

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOPA DISTRICT REGISTRY**

**AT BUKOPA**

**LAND CASE APPEAL NO. 98 OF 2020**

*(Arising from Land Case Application No. 48 of 2018, Land appeal No. 15 of 2010, Misc. Land Application No. 37 of 2012 and Misc. Land application No. 95 of 2016 of the High Court of the United Republic of Tanzania, In the District Registry of Bukoba at Bukoba, Originated from Application No. 156 of 2007 of the DLHT for Kagera at Bukoba.)*

**VEDASTO PROTACE.....APPELLANT**

(The administrator of the estate of the late PROTACE)

**VERSUS**

**JOHN JOSEPH MUGANGO..... RESPONDENT**

**RULING**

09/09/2021 & 20/09/2021

**NGIGWANA, J.**

In this ruling, I am called upon to decide whether the appeal instituted by the appellant with leave of this court granted on 26/10/2020 is competent following the objection on point of law raised and argued by Mr. Frank Karoli, learned advocate for the respondent that the memorandum of appeal is incurably defective for not being accompanied by copies of decree and judgment. The learned counsel argued that, the omission offended Order XXXIX rule 1(1) of the Civil Procedure Code Cap. 33 R: E 2019 hence urged the court to struck out this appeal for being incompetent.

The appellant after careful perusal of his document and the copy of the memorandum of appeal which he filed in court on 6<sup>th</sup> day of November, 2020 conceded that the memorandum of appeal was not accompanied by a copy of judgment nor with a proper copy of decree since the attached decree had no signature, seal of the Tribunal and the date.

It is must be noted that memorandum of appeal is a primary document of initiating appeal from the lower court/tribunal to the High Court. Order XXXIX rule 1(1) of the Civil Procedure Code Provides;

*"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 with) of the Judgment on which it is found**"* (emphasis supplied)

Order XX rule 7 of the same Code provides;

*"The decree **shall bear the date of the day on which the judgment was pronounced** and, when the Judge or Magistrate has satisfied himself that the decree has been drawn up in accordance with the judgment, **shall sign the decree**"* (emphasis is mine).

The bolded part of the herein above shows that the memorandum of appeal must be accompanied by a copy of dated and signed decree appealed from, and if the court has not dispensed with, be accompanied

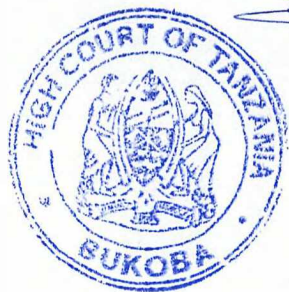
the copy of judgment on which it was extracted. I am saying it is mandatory because the provisions used the term **shall**. Section 53 (2) of the interpretation of Laws Act Cap1-R: E 2019 provides;

*"Where in any written law the word "**shall**" is used is conferring a function, such word shall be interpreted to mean that the function conferred must be performed"*

The non-compliance of the herein above provisions renders the appeal incompetent. See the case of **Mohamed Salamini versus Jumanne Omary Mapese, Civil Appeal No. 345 of 2019** CAT (unreported). Unfortunately, the situation cannot be rescued by the principle of overriding objective because the omission goes to the validity of the appeal itself. That means there is no valid appeal before this court capable of being determined by a competent court of law.

Having said so, and for reasons so stated, the objection is meritorious hence sustained. Consequently, I proceed to strike out the appeal with costs.

It is so ordered.



  
E.L. NGIGWANA

JUDGE

20/09/2021

Ruling delivered this 20<sup>th</sup> day of September, 2021 in the presence of the Applicant in person, Mr. Frank John Karoli learned Advocate for the Respondent, and Mr. E.M. Kamaleki, Judges' Law Assistant.



E.L. NGIGWANA  
JUDGE  
20/09/2021