

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

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**JUVENILE CIVIL APPEAL NO. 1 OF 2021**

(Arising from Juvenile Civil Application No. 5/2021 of the Kigoma District Court before  
Hon. E. B. Mushi, RM)

**KURUTHUM D/O MOSHI RASHID..... APPELLANT**

**VERSUS**

**AMOS S/O WAMBURA SERIKALI..... RESPONDENT**

**RULING**

24/11/2021 & 03/12/2021

**L.M. MLACHA, J.**

At the time when the court was set to hear Juvenile Civil Appeal No. 1 of 2021, between Kuruthumu Moshi Rashidi (herein after to be referred to as the appellant) and Amosi Wambura Serikali (hereafter to be referred to as the respondent), the counsel for the respondent Mr. Daniel Rumenyela, addressed the court on a preliminary objection, saying that the appeal was improperly before the court. Counsel had in mind the provisions of order XXXIX rule 1(1) of the Civil Procedure Code Act, Cap. 33 R.E. 2019. He said that rule 1(1) make it mandatory for the appellant to attach a copy of the

decree in the Memorandum of Appeal. He made a similar reference to sections 70(1) and 74(1) of the act saying that there must be a decree or drawn order short of which the appeal is incompetent. He argued the court to struck it out.

Submitting in reply, counsel for the appellant, Mr. Joseph Mathias said that it is mandatory to attach a copy of the decree under order XXXIX rule 1(1) of the CPC when the court is invited to hear an appeal from the District or RM's Court. That is not the case where, like in this appeal, the court is invited to hear an appeal originating from the Juvenile Court. He proceeded to say that the Juvenile court which is a creature of section 97 of the Law of the Child Act, [Cap. 13 R.E.2019] has its own procedure which is contained under the Law of the Child (Juvenile Court Procedure) Rules 2016. Counsel proceeded to say that rule 123(3) require the attachment of court proceedings, judgment or order but it is not mandatory. There is an option. He referred the court to **John D. Mmari v. Ebeneza A. Kirango**, CAT Civil Appeal No. 20/7 of 2019, page 3 where the interpretation of order XXXIX rule 1(1) of the CPC was given.

Counsel for the appellant went on to submit in the alternative saying that, if the court will find that it was important to attach the decree, which is

missing, it should apply the principle of the overriding objectives of Civil litigation to cure the mischief. He argued the court to dismiss the preliminary objection.

Mr. Daniel make a rejoinder submission and reiterated his earlier position.

I agree in principle that the Civil Procedure Code Act has no direct application in this court when sitting to hear appeals from the Juvenile Court. The Court has to be guided by the Law of the child (Juvenile Court Procedure) Rules, 2016. The relevant part is part XIII, 'APPEALS'. This is a short part and has only one rule, rule 123. The relevant part is sub rule (2). It is reproduced in full for easy of reference.

***123(2) An appeal shall be made in the form of a memorandum in writing in Kiswahili or English and state briefly the grounds of objection to the decision, sentence or order appealed against and be accompanied by a copy of the proceedings, judgment or order appealed against, unless the High Court otherwise directs' (Emphasis added).***

That literally means that one has to lodge a **Memorandum of Appeal** which must be accompanied by a copy of proceedings, judgment or order appealed against. The Law speaks of three attachments; a copy of proceedings, judgment or order. It calls for attachment of a copy of proceedings, judgment or order. It uses the word '*shall*' meaning mandatory.

It means that the appellant must attach a copy of proceedings, judgment or order to the Memorandum of Appeal. The word 'or' between judgment and order shows that either of them may be enough. See also **Suzan Rose Sanga v. Musa Selemani**, High Court Civil Appeal No. 296/2020 Dar es Salaam. If it had used the word '*and*' it could mean that both of them were needed. It follows that, in my view, an appellant should attach a copy of the proceedings and the judgment or a copy of the proceedings and the drawn order. He should do so unless this court directs otherwise.

The words '*unless the High Court otherwise directs*' should not be taken to mean that it can make the direction at the time of hearing the case or preliminary objection. I think it refers to an early stage, at the stage of admission. The Law has given this court power to waive the requirement on special reasons to be recorded. For example, where the appellant has failed

to get copies of proceedings, judgment or drawn order in time, and the appeal is of an urgent nature, he can seek leave of the Court to waive the requirement. This will not necessarily attract the lodging of an application. It is something which can be done by way of a letter addressed to the Deputy Registrar. The later will then be put to the Judge Incharge for his consent. The Judge Incharge can allow the appeal to be lodged without copies of proceedings, judgment or drawn order hoping that the court can get them from the records. Without the leave, there is no way in which the appeal can be said to be legally before the court.

The appeal before the court does not have the documents or leave to dispense with the requirements. It follows that the appeal was lodged without compliance to the law and thus incompetent. It is struck out. It is ordered so. No order for costs.



A handwritten signature in blue ink, appearing to read "L.M. Mlacha", is written over a horizontal line.

**L.M. Mlacha**

**Judge**

**03/12/2021**

**Court:** Ruling delivered. Right of Appeal explained.



A handwritten signature in blue ink, consisting of a stylized 'L' and 'M' followed by a long horizontal stroke.

**L.M. Mlacha**

**Judge**

**03/12/2021**

ORIGINAL