

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT KIGOMA**

LAND APPEAL NO. 23 OF 2019

*(From decision of District Land and Housing Tribunal of Kigoma in Land
Case No. 146 of 2018)*

DONATHA KAKWIRA 1ST APPELLANT

PAULINA KAKWIRA 2ND APPELLANT

VERSUS

FULGENCE KAKWIRA FULGENCE 1ST RESPONDENT

WILSON LUZIBILA 2ND RESPONDENT

RULING

Dated: 17th February, 2020

Before: Hon. A.K. Matuma - Judge

The appellants are aggrieved with the decision of the trial tribunal which dismissed their suit on a preliminary objection that they had no locus stand to sue.

Mr. Kabuguzi learned advocate for the respondents has raised again preliminary objection against this appeal that the same is incompetent for it has not been accompanied by the drawn order which is mandated in terms of Order XXXIX Rule 1 (1) of the Civil Procedure Code, Cap. 33 R.E 2002.

Both appellants had nothing useful on this legal point. They only prayed for time to make necessary amendments so that to proceed with the appeal. The prayer for amendments has been resisted by advocate Kabuguzi who submitted that an incompetent appeal cannot be amended but rather struck out.

It is quite true that under Order XXXIX Rule 1 (1) of the CPC supra, an appeal to this court must be accompanied by the decree, drawn order in the circumstances of this appeal for it to be competent.

In the case of **Ramadhani Rajabu @ Athumani versus Regina Rusimbi, DC Civil appeal No. 18 of 2018 (HC) at Tabora**, I had time to deal with a similar matter. Thereat, I held;

"Order XXXIX Rule 1 (1) of the Civil Procedure Code, Cap. 33 R.E 2002 provides for a mandatory requirement that an appeal to this court i.e. the memorandum of appeal shall be accompanied by the decree appealed from and unless the Court dispenses therewith, of a judgment on which it is founded. In other words the decree and the judgment impugned are mandatory attachments to an appeal to make it competent before the court".

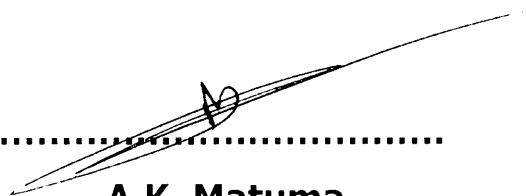
In the like manner, the appellants have not accompanied the impugned decree which renders their appeal incompetent.

As rightly submitted by Kabuguzi learned advocate, an incompetent appeal cannot be amended.

It suffers a struck out order. I consequently struck out the instant appeal for incompetence.

No orders as to costs.

It is so ordered



**A.K. Matuma,
Judge**

17th February, 2020.