

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT MWANZA**

**MISC. LAND APPEAL NO. 108 OF 2008**

*(From the Decision of the District Land and Housing Tribunal of Tarime District at Tarime in  
Land Case Appeal No. 40 of 2008 and Original Ward Tribunal of Komuge Ward in  
Application No. 7 of 2008)*

**MARWA KISIKE.....APPELLANT**

**VERSUS**

**MEDARD NYANTORA.....RESPONDENT**

**RULING**

**B.R. MUTUNGI, J.**

In this appeal the Respondent Medard Nyantora has raised a Preliminary Objection which bears two points of law;

- a) That the appeal is bad in law and untenable as it contravenes the mandatory provision of Section 38 (2) of the Land Disputes Act 216 (RE: 2002)
  
- b) That this appeal is bad in law for it contains a verification clause.

While submitting on the Preliminary Objection that he had raised, the Respondent concentrated only on the first point. He argued that the defect is fatal to the appeal as the law is very clear on this. In so far as the law is clear then the appeal stands incompetent before this court and should be struck out.

On the other hand the Appellant Marwa Kisike responded that he had followed all the appeal procedures and so the appeal is properly before the court.

Having observed the above submission which call for my perusing through the record, I find the appeal has been instituted by way of a memorandum of appeal.

I have also noted that the matter has its genesis from the Komuge Ward Tribunal (Application No. 7/2008). In view of these findings it is a Mandatory requirement of law as per Section 38 (2) of the Land Disputes Act, Cap 216 (RE: 2002) that,

***“Every appeal to the High Court (Land Division) shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought”***

As properly submitted by the Respondent, procedures are there to be followed more so if the procedure is mandatory as is the case at hand. In view of the foregoing the consequence of the Appellant filing the appeal contrary to the envisaged procedure by law renders the appeal incompetent before the court.

On the same footing I proceed to stike out the appeal as being incompetent before the court in line with the first limb of the Preliminary Objection. In so far as costs are concerned I have considered that the appellant is a layman hence I make no orders as to costs.

B.R. MUTUNGI

**JUDGE**

**27/6/2013**

Read this day of 27/6/2013 in presence of Appellant and Respondent in person.

B.R. MUTUNGI

**JUDGE**

**27/6/2013**