

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

DC. CIVIL APPEAL NO. 16 OF 2020

(Arising from Tabora District Court from Misc. Civil Application No. 8/2020)

VICENT CHIMI MASANJA..... APPELLANT

VERSUS

ALLIANCE FINANCE COPORATION LTD.....RESPONDENT

RULING

Date of Last Order: 08/9/2021

Date of Delivery: 15/12/2022

AMOUR S. KHAMIS, J:

Through the services of Mr. Musa Kassim, learned advocate (as he then was), Vicent Chimi Masanja filed a Memorandum of Appeal challenging Ruling and Drawn Order of the District Court of Tabora in Misc. Civil Application No. 8 of 2020.

The Memorandum of Appeal contains one ground of appeal, namely;

1. That in misdirection and misconception of the Application No. 8/2020 before the District Court, the learned Resident Magistrate erroneously dismissed it for want of merits.

Upon being served with the Memorandum of Appeal, Alliance Finance Corporation Limited, the respondent herein, filed a notice of preliminary objection to the effect that:

“The Appeal contravenes the mandatory provision of Order **XXXIX RULE 1(2) OF THE CIVIL PROCEDURE CODE, CAP 33, R.E 2019**”.

Before me, Vicent Chimi Masanja was represented by Mr. Musa Kassim, learned advocate.

Alliance Finance Corporation Ltd enjoyed legal services of Ms. Ruqaiya Abdulla Al – Harthy, learned advocate.

The preliminary objection was orally argued and both counsel made spirited submissions.

Whereas Ms. Ruqaiya Abdulla support the objection with contents of Order **XXXIX Rule 1 (2) of the CIVIL PROCEDURE CODE, CAP 33, R.E 2019** and relied on the case of **AMIN NDAMA MZIRAY V MILTON LUSAJO LAZARO, CIVIL APPEAL NO. 39 OF 2019, HIGH COURT OF TANZANIA AT DAR ES SALAAM** (Unreported), Mr. Musa Kassim contended that the objection was unfounded and moved this Court to dismiss it with costs.

I have carefully considered the learned counsel rival submissions and examined the records before me.

The issue is whether the present appeal is incompetent on account of non compliance of the mandatory requirements of the law.

Order **XXXIX Rule 1 (2) of the CIVIL PROCEDURE CODE, CAP 33, R.E 2019** provides that;

“ 1(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively.”

In **AMINI NDAMA MZIRAY V CAPT. MILTON LUSAJO LAZARO, CIVIL APPEAL NO. 39 OF 2019** (Unreported) this Court held that;

“ Determining the first point of objection, we all are in agreement to have been drawn from Order XXXIX Rule 1 (2) of the CPC. Looking at the grounds of appeal, I cannot but agree that the grounds of appeal contains both arguments and narrative with a view of sharing stories and justify their existence.....”.

I have examined the ground of appeal in the present matter. The same did not give out the concise grounds of objection on the faults allegedly appearing in the impugned decision of the District Court of Tabora.

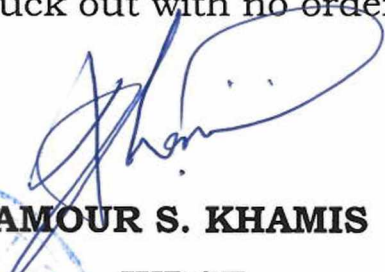
To the contrary, the ground of appeal faulted the lower court’s decision on its “misdirection and miscomprehension of the substance of the facts” without pointing out which particular facts were misconceived or miscomprehended.

Reading the grounds of appeal as a whole, one finds that it is vague and evasive.


In the circumstances, I am in all four with the learned counsel for the respondent that the Memorandum of Appeal contravened mandatory requirements of Order **XXXIX Rule 1 (2) of the CIVIL PROCEDURE CODE, CAP 33, R.E 2019.**

Consequently, the preliminary objection raised is sustained and the appeal is hereby struck out with no order for costs.

It is so ordered.



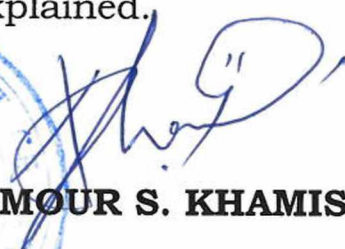
AMOUR S. KHAMIS
JUDGE
15/12/2022



ORDER

Ruling delivered in the open Court in presence of the appellant in person and Ms. Agnes Simba holding brief of Ms. Ruqaiya Al – Harthy learned advocate for the respondent.

Right of Appeal is explained.



AMOUR S. KHAMIS
JUDGE
15/12/2022

