

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

AT TANGA

(PC) MISC. CIVIL APPLICATION NO. 17 OF 2021

(Arising from Civil Appeal No. 2/2021 High Court of Tanzania at Tanga. Originating from Tanga Urban Court Civil Case No. 08/2021 the High Court of Tanzania at Tanga)

HAMISI JUMA FUJO.....APPELLANT

-VERSUS-

SHABANI JUMA.....RESPONDENT

RULING

Date of Last Order: 10/2/2022

Date of Ruling: 24/2/2022

AGATHO, J.:

This is the ruling on the preliminary objections raised by the respondent. The appellant filed his appeal before this court as the second appeal since the matter originate from Tanga Urban Primary Court Civil Case No. 08/2021 being aggrieved by the decision of the Primary Court appealed to the District Court of Tanga in Civil Appeal No. 02/2021 hence this appeal.

The Appellant enjoyed legal services from senior council Omary Mambosasa and the respondent appeared in person. On 22nd September 2021 the Respondent filed a notice of Preliminary

Objection contained two point which need to be argued, to mention them;

- (1) That, the appeal is bad in law on reason that it was filed at a wrong registry.
- (2) That, the appeal is bad in law on reason that it was brought by way of memorandum of appeal instead of petition of appeal.

It was agreed that the P.O. disposed by way of written submissions and the schedule was set for the parties to file their submissions. On 12th October 2021 the Respondent filed his written submission and submitted as follows:

Appeals from the District Court in their appellate and revisional jurisdiction is provided for under section 25(3) of the Magistrates' Court Act [Cap 11 R.E 2019] and quoted it that every appeal to the High Court shall be filed by way of petition and shall be filed in the District Court from the decision or order of which the appeal was brought.

He argued that the present appeal was filed by way of Memorandum of appeal at the High Court Registry, which is contrary to the mandatory requirement of the law which provide, to be filed by way of petition of appeal and to be filed in the District Court.

Respondent submitted further about the use of the word shall and cited 53(2) of the Interpretation of Laws Act, Cap 1, becomes relevant and reproduced what has been provided in the subsection (2)

"Where in a written law the word shall is used in conferring a function such word shall be interpreted to mean that the function so concerned must be performed".

He continued to submit that the appeal at hand is similar to what transpired in **ABBASI RAJABU VS. KIRUA RAJABU Misc. Land Appeal No. 14/2011 High Court of Tanzania at Tanga** (unreported) the judge held that:

"the appeal was wrongly preferred to this court and hence it is not properly before me I do accordingly strike it out".

The Respondent finalized by stating that foregoing submissions support preliminary points of objection raised by the Respondent and prayed it should be found to have merit and the appellant's appeal be strike out with costs.

The Appellant on his side submitted that section 25(3) of the Magistrate Court Act [Cap 11 R.E 2019] provides for the procedures to be followed when appealing to the High Court against the decision originated from Primary court that the appeal has to be lodged in the

District Court from the decision or order of which the appeal is brought. As per **section 25(3) of the Magistrate Court Act:**

Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought:

The Appellant reminded the respondent that the provision was overturned by the enactment of Judicature and Application of Laws (Electronic Filing) Rules, on 13th day of April, 2018 which requires all documents to be lodged electronically in accordance to those rules.

Rule 2(1) provides as follows

These Rules shall apply to all proceedings in all Courts save for proceeding in primary Courts.

Moreover, in alignment with the above quoted rule, the provision of Rule 4(2) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 states that;

"Where a document is required to be filed with served on, delivered, or otherwise conveyed under any provision of these rules, it shall be so filed, served, delivered otherwise conveyed using electronic filing service in accordance with

these rules and any practice directions for the time being issued by the Chief Justice”.

And concluding on the first issue by stating that after passing/promulgation of the mentioned rules procedures for filing any document before the Courts save for primary Court has to be done electronically as it was so directed.

The Appellant argued further on the second point of Preliminary Objection and stated that Respondent complaint against the memorandum of appeal instead of petition appeal which stipulated in the above quoted provision of the law. However, the Respondent did not submit on how this prejudiced his rights by the filed document, as observed by this Court in the case of **Vicent Francis Vs. Rodrick Maimbali, Civil Appeal No. 6/2016 HC at Bukoba** (unreported) at page 3 that,

“Looking at the document at issue, I am convinced that it abides to the above provision quoted, despite being title petition. In the circumstances therefore, it has not prejudiced the right of the parties and on the P.O is bound for fail”

Also in the case of **Ibrahim Yohana Katanzi Vs. Helens Ernest Sakawa, matrimonial Appeal No. 11/2019 HC Mbeya** (unreported) the court held that;

"The provision as it reads is in mandatory terms and thus had to be adhered to so in accordance with section 53(2) of the interpretation of Laws Act Cap 1 R.E. 2002 in the appeal at hand is defective being titled Petition of Appeal instead of Memorandum of appeal as per Rule 37(1). However, in terms of Article 107 A of the Constitution of the United Republic of Tanzania, the court allow the amendment of the title.

In examining what has been presented by the parties concerning points of preliminary objection. As it has been directed by the law that appeal originated from District Court when enjoying it appellate jurisdiction to be filed in the registry of the District Court entertained that appeal as it has been provided in **section 25(3) of the Magistrate Court Act.**

"Every appeal to the High Court shall be by way of petition and shall be filed in the district__court from the decision or order in respect of which the appeal is brought"

Since it is the requirement of the law to file an appeal to the District Court and not in High Court. There is a difference when District Court enjoy its Original Jurisdiction and appellate jurisdiction or Revision Jurisdiction. When district court exercise appellate jurisdiction aggrieved party is under duty to file his appeal in District Court since **Section 25(3) of the Magistrate Court Act [Cap 11 R.E 2019]**.

It was improper for the Appellant to rely on the provision **Judicature and Application of Laws (Electronic Filing) Rules** since the issue is not filing the appeal electronically the issue to be determined was on where to lodge an appeal from District Court when exercising its appellate jurisdiction.

The point of filling appeal in a wrong registry is sufficient to dispose this appeal since it is the requirement of the law to file appeal in proper registry for this appeal at hand was required to be file at the Registry of the District Court of Tanga and not in High Court.

For the foregoing reasons the appeal before this Court is not maintainable for being filed in a wrong registry. Moreover, the title memorandum of appeal while it ought to be petition of appeal if this Court had jurisdiction is preempted by the said observation. The appeal is consequently struck out with costs.

DATED at TANGA this 24th day of February, 2022.




U. J. AGATHO
JUDGE
22/02/2022

Date: 24/02/2022

Coram: Hon. Dr. U. J. Agatho, J

Appellant: Present

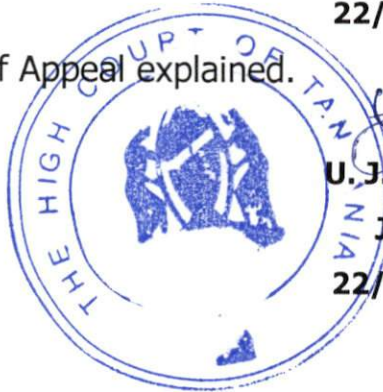
Respondent: Present

C/C: Zayumba

Court: Ruling delivered today 24/02/2022 in the presence of the Appellant and the Respondent.


U. J. AGATHO
JUDGE
22/02/2022

Right of Appeal explained.




U. J. AGATHO
JUDGE
22/02/2022