

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 75 OF 2021

(Arising from the judgment of the District Land and Housing Tribunal of
Tarime at Tarime Land Application No 91 of 2018)

SAMWEL OCHIENG ONDOTO 1ST APPELLANT

KWARA AIRO 2ND APPELLANT

VERSUS

FROLA AUMA NYARONGA 1ST RESPONDENT

MONICA APIYO NYARONGA 2ND RESPONDENT

JANE AKINYI NYARONGA 3RD RESPONDENT

JUDGMENT

27TH & 27TH May, 2022

F. H. Mahimbali, J

This ruling is in respect of two points of the preliminary objections raised by the respondent's counsel against the filed appeal by the respondents.

The said two points of the preliminary objection are:

- 1. The appeal is failed against wrong parties who did not entertain Land Application no 91 of 2018 before the District Land and Housing Tribunal for Tarime.*

2. That the present appeal is hopelessly incompetent and improperly filed before this Court for being brought in contravention of order XXXIX, Rule 1 (i) of the Civil Procedure Code (Code 33 R. E. 2019).

During the hearing of the said preliminary objection which was done by way of written submission as per appellant's prayer, Mr. Mligo learned advocate represented the respondents and the appellants fended for themselves.

In support of the preliminary objections, Mr. Mligo on the first limb of preliminary objection submitted that, the respondents at the trial District Land and Housing Tribunal sued at the capacity of administratrix of the estate of the late Gershon Oliver Nyaronga. He wonders now why at the appeal level, the appellant sues them at their personal capacities. He challenged this move as equal to suing wrong parties. In support of his assertion, he made reference to order XXX, rule 1 of the Civil Procedure Code, Cap 33 R. E. 2019 and the two cases by the Court of Appeal namely **Abdullatif Mohamed Hamis vs Mehboob Yusuf Osman and Fatma Mohamed**, Civil Revision No 6 of 2017, and **Christina Mrimi vs CocaCola Kwanza Bottles Ltd**, Civil Appeal No 112 of 2008, both at Dar es Salaam.

On the second limb of preliminary objection, Mr. Mligo submitted that the current appeal is defective and bad in law as it is not accompanied by the decree of the said judgment being appealed against. On this, he referred the court to the mandatory provision of order XXXIX, rule 7 (i) of the Civil Procedure Code, Cap 33 R. E. 2019. He further persuaded this Court on the decision of this court in **Dr. Mekidecki Stephen Kimaro vs Tanzania Jordanian General Trading company Ltd and Augustine Shija Masonga**, Land Appeal No. 06 of 2020. High Court Arusha where on the interpretation of order XXXIX , ruled 1 (1) of the CPC Cap 33 R. E. 2019 by Hon. Gwae.

In resisting this two points of preliminary legal objections raised, on the first point of preliminary objection raised, they replied that though the status of the said respondents is not indicated at the title of the case as administratrixs, they clarified that at the foot of the said petition of appeal, they have indicated that the copies thereof be served upon the respondents as probate administratrixs of the estate of the late Gershon Oliver Nyarongo. So, it served the same purpose, they submitted.

As regards to the second limb of preliminary objection, they are of the view that, the Land Dispute Courts Act, has no legal provision

directing that the appeal to High Court should follow the legal requirement of annexing copy of decree as it is provided by the CPC. Moreover, they referred this court to be guided by section 45 of the Land Disputes Court Act which makes insistence on doing substantial justice and do away with legal errors such as omissions and irregularity.

I have gone through the court records both at the trial tribunal and the appeal record. It is clear that the petition of appeal bears parties (respondents) at their personal capacity whereas at the original case the respondents had sued at their capacity as administratrixs of the estate of the late Gershon Oliver Nyarango. I wonder if these two personalities mean the same thing as propagated by the appellants. The argument that their real status has been put at the foot of the petition of appeal **"on whom to be served"**, I wonder if that is authoritative part of the petition of appeal. It is essential that the names and status of the proper parties to a suit must be clearly stated. The reason is very obvious. A cause of action as between two parties in a case necessarily means that it is those parties and no others who are the contestants. That can only be known or spotted on the names of the parties. A mistake in the names of say the appellant or respondent, may therefore render the case to be fatal.

With regard to the relation and interest of the parties where one sues in a representative character, the pleading must show so, that one has actual existing interest in the subject matter (Provision of order VII, rule 4 and Order XXX, rule of the CPC, Cap is R. E. 2019).

So long as the respondents sued as administratrixs of the estate of the late Gerson Oliver Nyarango, that title must be maintained all the time in the suit involving that estate unless the status of the parties has changed. In the current matter, I am inspired by the decision in **Christina Mrimi vs Cocacola Kwanza Bottles Ltd**, Civil Appeal No 112 of 2008 that the parties to the case must be fully identified and described. Failure of which the case and for this matter appeal is incompetent before the court.

As regards to the second limb of preliminary objection that the appeal is bad for contravening the mandatory provision of order XXXIX, rule 1 (1) of the CPC, Cap 33 R. E. 2019, the argument by the appellant that the LDCA does not make such a requirement, I wonder if it is a sound legal argument. According to section 56 the Land Disputes Courts Act, Cap 216, provides that the Minister may make regulations for the better carrying out of the provisions of the Land Disputes Courts Act. However, where there is inadequacy in those regulations, it shall apply

the Civil Procedure Code (see section 51 (2) of the LDCA). In my perusal to the LDCA and Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 as made under section 56, there is no regulation which provides for procedure of appealing to the High Court. The provision of section 41 (1) of the LDCA just provides for, where and when if one is aggrieved by the decision of the DLHT in its original jurisdiction may appeal. Thus, with this inadequacy of the Regulations Land Dispute Court Act, (GN 174 of 2003) then, the application of the Civil Procedure Act, Cap 33 R. E. 2019 comes into play as per Section 51 of the LDCA. With this basis, order XXXIX, Rule 1 (I) of the CPC then comes into play. Non-accompanying a copy of the decree appealed against renders the preferred appeal to this Court fatal. As rightly ruled by my senior brother Judge Gwae in **Dr Melkizeck Stephen Kimaro vs Tanzania Jordanian General Trading Company Ltd and August Shija Masonga**, Land Appeal no 06 of 2020 that an appeal emanating from DLHT, District Court or Resident Magistrate's Court exercising original jurisdiction must be accompanied by a right copy of decree appealed against.

In consideration of the submission in support the raised preliminary objections and my reasoning thereof, I am satisfied that the

appellant's submission is misplaced. The same holds no sufficient material to dismiss the legal objection raised.

That said, the preliminary objections raised hold legal value, the same are upheld. As the appeal before the Court is incompetent for want of proper parties and accompanying copy of decree, the same is struck out with costs. The appellants are at liberty to file proper appeal in compliance with the law in 45 days from today.

I so rule and order.

DATED at MUSOMA this 27th day of May, 2022.



F. H. Mahimbali
Judge

Court: Judgment delivered this 27th day of May, 2022 in the presence of Maura Tweve, advocate for the respondent and both appellant present in and Mr. Gidion Mugo, RMA.

F. H. Mahimbali
Judge

27/05/2022