

**IN THE HIGH COURT OF TANZANIA**

**AT TABORA**

**CIVIL APPEAL NO. 9 OF 2020**

*(Arising from Nzega District Court Civil Case No. 12/2018)*

**NZEGA TOWN COUNCIL..... APPELLANT**

**VERSUS**

**MAGDALENA ROBERT**

**(GOLDEN LAND HOTEL).....RESPONDENT**

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**JUDGMENT**  
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*Date of Last Order: 21/10/2022*

*Date of Delivery: 12/12 /2022*

**AMOUR S. KHAMIS, J:**

Nzega Town Council was the plaintiff in Civil Case No. 12/2020 filed in the District Court of Nzega whose judgment was delivered on 09/6/2020 in favour of Magdalena Robert t/a Golden Land Hotel.

Aggrieved by the whole judgment and decree of the trial Court, Nzega Town Council filed this appeal on two grounds, thus:

1. That the Hon. Magistrate erred in law and facts by holding that the appellant is not entitled to collect Hotel levy to the Respondent.
2. That the Hon. Magistrate erred in law and facts for failure to critically analyse and evaluate the appellant's evidence and arrived at unfair decision.

Upon being served with a Memorandum of Appeal, Magdalena Robert t/a Golden Land Hotel, filed a reply to the Petition of Appeal, thus:

1. That, the contents of paragraphs 1 and 2 of the appellant's memorandum of appeal are collectively vehemently disputed and the appellant is strictly put into strict proof thereof.
2. That, the trial Court did no error in reaching into the said decision as appellant is not entitled to collect hotel levy from the respondent.
3. That the trial Court considered all the evidence of each party and did not disregard the evidence of the appellant but rather the same evidence was weak to warrant a judgment on the part of the appellant.
4. Further, that the respondent is a value added tax registered person and is not subject to pay hotel levy charged by the appellant

Before, me Nzega Town Council enjoyed legal services of Ms. Esther John Mlayda, learned solicitor while Mr. Langa Mvuna, learned advocate, appeared for the respondent.

The appeal was canvassed by way of written submissions and parties dutifully complied to the timeline set by the Court. I have read and considered parties' rival submissions.

However, upon examination of the records, I observed that the appeal was filed without attaching copy of the decree extracted from judgement of the District Court sought to be challenged.

The law makes it mandatory for every appeal to the High Court to be attached with copy of the decree of the lower Court. **Order XXXIX Rule 1(1) of the CIVIL PROCEDURE CODE, CAP 33, R.E. 2019** provides that:

*"..... the memorandum of appeal shall be accompanied by a copy of the decree appealed from District Court and (unless the Court dispenses therewith) of the judgement on which it is founded".*

In this appeal, the Memorandum of Appeal was accompanied by copy of the impugned judgment but copy of the decree was omitted and thus rendering the whole appeal incompetent.

For the aforesaid reasons, this appeal hereby struck out with no order for costs.

It is so ordered.



**AMOUR S. KHAMIS**

**JUDGE**

**12/12/2022**

**ORDER**

Judgment delivered in Chambers in presence of Ms. Esther John Mlayda, learned solicitor for the appellant and in absence of the respondent.

Right of Appeal is explained.

  
**AMOUR S. KHAMIS**

**JUDGE**

**12/12/2022**

