

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

CIVIL APPEAL No. 01/2019

(Arising from Civil Case 27/2017 of the RM's Court at Bukoba)

VEDASTO ISRAEL----- APPELLANT

VERSUS

KIKUNDI CHA JAMII WA KISOMA-----RESPONDENT

RULING

Kilekamajenga, J

The appellant appeared before this Honourable Court challenging the decision of the Resident Magistrate's Court of Bukoba. On the other hand, the respondent, through the services of the learned counsel Mr. Joseph Bitakwate, filed a counter affidavit accompanied with a point of preliminary objection that:

This appeal was wrongly filled in the Court in contravention of provisions of order XXXIX, Rule 1 (i) of the Civil Procedure Code Cap. 33 RE 2002.

The parties finally appeared to argue the point of preliminary objection. The appellant appeared in person while the respondent enjoyed the legal services of the learned advocate, Mr. Joseph Bitakwate. In arguing the point of preliminary objection, Mr. Bitakwate submitted that the appeal was supposed to be accompanied with a decree as per **Order XXXIX, Rule 1 (i) of the Civil Procedure Code, Cap. 33 RE 2019**. As the appellant failed to attach a decree,

the appeal has no legs to stand. He supported his argument with the case of **Kashemeza Phares Kabuye v. Choya Anatory Kasazi, civil Appeal No. 110 of 2007 (unreported)**.

In response, the appellant was just brief in his submission. He urged the Court to dismiss the point of preliminary objection so that the appeal may be heard on merit.

In the rejoinder, the counsel for the respondent insisted that the requirement to attach a decree is the requirement of the law. The appellant was supposed to attach the decree otherwise his appeal has no legs to stand.

I have considered the submissions from the parties. In fact, the requirement to attach a decree on an appeal is the requirement of the law. The law provides that:

*"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."*

As can be gleaned from the above provision of the law, this requirement is a mandatory requirement of the law and cannot be done away by the application of the overriding objective because the oxygen principle does not operate in

contravention of the law. Based on the above reasons, I find the objection raised by the respondent has merit and I hereby strike out the appeal with costs. Order accordingly.





Ntemi N. Kilekamajenga
JUDGE
25/11/2020


Court:

Ruling delivered this 25th November, 2020 in the presence of the appellant and counsel for the respondent, Mr. Joseph Bitakwate. Ms. Saraia Yasin appear for the respondent.

Order:

The appeal is struck out with costs. Right of appeal explained to the parties. Order accordingly.




Ntemi N. Kilekamajenga
JUDGE
25/11/2020