

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

AT BUKOBA

LAND CASE APPEAL NO. 43 OF 2021

(Arising from District Land and Housing Tribunal for Kagera at Bukoba in Application No. 147 of 2016)

1. AARON KAMALA

**2. DEOGRATIAS MUTALEMWA (Administrator of
Estate of the late LEURENT MUTALEMWA)**



.....APPELLANTS

VERSUS

**CHRISTOPHER MARTINE MULEJU (Administrator of estate of the
late MARTINE KAKWEZI MULEJU).....RESPONDENT**

RULING

Date of ruling: 28.9.2021

Mwenda, J.

The present appeal was filed by the appellants following their dissatisfaction with the decision of the District Land and Housing Tribunal of Kagera at Bukoba in Application No. 147 of 2016. In the said decision the Tribunal Decreed that the land in dispute is the property of the respondent and the appellants were ordered to vacate the suit premises and demolish any structure erected. They were also restrained from interfering with the land in dispute.

Having filed their grounds of appeal before this court and the same having been served to the respondents, they were countered with a reply to the memorandum of appeal accompanied with a notice of preliminary objection.

It is trite practice that once a notice of preliminary objection is filed the court has to consider it first before resorting to the hearing of the main appeal.

During hearing of the preliminary objection the appellants were represented by Mr. Abel Rugambwa, learned counsel and the respondent were represented by Ms. Gizela Maruka, learned counsel.

Mr. Abel Rugambwa, learned counsel for the appellant was the first to address the court in respect of the preliminary objection. He submitted that after going through the Decree and judgment he noted that they don't agree each other. He is conceded to the preliminary objection and prayed this appeal to be struck out. He however stated that since the discrepancy in the said documents were caused by the trial Tribunal he prayed that the appellants be exempted from paying costs of the matter. He also prayed for leave to refile upon receipt of the correct records.

Responding to the submission by Mr. Rugambwa, Ms. Gisela Maruka, learned counsel for the respondents submitted that they agree with the learned counsel's submissions save for a prayer for leave to refile this appeal . She said that the prayer to refile the appeal while the appeal is incompetent is not possible as the

decree is not existing. She said since there is no decree that means there is no appeal and she prayed this appeal to be struck out.

In rejoinder Mr. Rugambwa, learned counsel for the appellants submitted that leave to refile and order for costs is the discretion of the court and since the court has powers to hear appeal from District Land and Housing Tribunal the same can have power to grant leave to refile.

Having summarized submissions by both parties the issue is whether the preliminary objection has merits.

From the record, it is clear that the decree does not agree with the Judgment. While the judgement is silent on the issue of absence of the tribunal's assessors due expiry of their tenure before the case was due for judgment, the copy of decree is loaded with the said information. This discrepancy is contrary to Order ***XX Rule 6(1) of the Civil Procedure Code, [Cap 33 R.E 2019]*** which state as follows:

"The decree shall agree with the judgment; it shall contain the number of the suit, the names and description of the parties particulars of the claim, and shall specify reliefs granted or other determination of the suit."

In the case of ***Mohamed Bantura V. Hemed Mussa, Land Appeal No. 46 of 2021*** this court citing the case ***of Abdulkhakim Abdul Makbel V. Zubeda Jan Mohamed and Another, Land Appeal No.28 of 2018*** held inter alia that:

"This court is of the view that the defect in the decree and judgment cannot be taken lightly. It goes to the root of this appeal. The law is settled that an appeal accompanied by a defective judgment or decree is incompetent"

From the foregoing observations, as rightly submitted by counsels of both sides, this appeal is incompetent and it is hereby struck out.

As for a prayer that the appellant be exempted to pay cost, this court is of the view that since the discrepancy is the trial tribunal's fault then it won't be fair to condemn the appellants to pay costs. Each party shall bear its own costs. Otherwise the prayer for leave to refile the fresh appeal is because once the appeal is struck out there is nothing left on the records to hold it.

It is so ordered.




A.Y. Mwenda

Judge

28.9.2021

Ruling delivered in chamber under the seal of this court in the presence of Mr. Abel Rugambwa for the Appellants and in the presence of Ms. Gisela Maruka for the respondent.




A.Y. Mwenda

Judge

28.9.2021