

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL APPEAL NO. 112 OF 1996

IBRAHIM MPHAMED HASSAN APPELLANT
VERSUS
AWADH SAID NKANATILA RESPONDENT

R U L I N G

MURO, J.

This appeal which was filed in this court on 13/9/1996 in challenging the ruling of the Hon. PRM Chillongi (as he then was) in Kisutu RM'S court Civil Case NO.18/1994. In that ruling, the court had ordered to be attached and ^{sold} by public auction a house situated on Plot NO.105 Block "B" Kigogo area in Kinondoni District in order to satisfy a decree of the same court granted in favour of the respondent, one Awadh Said Nkanatila against the Judgment Debtor, one Ali Mbunda, who is the owner of the said house.

The appellant is now appealing against that ruling on the strength of a General Power of Attorney issued to him by a person called Mohamed Hassan of Mtimbo village.

When the appeal came up for hearing, the learned counsel for the respondent Mr. Leoba, sought permission to be heard first in respect of preliminary objections on points of law. He presented his argument by way of written submissions. The appellant chose not to submit anything.

The learned counsel for the respondent has raised two points of Preliminary Objection in his written submission. Those are:-

- (1) The order appealed from is not an appellable order.
- (2) The memorandum of appeal has been annexed with documents legally not required to be annexed thereto, also enabling provisions of law are cited on the Memorandum of Appeal.

It is the submission of the learned counsel for the respondent which I agree with that the appeal contravenes Order XXXIX rule 1 (1) of the CPC 1966 which mandatorily require a Memorandum of Appeal to be accompanied by a copy of the decree appealed from and unless the court dispenses therewith, a copy of the judgment on which it is founded.

Instead, the appellant, offending the above cited provision of law, has provision of law, had attached other documents which are strange to the original case.

In addition, the appellant has cited provision of law purporting to be enabling provisions of law under which the appeal was brought, which are enabling provisions for a chamber summons and not those of a memorandum of appeal. Order XXI rule 57, Order XXXVII and order XXXIX of the CPC so cited cover Chamber Summons and not memorandum of appeal.

The parties to the case the appellant is appealing against are one Awadhi Said Nkamatila and Ali Mbunda. The appellant Ibrahim Mohamed Hassan is a stranger to the original case. He has presumably jumped in the shoes of Ali Mbunda through a Power of Attorney which is annexed to the Memorandum of Appeal. But the power of attorney is challenged by Mr. Lebba for being unregistered. For all intents and purposes it cannot be enforced in law.

Scrutiny of the Power of Attorney also reveals that it has been issued by a person other than Ali Mbunda, who is a party to the original case and on whose behalf the present appellant is supposed to appear.

For that reason, it is my finding that the appellant lacks the necessary Locus standi and he is therefore incompetent to file the appeal. The appeal lacks merits and is hereby dismissed. The respondent shall have his costs.

Sgd: M.I. MURO,
JUDGE
1/11/2001

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

F.S.K. Mutungi
DISTRICT REGISTRAR
10/4/2002