

IN THE HIGH COURT OF TANZANIA

AT TABORA

DC CIVIL CASE APPEAL NO. 10 OF 2020

(Originating from Nzega District Court in Civil Case No. 9 of 2018)

NZEGA TOWN COUNCIL..... APPELLANT

VERSUS

EDMUND KILEO (CHARITY HOPE LODGE).....RESPONDENT

JUDGMENT

Date of Last Order: 21/10/2022

Date of Delivery: 12/12/2022

AMOUR S. KHAMIS, J:

Nzega District Council was the plaintiff in Civil Case No. 9/2018 of the District Court of Nzega whose decision was delivered on 28/05/2020.

Aggrieved by that decision, it filed this appeal on two grounds, namely:

1. That the Hon. Magistrate erred in law and facts by holding that the appellant is not entitled to collect hotel levy from 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 copy of Petition of the Appeal, Edmund Kileo t/a Charity Hope Lodge, the respondent herein, filed a Reply thereto challenging all grounds of appeal as follows:

1. That the contents of paragraph 1 and 2 of the appellants 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 the 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 week to warrant a judgement on the part of the appellant.
4. Further, that the respondent is a Value Added Tax registered person and is not subjected to pay hotel levy charged by the appellant.

Before me, the Nzega District Council was represented by Mr. Geoffrey Mwakanyamale, learned solicitor. On the other side, Mr. Langa Mvuna, learned advocate, acted for the respondent.

The appeal was disposed of by way of written submissions and both parties complied to the timeline set by the Court.

I have read and carefully considered the parties' rival arguments on the appeal.

The Memorandum of Appeal in this matter was lodged on 29/06/2020 accompanied with copy of the impugned Judgement only.

However, gone through the record, it is clear that the judgement by the trial Court was pronounced on 28th May 2020

Order **XXXIX Rule 1 (1) of the CIVIL PROCEDURE CODE, CAP, 33, R.E 2019** provides that every appeal shall be preferred in the form of Memorandum of Appeal which shall be accompanied by copy of the decree appealed from and (unless the Court dispenses therewith) of the judgement on which it is founded.

By omitting to attach copy of the impugned decree, alongside the Memorandum of Appeal, Order **XXXIX Rule 1 (1) of the CIVIL PROCEDURE CODE** was violated which omission renders the appeal incompetent.

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

It is so ordered.




AMOUR S. KHAMIS

JUDGE

12/12/2022

ORDER

Judgement delivered in Chambers in presence of Ms. Esther John Mayala, solicitor and absence of the respondent.

Right of Appeal is explained.




AMOUR S. KHAMIS

JUDGE

12/12/2022