

**IN THE HIGH COURT OF TANZANIA**

**[LAND DIVISION]**

**AT TANGA**

**MISC. LAND APPEAL NO.51 OF 2008**

*[From the decision of the District Land and Housing Tribunal  
of TANGA District at TANGA In Land Appeal No.16 of 2008  
and original Tribunal of MOMBO - KOROGWE  
WARD in Application No.16 of 2007]*

**HAMZA NJEKU & 2 OTHERS.....APPELLANTS**

**VERSUS**

**MOMBO AFRICAN MUSLIM ASSOCIATION.....RESPONDENT**

Date of last order: 15.03.2012

Date of delivery: 14.09.2012

**RULING**

**Mussa, J;**

The proceeding giving rise to this appeal was initiated in the Mombo Ward Tribunal, Korogwe District. In the original proceeding, the respondent, a religious association, sued the appellants over ownership of a mosque situate at Mombo. At the conclusion of the trial, the Tribunal, sort of, placed the mosque under the guardianship of BAKWATA pending an installation of a new board of trustees. As it were, both the appellants and the respondent were aggrieved, whereupon, they, respectively, preferred an appeal and a cross – appeal in the Tanga District Land Tribunal. In the upshot, it was, rather, the respondent's cross – appeal that carried the day. Dissatisfied, the appellants preferred an appeal to this court, seeking to impugn the verdict of the first appellate Tribunal.

The respondent greeted the petition with scorn upon a preliminary objection to the effect that, after all, the appellants had no *locus standi* to institute the proceeding giving rise to this appeal. On the premises, I was urged to have the appeal struck out for incompetence. The submission was resisted by the appellants who countered that the same is wholly without substance.

As I geared towards a resolve, an obviously disquieting detail crossed my mind. Unfortunately, I could not brook it undetermined more so as, in my view, the same travels to the root of the appeal. To express it at once, it is imperatively required of section 38(2) of Act No.2 of 2002, that an appeal to this court pertaining to a matter originating from a Ward Tribunal must, in the first instance, be filed in the District Tribunal. On the contrary, it is noteworthy, this appeal was mounted directly to this court. In this regard, exchequer receipt No.29284861 bares out the detail. That is to say, albeit, for a reason different from that raised by the respondent, this appeal is incompetent. Nonetheless, much as the misnomer was not raised by the respondent, I would strike it out without an order as to costs.



K.M. MUSSA, J.

DATE: 14/9/2012

CORAM: P.C. MKEHA – DR


APPLICANTS – Present

RESPONDENT: Present

C/C MARIAM



Court: Ruling is read over to the parties on this 14<sup>th</sup> day of September, 2012.

  
P.C. MKEHA – DR.  
14/09/2012