

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

LAND APPEAL NO. 19 OF 2021

(Originating from Land Application No. 254 of 2018 in the District
Land and Housing Tribunal for Mbeya)

Between

1. ABDULKARIM ABBAS1ST APPELLANT
2. ABBAS MCHANGINONYA 2ND APPELLANT
3. ZAIRE MWANDA3RD APPELLANT

VERSUS

GORDON MWAMBULULURESPONDENT

RULING

A. A. MBAGWA J.

This is a ruling in respect of preliminary objection raised by the respondent. The respondent is challenging the competency of appeal on the ground that the appellant, in the memorandum of appeal, referred to the wrong case number.

The appellants herein were not satisfied with the decision of the District Land and Housing Tribunal. Thus, they preferred the instant appeal. However, in the memorandum of appeal, the appellants indicated that the appeal originates from Land Application No. 254 of 2018 instead of Land Application No. 67 of 2019.

On noticing the wrong citation of the case number, the respondent raised a preliminary point of objection to the following effect;



‘The appeal filed by appellant on 16th day of April, 2021 is hopeless for being originated from non-existing case that is Application No. 254 of 2018 instead of Application No. 67 of 2019’.

When the matter was called on for hearing, both parties unanimously agreed to argue the preliminary objection by way of written submission. I commend counsels for both sides as the written submissions were timely filed.

The appellants had the service of Samson Suwi, learned advocate while the respondent was represented by Amani Mwakolo, learned advocate.

In support of preliminary objection, Mr. Mwakolo submitted that the correct case number from which this appeal stems is Application No. 67 of 2019 but the appellants indicated Application No. 254 of 2018 both in the memorandum of appeal and its accompanying documents. Mr. Mwakolo insisted that wrong citation of a case number is fatal and renders the appeal incompetent. He thus, implored the Court to strike out the appeal with costs.

Replying to respondent’s submission, Mr. Suwi, at the outset, conceded to the errors but hastily pointed that the documents bearing Application No. 254 of 2018 were supplied to appellants by the trial tribunal on 4th day of March, 2021. The counsel added that he was wondering that on the 4th day of March 2021 the appellants were supplied with copies of judgment and decree bearing wrong case number and on the same date the respondent was supplied with judgment and decree bearing a correct case number.

Mr. Suwi submitted that errors were committed by the trial tribunal for that reason the appellants cannot be punished for errors of the court. He cited the case of **Mount Meru Flowers Tanzania Limited versus Box**



Board Tanzania Limited, Civil Appeal No. 260 of 2018, CAT at Arusha to support his contention. The appellants' counsel implored the court to find that indicating a wrong case number was just a typing error because the rest of the information regarding the appeal are correct and that no injustice has been occasioned to the respondent. To back up his argument he referred to the case of **Mage Namga & 11 Others versus the Governing Body College of Business Education (CBE)**, Land Appeal No. 22 of 2019, CAT at Dodoma (Unreported). He thus, prayed Court to invoke the overriding objective principle and allow him to insert a correct case number.

Having canvassed the rival submissions pertaining to the point of preliminary objection raised, this Court observed that there is no dispute that the correct case number from which this appeal arises is Application No. 67 of 2019 and that the case number indicated in the memorandum of appeal and accompanying documents is wrong. Therefore, the germane issue for determination is whether wrong citation of case number is fatal and renders the appeal incompetent.

Upon scrutiny of the record, this Court has found that **one**, the correct original case number in the trial Tribunal between the parties is Application No. 67 of 2019, **two**, memorandum of appeal and accompanying documents namely, judgment and decree bear case number 254 of 2018, **three** the respondent, in his reply to memorandum of appeal, attached copies of judgment bearing case number 67 of 2019 and **four** the trial court file contains documents bearing both case numbers namely, 254 of 2018 and 67 of 2019. There are, in the file, typed proceedings which bear case 254 of 2019 while the judgment and decree carry case number 254 of 2018. Further, there are copies



A handwritten signature in blue ink, appearing to read 'A. Amida', with a horizontal line underneath it.

judgment and decree bearing case number 67 of 2019. All these documents were certified on 4th day of March, 2019.

In view of the above, it is my considered findings that there is confusion, in the court file, as to the case number. Nonetheless, I am of the firm views that the correct case number is 67 of 2019.

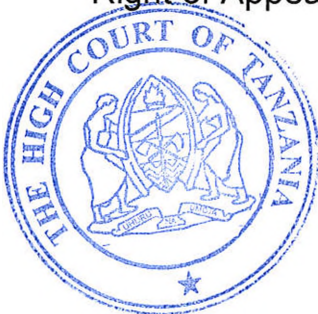
In the circumstances, I am in agreement with Mr. Suwi that the appellants cannot be punished for errors committed by the court as it was held in the case of **Mount Meru Flowers Tanzania Limited** (Supra).


In the event, in cognisance of the overriding objective principle, I find that wrong citation of case number is not fatal in the circumstance of this case. Consequently I am opined that the appropriate remedy is to allow the appellants to amend the memorandum of appeal in order to reflect the correct case number namely, Application No. 67 of 2019. Concomitantly, the applicant should attach to the memorandum of appeal documents which bear Application No. 67 of 2019. The amended memorandum of appeal should be filed within thirty (30) days from the date of delivery of this ruling.

That said and done, I overrule the preliminary objection and order each party to bear its own costs

It is so ordered.

Right of Appeal is explained.




A. A. Mbagwa
Judge
15/12/2021



Court: The ruling has been delivered in the presence of Abdulkarim Abbas (1st appellant) and Gordon Mwambalulu but in absence of the 2nd and 3rd appellants this 15th day of December, 2021.



A. A. Mbagwa
A. A. Mbagwa
Judge
15/12/2021

A. A. Mbagwa