

THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL NO. 257 OF 2018

*(Arising from Application No. 434 of 2011 District Land and
Housing Tribunal of Kinondoni at Mwananyamala)*

OMARI IDD SLEYUM.....APPELLANT

VERSUS

ASSA IDD SLEYUM.....1ST RESPONDENT

HAMUD IDD SLEYUM.....2ND RESPONDENT

NASSIR IDD SLEYUM.....3RD RESPONDENT

RULING

Date of last order: 12/11/2019

Date of Ruling: 30/03/2020

S.M. KULITA, J.

This is a ruling on the Preliminary Objection on point of law raised by the respondent's learned counsel, Mr. Erick Mhimba on the following points;

- i. That the appellant's petition of appeal is incompetent on the ground that it has been improperly filed before

this court as civil appeal whilst the original suit was litigated as land dispute.

- ii. That the petition of appeal is incompetent on the ground that the appellant has wrongly pleaded and attached the judgment as well as decree of Application No. 189 of 2018 which is not subject of this appeal.

During the hearing of submissions which was done by way of written submissions, the respondent's Learned Counsel Mr. Mhimba submitted in respect of the first point of Preliminary Objection that this appeal originates from the decision of the Land Application No. 434 of 2011 delivered by the District Land and Housing Tribunal for Kinondoni where the appellant moved the court to determine the issue of ownership in respect of Plot no. 60 located at Togo Street in Kinondoni Municipality within the city of Dar es Salaam.

He submitted that the present appeal has been filed by the appellant as Civil Appeal instead of Land Appeal as required by the law in the Written Laws (Amendments) Act No. 2 of 2010 which extended the land jurisdiction in both High Court Land Division and ordinary High Court Registry. He said that once the case has been filed as a land case cannot be subsequently attended as a civil case. To support his argument he cited the case of **TECHPACK TANZANIA LTD & 4 OTHERS VS. THE**

DEVELOPMENT BANK, Civil Case No. 164 of 2016, DSM District Registry (unreported).

The learned counsel submitted that the appellant has filed this matter as a civil appeal which renders it incompetent and that the same should be struck out with costs.

Arguing on the second point of the Preliminary Objection, the respondent's counsel submitted that the appellant has wrongly attached the decision of the application no. 189 of 2019 instead of Application No. 434 of 2011 from which the application at hand emanates.

He stated that attaching the judgment and decree which is not subject of appeal is fatal in the eyes of law. The Learned Counsel supported his argument by citing the case of **SAULO MWANDU @KOMANDO & 2 OTHERS V. R, Criminal Appeal No. 247 of 2015, CAT at Mbeya (unreported)** where the court ruled out that the defect of not inserting the correct case number renders the appeal incompetent.

The Learned Counsel concluded by praying for the appeal to be struck out for being incompetent.

In reply to the respondent's submission with regard to the first point of Preliminary Objection the appellant's Counsel Mr. Yusuf Sheikh submitted that one can opt to file a land matter either in the High Court Land Division or the in the High Court District

Registry. He submitted that the appeal has been rightly filed in this court as civil appeal. Learned Counsel also stated that the court should deal with substantive issues rather than technical issues in determining cases. He cited the case of **YACOBO MAGOIGA GICHERE V. PENINAH YUSUPH, Civil Appeal No. 55 of 2017, CAT at Mwanza (unreported)** where the court held that the principle of overriding objective requires the courts to deal with cases justly and to regard to substantive justice rather than technicalities.

Arguing on the second point of the Preliminary Objection the Learned Counsel submitted that this Preliminary Objection needs to be proved by evidence and therefore under the law it cannot stand as Preliminary Objection.

He further submitted that the appellant is aggrieved by the decision and decree in Application No. 189 of 2018. He said that the appellant was specifically named as the second respondent and he was the most affected party.

He concluded his submission by praying for this court to dismiss the Preliminary Objection for lack of merits.

Upon giving consideration on the submissions of both parties I have this to say with regard of the first point of Preliminary Objection; Learned counsel for the respondents cited the Written Laws (Amendments) Act No. 2 of 2010 which extended

the land jurisdiction to both **High Court Land Division** and **High Court, District Registries**. According to the appellant's counsel the matter at hand has been filed in this court by virtue of having the extended jurisdiction with the land division, and therefore the case number which appears as civil case is there because matters in this registry can either be filed as civil or land case. As rightly submitted by the respondents' counsel that it is misconception. The gist of the said amendment was to extend jurisdiction of entertaining land cases to the High Court District Registries from the Land division. However, it had not meant that mode of registration of cases was to be changed. If the case is Land by nature or origin it can't be registered as civil case just because it has been filed at the registry of the High Court which is not the Land division. The same applied to **the application and appeal cases, if they originate from land cases they have to be registered as land matters not only at the High Court Land Division but also at the High Court District Registries.**

Cases have been classified into different categories not only for the purposes of recognition but also identification of proper laws to applied in litigating them. Failing to adopt the required mode of registration may affect the whole case as the laws necessary to be applied in arguing the matter won't be in a position to be used for the reason that the case is of different

character/nature. Taking example of the matter at hand, the court will be in a position to invoke the Civil Procedure Code for this matter because it has been registered as the civil matter, but the Land statutes which are so relevant to this matter won't be applied. It is undisputable that sometimes the Civil Procedure Code is applied in the land cases but it is applied only where there is a lacuna in the land statute(s) and that situation is used to be prescribed in the land statute(s) itself. **It is illegal to file and register as a civil appeal a case whose origin is a land case while the law recognizes the presence of land appeal register.**

The principle of overriding objective cannot be applied to cure this situation as wrong registration of the case is a core issue which goes to the root of the case. In **MONDOROSI VILLAGE COUNCIL & 2 OTHERS V. TANZANIA BREWERIES LIMITED & 4 OTHERS, Civil Appeal No. 66 of 2017, CAT at Arusha (unreported)** it was held;

"Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the foundation of the case."

This ground of Preliminary Objection is sufficient to dispose of the appeal. In upshot the preliminary objection sustains. The appeal is therefore struck out with costs.



S.M. KULITA

JUDGE

30/03/2020

