

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF ARUSHA)**

**AT ARUSHA**

**LAND APPEAL NO. 70 OF 2019**

*(CF Misc. Application No. 108/2019 Originating out of the ex-parte Judgment of the District Land And Housing Tribunal for Manyara Application No. 78/2017, The District Land and Housing Tribunal for Manyara)*

**LEONARD QAMUNGA.....APPELLANT**

**VERSUS**

**MARANG' VILLAGE COUNCIL .....RESPONDENT**

**RULING**

**15/12/2020 & 15/12/2020**

**GWAE, J**

As observed by the Court on 12.11.2020, this appeal is not maintainable as has also been rightly submitted by the respondent's counsel since an order of DLHT setting aside an ex-parte or judgment is not in law appealable except when an application for setting aside ex-parte decree or judgment is refused. This position was highlighted in the case of **Paulo A. Kweka and another v. Ngorika Bus Services and Transport Company Ltd**, Civil Appeal No. 129 of 2002 (Unreported) where the Court of Appeal of Tanzania held;

*"It is provided in order XL rule 1 (d) that an appeal shall lie only from an order under rule 13 of the order IX rejecting an application for an order to set aside a decree of Judgment passed ex-parte (in a case*

*open to appeal). That being the legal position. It well be accepted without further elaboration this appeal is barred by the C.P.C.*


*This is the law which provides otherwise in terms of section 5 (1) of the Act consequently we are in agreement with Prof. Msanga in his submission that thus appeal is incompetent" .....*

An order under order 9 rule 12 setting aside an ex-parte decree is not an order that affects the merits of the case, such an order merely ensures a hearing upon merit.

In view of the above precedent and provisions of the law that is section 74 (2) and order IX rule 13 of the Civil Procedure Code Cap 33, R. E 2019 which provide for a prohibition for a party from appealing against a decision or order which does not have an effect of finally determining a suit/matter. Therefore, the appellant's appeal is thus found to have been prematurely filed.


Having taken this course, this appeal is therefore found to be incompetent. Consequently, the same is hereby struck out with costs.

It is so ordered.

  
**M. R. GWAE**  
**JUDGE**  
**15/12/2020**

**Court:** DLHT'S record be timely remitted to the trial tribunal.



  
**M. R. Gwae**  
**Judge**  
**15/12/2020**