

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 73 OF 2022**

**ATHUMANI NYAMBILILE NGOMBILE ..... APPELLANT**

***VERSUS***

**ROSE HALIFA KITETI ..... RESPONDENT**

***(Appeal from the decision of the District Court of Ilala at  
Kinyerezi in Civil Appeal No. 100 of 2021)***

**RULING**

14<sup>th</sup> and 14<sup>th</sup> June, 2022

**KISANYA, J.:**

This second appeal arises from the decision of the District Court of Ilala at Kinyerezi (the first appellate court) in Civil Appeal No. 100 of 2021. The said decision was made in appeal which stemmed from the decision of the Ukonga Primary Court (the trial court) in Civil Case No. 278 of 2021.

It is discerned from the record that, the appellant successfully sued the respondent before the trial court claiming Tshs. 7,000,000 arising from breach of a car sale agreement. Dissatisfied, the respondent appealed to the first appellate court which allowed the

appeal on the ground that the sale agreement was breached by the appellant.

The decision of the first appellate court prompted the appellant's appeal at hand. His petition of appeal was lodged in this Court on 7<sup>th</sup> June, 2022 and is premised on three grounds of appeal.

When the matter was called on for hearing today, the appellant appeared in person while the respondent failed to appear.

Upon being prompted by the Court as to whether the appeal is competent, the appellant readily conceded that the petition of appeal was not filed in the District Court. For that default, he prayed to withdraw the appeal.

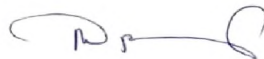
It is the acknowledged fact that the decision subject to this appeal was made by the District Court of Ilala in the exercise of its appellate jurisdiction. Therefore, in terms of section 25(3) and (4) of the Magistrate' Courts Act, Cap. 11, R.E. 2019 (the MCA), the petition of appeal ought to have been lodged in the district court which passed the impugned decision. Thereafter, the district court was required to

dispatch the petition of appeal together with the record of the proceedings in the primary court and the district court to this Court.

As rightly conceded by the appellant, the petition of appeal at hand was not lodged in the District Court of Ilala. The omission to file the petition of appeal in the district court which heard the appeal renders the appeal incompetent for contravening the mandatory provisions of section 25(3) and (4) of the MCA. It is trite law that the proper recourse against an incompetent matter is to strike out the same and not otherwise. Therefore, the appellant's prayer for withdrawing this appeal cannot be granted.

On the foregoing reason, this appeal is hereby struck out with no order as to costs. The appellant is advised to lodge his appeal in accordance with the law.

DATED at DAR ES SALAAM this 14<sup>th</sup> day of June, 2022.



S.E. Kisanya  
JUDGE

Court: Ruling delivered this 14<sup>th</sup> day of June, 2022 in the presence of the appellant and in the absence of the respondent. B/C Zawadi present.



S.E. Kisanya  
JUDGE  
14/06/2022