

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA

CIVIL APPEAL No. 7 OF 2022

*(Originating from the Resident Magistrates' Court of Musoma at Musoma in
Misc. Civil Application No. 4 of 2021)*

IBRAHIM KIGOMBE APPELLANT

Versus

1. MARY SANGE	} RESPONDENTS
2. MARA MICROFINANCE CO. LTD		
3. KINDO BISWARO		

RULING

24.11.2022 & 24.11.2022
Mtulya, J.:

Mr. Ibrahim Kigombe (the appellant) was dissatisfied with the Ruling of the **Resident Magistrates' Court of Musoma at Musoma** (the court) in **Misc. Civil Application No. 4 of 2021** (the application) hence rushed to this court and preferred **Civil Appeal Case No. 7 of 2022** (the appeal) to protest the Ruling of the court in the application. However, in the Petition of Appeal, the appellant declined to attach a drawn order emanated from the decision of the court in the application as per requirement of the law in **Order 39 Rule 1 (1) of the Civil Procedure Code [Cap 33 R.E. 2019]** (the Code).

The appeal was scheduled for hearing on 17th day August 2022, but it faced with a protest from **Mr. Baraka Makowe**, learned counsel for **Mary Sange** (the first respondent) who registered a point of preliminary objection (the objection) contending that the appeal is incompetent for want of application of **Order 39 Rule 1 (1) of the Code** and precedent in **Kotak Ltd v. Vallabhias Kooverji** [1967] HCD 111, because it was filed without the support of the drawn order. Following the objection, the appellant prayed leave to consult and hire legal services of learned counsels to reply the objection. Today, when the appeal was scheduled again for hearing, the appellant appeared in person and submitted that the objection by Mr. Makowe has no any merit as the wrong was committed by the court in failing to issue the drawn order within time despite formal application of the same within time.

In rejoining the submission, Mr. Makowe contended that the cited court is not part of the present suit and cannot reply the submission produced by the appellant. According to Mr. Makowe, wrongs committed by the court in delaying to issue the drawn order cannot give a right to the appellant to prefer the appeal without the drawn order or rectify the incompetent appeal already filed in this court.

Regarding the available remedies, Mr. Makowe contended that the appellant was supposed to remind the court on issuing the drawn order and if it had failed to do so within time, the appellant would have cited the delay as good cause in an application for enlargement of time to file an appeal out of time. Finally Mr. Makowe prayed to this court to strike out the appeal with costs as this court cannot proceed to hear and determine the incompetent appeal.

I have perused the record of the present appeal. It is vivid that the appellant had filed the present appeal without attaching the drawn order appealed from. The law in **Order 39 Rule 1 (1)** of the Code provides, in brief that: every appeal shall be preferred accompanied by a copy of decree [drawn order] appealed from and judgment [ruling] on which it is founded.

The provision had already received practice of courts in the precedents of **Kotak Ltd v. Vallabhias Kooverji** (supra); **Munshiran & Co. v. Star Soda Water Factory** [1934], 16 K.L.R. 51; and **Adams v. Adams** [1959] 1 E.A. 777. In **Adams v. Adams** (supra), it was held that:

This rule requiring a copy of a decree to be filed with an appeal applied to any appeal and not

merely to appeals against a judgment, and that the requirement is mandatory.

The statement was echoed in a number of decisions in this court and the Court of Appeal (see: **Yusufu Mntambo & Others v. Moez Alidina** [1985] TLR 145; **Mariam Abdallah Fundi v. Kassim Abdallah Farsi** [1991] TLR 196; and **Intertek Testing Services EA PTY Ltd v. Walter A. Kawa**, Civil Appeal No. 2 of 2010). In **Mariam Abdallah Fundi v. Kassim Abdallah Farsi** (supra), the Court of Appeal in full court stated that:


...it has been held a number of times that Order 39 Rule 1 of the Code is mandatory in requiring every memorandum of appeal to be accompanied by a copy of the decree or order appealed from, and that where an appellant has failed to comply with this provisions, the appeal is not properly before the court.

In the present appeal, the appellant had filed the appeal without attaching the drawn order appealed from as per requirement of the cited law and precedents hence must be struck out. Having said so, I am moved to sustain the point of objection as it has merit hence strike out the appeal for want of competence, as I hereby do. I do so without any costs as the

appellant is a lay person and unaware of the legal matters regulating appeals filed in this court.

It is so ordered.

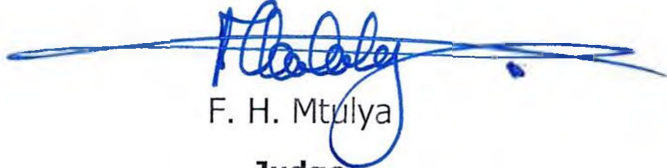



F. H. Mtulya

Judge

24.11.2022

This Ruling was delivered in court in the presence of the appellant, **Mr. Ibrahim Kigombe**, the third respondent, **Mr. Kindo Biswaro** and in the presence of **Ms. Helena Mabula** for the first respondent.


F. H. Mtulya

Judge

24.11.2022