the judgment of the High Court (Mipawa, J.). Leave to appeal was granted by that court (Twaib, J.) on 16/6/2015. The appellant lodged his appeal on 14/8/2015.

Now, Rule 45 (a) provides:

"45. In Civil matters-

*(a) **Where an appeal lies with leave of the High Court, application for leave may be made informally when the decision against which it is desired to appeal is given or by chamber summons according to the practice of the High Court within fourteen days of the decision***" (Emphasis added).

As outlined earlier, that the impugned judgment of the High Court was delivered on 5/5/2011. Misc. Land Application No. 19 of 2014 seeking from

the High Court leave to appeal to the Court of Appeal was lodged by the appellant on 23/09/2014. About three years and four months had elapsed in between. The application was granted on 16/06/2015.

With respect, it is self-evident that the leave to appeal was erroneously granted by the High Court without it having been prefaced by a prior application by the appellant for an extension of time within which to lodge an application for leave to appeal to the Court. Moreover, the situation being as analysed, the High Court could not and in fact did not grant to the appellant any extension of time for leave to appeal. Accordingly, the leave to appeal, which was granted by the High Court on 16/06/2015 was effected without their having been any prior grant of an extension of time within which the appellant could validly seek leave to appeal to the Court, the fourteen days limitation period under Rule 45(a) having long expired. The legal effect of this is that the leave to appeal paraded by the appellant in the record of appeal is invalid in terms of the mandatory requirement of section 47(1) of the Land Disputes Court Act.

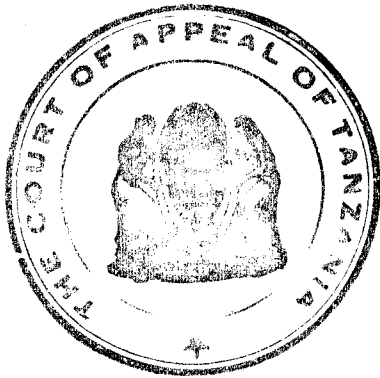
On this footing and for these reasons, the purported appeal is equally incompetent and is liable to be struck out. Much as we are conscious of the appellant's vain efforts since 2009 to pursue his right of appeal, the

Court and the parties too are all bound by the dictates of the law, which must be duly complied with.

In the final analysis and for the foregoing reasons we hereby proceed to strike out the purported appeal, with no order as to costs. Ordered accordingly.

**DATED** at **MTWARA** this day of 3<sup>rd</sup> August, 2016.

M. C. OTHMAN  
**CHIEF JUSTICE**



N. P. KIMARO  
**JUSTICE OF APPEAL**

S. S. KAIJAGE  
**JUSTICE OF APPEAL**

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

  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**