

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

CIVIL APPEAL No. 10 OF 2021

(Arising from the Resident Magistrate Court of Bukoba at Kagera in Civil Case No. 05 of 2021)

ST. MICHAEL PETER SECURITY CO LTD..... APPELLANT
VERSUS
LAKE OIL LTD.....RESPONDENT

RULING

Date of Ruling: 26.07.2022

Mwenda, J.

This appeal arises from the judgment and decree of the Resident Magistrate's Court of Bukoba at Kagera in **Civil Case No. 05 of 2021** which was entered in favour of the respondent, dated 30th July 2021.

Aggrieved the appellant preferred this appeal which carries 27 grounds of appeal. Before the hearing of this appeal on merits commenced, the respondent raised two preliminary points of objections to wit;

- 1) The memorandum of appeal is incompetent for contravening Order XXXIX, Rule 1 of the Civil Procedure Code, [CAP 33 R.E 2019] without being accompanied with decree

2) The memorandum of appeal is incompetent for contravening Order XXXIX Rule 2 of the Civil Procedure Code [CAP 33 R.E 2019] for being combined with arguments and narratives into grounds of appeal.

When this appeal came up for hearing, the appellant hired the legal services of Ms. Pilly Hussein the learned counsel whilst the respondent was represented by Mr. Heriolotu Boniface the learned counsel.

It is trite practice that when preliminary objection is raised it must be disposed of first before going into merits of the case.

When parties were invited to submit in respect of preliminary objections the learned counsel for the appellant Ms. Pilly Hussein submitted that after going through the raised preliminary objections, she found substance on them and as such she conceded them. She however prayed this appeal to be struck out with no order for costs. To support her argument, she cited the case of *ALLY CHAMANI & ANOTHER VS TBA & ATTORNEY GENERAL CIVIL APPEAL NO. 47 OF 2019 (unreported)*.

In reply to the submission by the learned counsel for the appellant Mr. Heriolotu, the learned counsel for the respondent submitted that, they appreciate on the learned counsel for the appellant's conceding on the raised preliminary objections but they are praying to be awarded costs. He submitted that the respondent incurred costs of engaging an advocate to defend his case.

He said the respondents incurred costs like air tickets for his advocate from Dar es salaam to Bukoba to attend on all scheduled dates.

With regard to the case of ALLY CHAMANI (SUPRA) Mr. Heriolotu the learned counsel for the respondent submitted that the nature of the preliminary objections raised is different from the present case because in the cited authority the case was filed out of time while in this one it was filed in time but contrary to the provisions of the law.

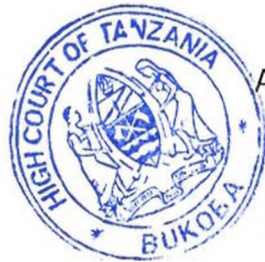
Having gone through submissions by both parties and Order XXXIX Rule I of the Civil Procedure Code, it is clear that every appeal shall be accompanied by a copy of decree. This order which reads as follows;


*"Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and **the memorandum shall be accompanied by a copy of the decree appealed from** and (unless the Court dispenses therewith) of the judgment on which it is founded."*

Guided by the above position of law and since parties are in agreement that this appeal is incompetent for lack of decree appealed from as per the requirement of the law, this court finds merits in the preliminary objections on

point of law raised by the learned counsel for the respondent. In the event the said preliminary objection is hereby sustained. This appeal is thus struck out. Guided by the principle in the case of ALLY CHAMANI (SUPRA) which is indistinguishable to the present matter, each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda

Judge

29.06.2022

Ruling delivered in chamber under the seal of this court in the presence of Ms. Pilly Hussein the learned counsel for the appellant and in the presence of Mr. Heriolotu Boniface the learned counsel for the respondent.




A.Y. Mwenda

Judge

29.06.2022