

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL APPEAL NO. 197 OF 2019

*(originating from Misc Civil Application No. 86 of 2019 at Temeke District Court
before Hon. Batulaine (RM))*

Evarist Samwel ManembeAppellant

Versus

1. The Board of Dar Es Salaam University

College of Education Saccos Respondent

2. Ramadhani Abdallah Kigume

JUDGEMENT

Date of Last order: 30.04.2020

Date of Ruling: 30.06.2020

Ebrahim, J.:

This appellant herein had filed Miscellaneous Civil Application No. 86 of 2019 praying for the District Court of Temeke at Temeke to grant stay of Miscellaneous Application No. 228 pertaining to the bill of cost of decree delivered on 25/10/2018 in respect of Civil Case No. 40/2018 at Temeke District Court. The said chamber application was preferred under the provisions of **sections 8 and 95 and Order XX1 Rule 27 of the Civil Procedure Code, Cap 33 RE 2002** supported by an affidavit sworn

by the appellant herein (applicant). Upon filing their counter affidavit, the respondents filed notice of preliminary objection on points of law to the effect that the application was misconceived and unmaintainable as it was filed under the wrong provisions of the law. The second limb of objection was that the affidavit in support of the chamber summons does not relate to any case pending before the trial court. On 30.05.2019 when both parties appeared before the trial court, it was ordered that the point of objection be disposed of by way of written submission and the court set a schedule thereat. As it could be gleaned from the records of proceedings, it was only the respondents that filed their submissions. The trial court proceeded to determine the points of objection from the available submissions of the respondents and accordingly sustained the points of objection resulting into dismissal of the application with costs.

Aggrieved, the appellant has preferred the present appeal raising four grounds of appeal which I must admit that they are incorrigible though with great difficulty I could gather that the appellant is complaining on the order of trial court on Civil Case No 40/2018 to have been obtained from irrelevant law. The appellant is also complaining that he was not served with the copy of the respondents' submission despite

the efforts he made in court and to the respondent. The appellant claimed further that the trial court disregarded the application for stay in Miscellaneous Civil Application No. 86 of 2019 while there was Civil Case No. 43 of 2019; and that Miscellaneous Application No. 86/2019 originated from Miscellaneous Application No. 228/2019 having its origins from Civil Case No. 40/2018. On 24th February 2020 this court ordered the appeal to be disposed of by way of written submission and set a schedule thereat. Both parties adhered to the set schedule. I have thoroughly and repeatedly gone through the rival submissions of parties particularly of the appellant.

Certainly what is before this court is an appeal against the *ex parte* decision of the trial court in Miscellaneous Civil Application no. 86/2019 on the fact that the appellant did not file his submission in reply to the respondents' submissions. Nevertheless I would not address grounds no 1, 3 and 4 of appeal as without wasting time I find them to be incorrigible, confusing and addressing issues which are either not connected with the present application or this is a wrong forum and route. I would thus concentrate on ground no 2 of appeal.

The appellant is claiming on the second ground of appeal that the trial court disregarded the fact that he was not served with the

respondent's written submission in support of the point of preliminary objection. However, the remedy and the recourse that the appellant was supposed to take was to file application to set aside an exparte ruling under the spirit of **Order IX Rule 13(1) of the Civil Procedure Code, Cap 33 RE 2002** where he would have explained the reasons for his failure to file his reply to the respondent's submission. It is procedurally in-correct and premature for the appellant to file an appeal. He would have appealed after the refusal order to set aside exparte order. The attempt by the appellant to address grounds 1, 3 and 4 of appeals does not fall within the purview of this application. The appellant has mixed up causes.

All in all the present appeal is not maintainable and I accordingly dismiss it with costs.

Accordingly ordered




R.A. Ebrahim
Judge

Dar Es Salaam
30.06.2020