

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPEAL NO. 63 OF 2023**

*(Originating from Land Application No. 37 of 2023 District Land and Housing Tribunal Kahama)*

**BEDAS ANDREA.....APPELLANT**

**Versus**

**AGNES KIMARO** (Administratrix of the estate of the late Theopista Alphonse Chami).....**RESPONDENT**

*Date of Last Order: 5/2/2024*

*Date of Ruling: 5/2/2024*

**RULING**

**S. M. KULITA, J**

The Respondent's Counsel, Mr. Denis Machui, Advocate, raised a Preliminary Objection that the case at hand is unmeritorious for non attachment of the copy of Decree of the impugned Judgment. Hence, prays for the same to be dismissed with costs. On the other hand the Appellant who appeared in person stated that the Petition of Appeal was prepared by his Advocate, who, for no reasons never appeared to court today which was for hearing the Preliminary Objection. He thus prayed for the court to decide whatever it thinks fit, as he is not familiar with the legal Procedures.

Upon going through **Order XXXIX, Rule 1(1) of the Civil Procedure Code [Cap 33 RE 2019]**, I have noticed it stating that the copy of Decree is mandatory to be attached in the Petition of Appeal.

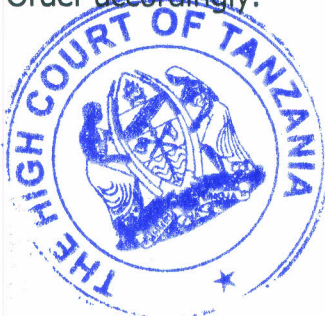
The fact that the Appellant herein has not complied with the said requirement of the law, the appeal he has lodged is regarded to be defective.

Now, what is a way forward? The Respondent's Counsel sought for the Appeal to be dismissed with costs. He cited the case of **MARIAM ABDALLAH FUNDI VS KASSIM ABDALLAH FARSI** [1991] TLR 196 to Justify his argument.

On my side, I came across several cases which have been recently decided in respect of such situation. One of them is **T.G. WORLD INTERNATIONAL LTD VS CARRIER OPTIONS AFRICA (TANZANIA) LTD, Civil Appeal No. 23 of 2021, High Court Arusha Registry**. In that case the decision was striking out the matter, not dismissal. That being the case, I also adopt this kind of decision.

Conclusively, the fact that the appeal at hand is legally incompetent, **I hereby strike it out with costs**. For the sake of justice, I give the Appellant **leave to re-file the same in 30(thirty) days period** from today, upon compliance of the legal requirements provided under **Order XXXIX, Rule 1(1) of the Civil Procedure Code**.

Order accordingly.



  
**S. M. Kulita**  
**JUDGE**  
**5/2/2024**