

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

PC CIVIL APPEAL NO. 51 OF 2019

(Arising from the Ruling of the District Court of Ilala in Civil Revision No. 15 of 2018)

FEBE THOMAS SIMKOKOAPPELLANT

VERSUS

SAID ABDALLAH LIPENDELE RESPONDENT

RULING

MASABO, J.L.:-

The Appellant herein is aggrieved of the decision of the District Court for Ilala in Civil Revision No. 15 of 2018. The matter was heard in writing to accommodate the Applicant who is lay and totally dependent on Legal Assistance. In the course of preparation of the judgment the court directed the parties to address it on the competence of the appeal so as to ascertain whether or not the appeal complies with section 74(2) of the Civil Procedure Code, Cap 33 RE 2002.

The Applicant submitted a written submission in which she was insistent that the appeal is competent. The Respondent's counsel, was of the view that the Appeal is incompetent.

For easy of reference, section 74(2) which was introduced in the civil Procedure Code Vide the Written Laws Miscellaneous Ammends Act, No. 25 of 2002 provides that:

“.....no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the suit.”

The order appealed against was made by the Court in respect of preliminary objections on the point of law raised by the Applicant herein. The decision of the court did not finally determine the application. The Applicant was ordered to amend his affidavit and file it within 14 days. As stated by the Court of Appeal while interpreting section 5(2)(d) of the Appellate Jurisdiction Act, Cap 141 R.E 2002 which is similar to the section 74(2) of the Civil Procedure Code, the appeal cannot be sustained as it is incompetent (see **Vidyadhar Girdhar Chavda v Dr. (Mrs.) Indira P. Chavda**, Civil Appeal No. 99 of 2012, CAT at Dar es Salaam (unreported)).

Accordingly, I struck it out. Each part is to bear its respective costs.

DATED at DAR ES SALAAM this 31th day of March 2019.

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J.L. MASABO
JUDGE

Ruling delivered in open court today 31st day of March 2020 in the presence of the Applicant and Mr. Emmanuel Hyera, counsel for the Respondent



J.L. MASABO
JUDGE