

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA
MATRIMONIAL APPEAL NO. 08 OF 2020

*(Originating from the Decision of the District Court of Kyela in Matrimonial
Revision No. 9 of 2012. Originating From Kyela Urban Primary Court,
Matrimonial Cause No.33 of 2011)*

AYUBU MWAMBIPILE APPELLANT
VERSUS
SARAH MWASILEMBO.....RESPONDENT

RULING

Date of Ruling: 20.11.2020

A.Mambi, J

This ruling emanates from the preliminary objection raised by the respondent. Earlier, the appellant filed an appeal to challenge the decision of the District Court. However, the respondent raised preliminary objection that this court has not been properly moved. In her preliminary objection the respondent briefly submitted that the appellant wrongly cited the name of this court and cited the non-existent court that is “THE HIGH COURT OF MBEYA”.

In response, the appellant counsel briefly submitted that the preliminary objection has no merit since there is no point of law. He argued that the respondent preliminary objection is purely based on facts and not law. He argued the court should not entertain technicalities contrary to the principles of over-riding objectives.

I have thoroughly gone and considered the Preliminary objection raised by the respondent in line with submission by both parties. In my considered view, the main issue is whether this court has been properly moved or not. The respondent in her objection has submitted that the appellant filed his appeal to the non-existent court.

Now, the question to be asked and answered at this juncture is whether this appeal has been properly filed or not. It is on the record that the appellant cited this court by the name "THE HIGH COURT OF MBEYA". This in my considered view is wrong citation of the court. The proper citation of the court is as follows:

"THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA"

In my considered view, the principles of the overriding objectives cannot be at any rate be used as the shield to cover obvious omission. Failure to cite proper name of the court means that the

appeal was filed to the non-existent court. This is as good as saying there is no appeal before this court.

Now since this court has not been properly moved, it means that there is no appeal before this court and I hold so. Worth referring the decision of the court in **Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005** (unreported) where it was held that:

“Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court”.

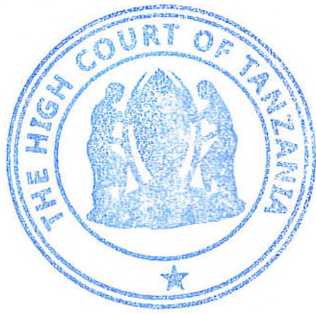
Reference can also be made to the decision of the court of Appeal of Tanzania in **The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

I am thus of the view that on account of the observation and finding I have made, I find it the appeal before this court is fatally incompetent. From the foregoing brief discussion, I am of the settled mind that the purported appeal at hand is incompetent and cannot stand as an appeal.

In the circumstance, since the appellant's appeal was invalid on the reasons I have stated, it could not have founded a proper forum before this court. In this regard, the preliminary objection raised by the respondent is sustained. For the reasons stated above the appeal has been improperly filed at this court, what then follows is to struck it and I hereby do so.

No order as to costs.



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**A. J. MAMBI
JUDGE
20.11. 2020**

Ruling delivered in Chambers this 20th of November, 2020 in presence of both parties.

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**A. J. MAMBI
JUDGE
20.11. 2020**

Right of appeal explained.

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**A. J. MAMBI
JUDGE
20.11. 2020**