

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MBAROUK, J.A, MKUYE, J.A And MWAMBEGELE, J.A.)

CIVIL APPEAL NO. 212 OF 2017

**1.MWAJUMA HASSANI
2.MWANAHAMIS NASSOR
3.PILI HASSANI
4.AMINA HASSANI** }**APPELLANTS**

VERSUS

**1.HAMIS ABDALLA
2.JUMA OMARY MGAZA** } **RESPONDENTS**

(Appeal from the judgment of the High Court of Tanzania at Dodoma)

(Shangali, J.)

dated the 28th day of September, 2012

in

Land Case Appeal No.30 of 2010

RULING OF THE COURT

5th & 13th March, 2018

MWAMBEGELE, J. A.:

This land matter stems from the decision of the District Land and Housing Tribunal of Dodoma in which the appellants lost a suit in which they sued the respondents over interest in land. The District Land and Housing Tribunal (henceforth "the Tribunal") held that the suit the appellants brought before it was essentially a probate matter

which the Tribunal had no jurisdiction to entertain and hear. The appellants were not amused by the decision of the Tribunal and, therefore, appealed to the High Court. On 28.09.2012, the High Court (Shangali, J.) dismissed their appeal. Upholding the decision of the Tribunal, the High Court held that the matter was indeed a probate one on which the Tribunal had no jurisdiction. Undeterred, the appellants have lodged this second appeal.

When the appeal was called on for hearing on 05.03.2011, both parties were represented. While the appellants had the representation of Dr. James Jesse, learned advocate, the respondents had the services of Mr. Zakayo Njulumi, also learned advocate.

At the very outset, we prompted the learned advocates to address us on the propriety of the appeal before us. We had such a concern because of the fact that the record of appeal shows at p. 87 that the matter was ordered to proceed *ex parte* on 18.08.2010. On the said 18.08.2010 Mr. Jesse (as he then was; he is now Dr. Jesse) before J. W. Sillas, Chairman, prayed for another date during which he

could field his witnesses for *ex parte* proof of the case. What follows thereafter on the record is the judgment.

To the foregoing, Dr. Jesse conceded that the record was short of proceedings that followed thereafter. As to the way forward, the learned advocate first told us that the missing record of proceedings was not fatal to the appeal but at a later stage, in a conceding tone, he submitted that he left everything in the wisdom of the Court.

On his part, Mr. Njulumu, submitted that the record of appeal was incomplete thereby rendering the appeal incompetent. The only option available, he submitted, was to strike out the incompetent appeal.

We respectfully think Mr. Njulumu is right. The provisions of Rule 96 (2) (c) of the Tanzania Court of Appeal Rules, 2009 (henceforth "the Rules") provide:

"(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) N/A*
- (b) N/A*
- (c) the record of proceedings;*
- (d) ..."*

According to section 47 (3) of the Land Disputes Courts Act, Cap. 216 of the Revised Edition, 2002, the procedure for appeal to this Court in land matters like the present, is governed by the Rules. As per Rule 96 (2) (c) of the Rules cited above, 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) as well as the record of proceedings.

In the case at hand, the appellant did not append a complete record of proceedings. Dr. Jesse conceded to this glaring fact and, to our surprise, left the wisdom of the Court to be behind the wheel. Without much ado, we are of the considered view that the shortcoming makes the record of appeal incomplete and consequently

renders the appeal incompetent. In **Mbeya Intertrade Company Ltd v. The Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 68 "A" of 2010 (unreported) we were confronted with an akin situation respecting appeals in Tax Appeals matters. In that case, the appellant did not accompany a valid decree in its record of appeal as required by Rule 96 (2) (e) of the Rules. We observed that in view of the fact that Rule 24 (3) of the Tax Revenue Appeals Tribunal Rules, 2001 made under the Tax Revenue Appeals Act, Cap. 408 of the Revised Edition 2006 and in further view of the fact that Rule 96 (2) (e) of the Rules makes it mandatory to include in the record of appeal a valid decree, the appeal was incompetent and we consequently struck it out.

We entirely subscribe to the position we took in **Mbeya Intertrade Company** (supra) to the effect that failure to include in the record of appeal documents enumerated in Rule 96 (2) of the Rules makes the record of appeal incomplete and, consequently, renders the appeal incompetent. As the record of proceedings of the present case is not complete, thereby offending against Rule 96 (2) (c)

of the Rules, the record of appeal is incomplete and the appeal is rendered incompetent.

In the upshot, the incompetent appeal is struck out. As the ailment was raised by the Court on its own motion, we make no order as to costs.

Order accordingly.

DATED at DODOMA this 12th day of March, 2018.

M.S. MBAROUK
JUSTICE OF APPEAL

R.K. MKUYE
JUSTICE OF APPEAL

J.C.M. MWAMBEGELE
JUSTICE OF APPEAL

I certify that this is true copy of the original.


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL