

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MUSOMA
AT MUSOMA**

CIVIL APPEAL NO 9 OF 2021

FINCA MICROFINANCE BANK LTD1ST APPELLANT

CHAMPION AUCTION MART2ND APPELLANT

VERSUS

FATUMA JUMANNE SOLOKA RESPONDENT

(Arising from Civil Case No. 14/2019 of Bunda District Court)

RULING

22 September, 2021

Kahyoza, J.

The appellants Finca Microfinance Ltd and Champion Auction Mart appealed against the judgment of Bunda District Court. They filed a memorandum of appeal attached a decree and failed to attach a copy of the judgment without leave to do so. This Court invited the parties to address it if the appeal was properly filed.

FINCA appeared through Ms. Anna Mwambosya, advocate and stated that the appeal was not properly before this Court for failure to attach the copy of judgment. She added that she also noted another defect regarding

the names of the parties. She submitted that the appeal had four persons, two appellants and two respondents, while the application before the tribunal had five people, i.e. one applicant, and four respondents. She prayed to withdraw the appeal under Ord. XXIII rule 1(2) (a) and (b) of the **Civil Procedure Code**, [Cap. 33 R.E 2019] (the **CPC**) with leave to refilled.

Mr. Adam, the respondents' advocate did not oppose the application. He contended that the application to withdraw ought to have been made under Ord. XXXIX rule 3 of the CPC.

It is true that the appeal was not competent for want of a copy of the judgment appealed against. Ord. XXXIX rule 1(1) of the **CPC** states categorically that the memorandum of appeal shall be accompanied by a copy of the degree appealed from and **unless the court dispenses therewith) of the judgment on which it is founded**. In this case the appellant's advocate conceded that they did not attach a copy of the judgment appealed from. For that reason, the appeal was not competent. She prayed to withdraw the appeal with leave to refilled.

Mr. Adam did not oppose the prayer. I wish to point out at the outset that an incompetent appeal cannot be withdrawn or adjourned. The remedy is to strike it out. See **Ghati Methusela Vs Matiko Marwa Maribu** Civil Application No.8/2006, where the Court of Appeal held that:-

"It is now established that an incompetent proceedings be it an appeal, application etc is incapable of adjournment for the court cannot adjourn or allow withdrawing what is incompetent before it."

The appeal before this Court was incompetent for offending the provisions of Ord. XXXIX r.1 (1) of CPC, hence, this Court Cannot grant the prayer to withdraw it.

For that reason, the pray to withdraw the appeal with leave to refile it is denied. The appeal is struck out with costs.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

22/9/2021

Court: Ruling delivered in the absence of the parties as we had a problem of poor network during the virtual hearing. The copy to be sent to the parties after the same is typed on the 23/9/2021. B/C Ms. Millinga present.



J. R. Kahyoza

JUDGE

22/9/2021