

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND APPEAL NO. 54 OF 2021**

*(Originating from the decision in Application No. 64 of 2019 of Geita District Land and Housing Tribunal dated 22nd day of August, 2021 before Masao E. Chairperson)*

**DAUD PETRO KASAMBULA ( Administrator of the  
Estate of the Late PETRO MICHAEL Kalago).....APPELLANT**

versus

**HELENA MBOJE BAJIMU & 27 OTHERS ..... RESPONDENTS**

**RULING**

**25<sup>th</sup> Nov 2021 & 17<sup>th</sup> January, 2022**

**RUMANYIKA, J.:**

When, on 15/11/2021, essentially with respect to judgment and decree dated 20/08/2021 of Geita district Land and Housing Tribunal (the DLHT) the appeal was, by way of audio teleconference called for hearing, I had to hear the parties on three-limb preliminary point of objection (the p.o) formally raised on 15/10/2021 and now taken by Mr. Ernest Makene learned counsel for Helena Mboje (the 1<sup>st</sup> respondent); **one** that for the reason of not appending copy of the impugned decree therefore, it offended provisions of Order XXXIX Rule 1(1) of the Civil Procedure Code

Cap. 33 RE. 2019 the appeal was liable to be struck out. **Two;** contrary to sections 40 and 41(1) of the Advocate's Act Cap. 391 RE. 2019 (the Act) it having been prepared by unqualified person the appeal was fatally defective therefore liable to be struck out. **Three;** that the appeal was incompetently before the court as it contained such grounds not linked to the decree.

The appellant who appeared in person he submitted; (a) that with all the evidence the requisite documents inclusive of the decree were actually appended (b) that one Bathomeo Musyangi who prepared the appeal was a lawyer based at Geita much as he (the appellant) was not duty bound to inquire and verify the former's qualifications and status before. That is all. For avoidance of doubts I heard them through mobile numbers 0768199485 and 0753247542.

The issue is whether, with all legal intents and purposes the appeal is competently before the court. The answer is no.

Infact having had twice and thrice looked at the appeal I could not see copy of the impugned decree or anything equivalent thereof except the judgment. I think by provisions of Order XXXIX of the Code, for good

reasons the legislature did intend to make a distinction between the two because as defined, by all standards and conveniences a decree is not judgment. I therefore would increasingly hold that attachment of copy of decree it served two purposes; **One;** for the appeal court to appreciate nature of and points one was aggrieved with **two;** on that one the respondent shall not be caught by surprise, suffices the point to dispose of the appeal.

Without prejudice to the fore going, with respect to who prepared the appeal at least the appellant confessed that the memorandum of appeal was prepared by lawyer based at Geita. One should get to know that whereas all advocates were lawyers, until such time, and according to the Act one was accordingly enrolled, or, according to TAMS permitted, which is not the case here, not every lawyer was advocate. I once said, and today would repeat myself that for the sake of clarity and safety, dentists should not do mechanical engineer's work just like botanists shall not practice geology. Moreover, it is trite law that whomever was proved unqualified, in this case Batromeo Musayangi in effect whatever he did it vitiated the entire proceedings (case of **National Bank of Kenya Ltd v. Anaj Warehousing Ltd Petition** No. 36 of 2014 (the Supreme Court of

Kenya) it follows therefore that from its inception the purported memorandum of appeal was good for nothing therefore no appeal filed suffices the two points to dispose of the appeal. The p.o is stained. The purported appeal is for the reason of incompetence struck out with costs. It is so ordered.

Right of appeal explained.

  
**S.M. RUMANYIKA**  
**JUDGE**  
**22/12/2022**

**Date:** 17/01/2022

**Coram:** A.W. Mmbando – DR

**Appellant:** Present in person

**Respondent:** Absent

**B/C:** Martina R. Nelei – RMA

**Court:** Ruling delivered this 17<sup>th</sup> January, 2022 in the presence of Appellant and in the absence of Respondent.





**A.W. MMBANDO**  
**DEPUTY REGISTRAR**

**17/01/2022**