

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY**

AT MWANZA

HC CIVIL APPEAL NO 27 OF 2007

(Arising out of Civil Case No: 1/2002 Ukerewe District Court)

SYLIVESTER MISANA BIHEMO.....APPELLANT

Versus

**THE VILLAGE CHAIRMAN MURITI VILLAGE-
UKEREWE DISTRICT** } **.....RESPONDENT**

JUDGEMENT

25/11&16/12/2008

SUMARI,J

This is an appeal by the appellant appealing against the decision of Ukerewe District Court. At Ukerewe District Court the appellant unsuccessfully sued the respondent for compensation of Tshs.1,973,825/= for his destroyed permanent trees/crops plus grave yard. The trial court dismissed the suit for lack of merits and also that it was time barred. It is from that decision he is dissatisfied and hence, this appeal.

The appellant was unrepresented. On 26th June, 2008 the matter came for mention and both parties appeared, appellant in his person and respondent was represented by Venance Silvanus Magafu, the Village Executive Officer. They agreed on the hearing date to be on 25/11/2008. On 25/11/2008 when the matter came for hearing

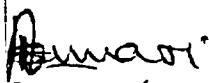
only appellant was present. Neither the respondent nor his representative appeared and on no notice so the hearing proceeded as scheduled. Appellant had nothing to add or to explain. He prayed his grounds of appeal to be considered.

I then fixed the date of judgement, however, when preparing for the same I noted two important things which has raised legal issues which I am bound to dispose of before I proceed. These are one, no copy of the decree has been accompanied with the memorandum of appeal as required under Order xxxix Rule 1 of Civil Procedure Code, Cap. 33 of the Laws (R.E.2002)., which provision is mandatory. This Order reads:- Order xxxix Rule 1(supra):-

*(1)" Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and **the memorandum shall be accompanied by a copy of the decree appealed from** and (unless the Court dispenses therewith) of the judgment on which it is founded"(emphasis is mine).*

Two, the memorandum of appeal does not indicate when the same was presented for filing. There is no even the court seal which could at least assist me to grasp this. The record however, contains no receipt- ERV to prove payment for filing the same. With these two anomalies I have no doubt to hold that the appeal is incompetent before this court. This being the position, the appeal is struck out.

No order for costs.


A.N.M Sumari
JUDGE

Delivered in absence of the parties.

***At Mwanza
16/12/2008***