

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 175 OF 2021

(Appeal from the Ruling of District Land and Housing Tribunal for Ilala (at Mwalimu House), Hon. Kirumbi (C/P), dated 09th July, 2021 in Land Application No. 53 of 2021)

**HAPPINESS JAIROS KOJESA (Administratrix of
the Estate of late Jairos Chalagwa**

Kojesa, Deceased APPELLANT

VERSUS

FREDRICK JEREMIA SAUSI 1ST RESPONDENT

BARIKI GODSON JEREMIA SAUSI 2ND RESPONDENT

RULING

Date of the last order: 25.10.2021

Date of Ruling: 25.10.2021

A.Z. MGEYEKWA, J

The Applicant was aggrieved with the Ruling of the District Land and Housing Tribunal in Land Application No. 53 of 2021, he decided to lodge an appeal to this Court.

On 05th October, 2021 when the matter was called for mention the appellant was represented by mr. Samson Samo, learned Advocate whereas the 1st and 2nd respondents were represented by Mr. Dennis Malamba, learned Advocate.

The learned counsel for the appellant informed this court that the 1st respondent has passed away, therefore he urged this court to withdraw the deceased's name from the court records and the matter to proceed with the 2nd respondent only. The respondent's Advocate had no any objection this, this court granted the applicant's prayer.

Submitting on his side, the learned counsel for the Respondents contended that the Appellant had filed Petition of Appeal instead of memorandum of appeal since the matter did not originate from the Ward Tribunal. The learned counsel for the appellant conceded to the raised preliminary objection. This court-ordered the Appellant's Advocate to file an amended Memorandum of Appeal within 4 days.

When the application was called for hearing on 18th October, 2021, the learned counsel for the respondent raised a following preliminary objection: -

That the appellant's amended Memorandum of Appeal is defective, it is contrary to the order of this court dated 5th October, 2021.

During the hearing of the preliminary objection, the learned counsel for the respondents argued that the amended Memorandum of Appeal is defective since it still shows the name of the 1st respondent (deceased) contrary to the court order in response to his own prayer to strike out the name of the deceased who was reported dead by counsel for the Appellant himself.

The learned counsel for the respondent contended that the Memorandum of Appeal is bad in law for naming a wrong party. He contended that it is the duty of the learned counsel for the applicant to file a correct name of the party, failure to that the appeal is incompetent. Fortifying his position he referred this court to the case of **Stephene Kibwana v Banc ABC Ltd Land Case No.71 Of 2017**. He urged this court to strike out the Memorandum of Appeal be struck out with costs.

Mr. Ramadhan, learned counsel for the applicant in response conceded with the preliminary objection save for the costs.

In his rejoinder, Mr. Dennis, learned Advocate maintained his submission in chief. Stressed that the prayers be granted with costs since the parties had spent their time coming to court and they were to proceed with hearing the preliminary objection since the learned counsel for the appellant was ready to argue the preliminary objection, while he was in position not to waste the time of the court.

After careful consideration of the rival submissions from both parties, it would appear to me that so long as the preliminary objection has been conceded to. It is undoubtful that failure to indicate the correct parties in a plaint is a fatal defect that renders the appeal incompetent. As it was held in the case of **Stephene Kibwana v Banc ABC Ltd Land Case No.174 Of 2017** at page 2 my brother Hon. Kente (as he then was) had this to say:--

“Improper or incorrect naming of a part in any proceeding is a serious irregularity which cannot be simply glossed over as a mere technicality. Proper naming of parties is very fundamental to any case, and failure to abide by this procedural requirement is a defect which court cannot simply consign into oblivion.”

Based on the respondents' attendance on records, the appellant is ordered to pay half of the costs of the case taxable by the Taxing Master.

Order accordingly.

Dated at Dar es Salaam on this 25th October, 2021.



A.Z.MGEYEKWA

JUDGE

25.10.2021

Ruling delivered on 25th October, 2021 in the presence of Mr. Ramadhani, learned counsel holding brief for Mr. Samson Samo, learned counsel for

the applicant and Mr. Dennis Malamba, learned counsel for the respondent.




A.Z.MGEYEKWA

JUDGE

25.10.2021