

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. LAND APPEAL NO. 7 OF 2021**

(C/O Land Appeal No. 30 of 2017 of District Land and Housing Tribunal for Rukwa  
originating from Land dispute No. 71 of 2016 Mtowasi Ward Tribunal)

(J. Lwezaura, Chairman)

**ROMANIA MALINGUMU ..... APPELLANT**

**VERSUS**

**MELKIO KILUKA ..... RESPONDENT**

**RULING**

Date: 17 & 17/02/2022

**Nkwabi, J.:**

The 2<sup>nd</sup> appeal filed by the appellant met a preliminary objection on points of law:

1. That this appeal is not properly filed before this Court for failure to pay Court fees.
2. That this appeal is incompetent for joining a person who was not a party to the original proceedings

In the course of the hearing, Mr. Peter Kamyalile, learned advocate, withdrew the second limb of the preliminary objection and maintained the



first one. Mr. Kamyalile advanced that the appeal is incompetent before this court since the filing court fee was not paid by the appellant. To back up his argument he cited **Inter-export Ltd v Customs** [1970] E.A. 648, **Gregory Raphael v Pastory Rwehabula** [2005] TLR 99 and **John Chua v Anthony Siza** [1992] TLR 233. He prayed the appeal be struck out with costs.

In her submission, the appellant conceded that she did not pay the filing court fees and admitted that it is contrary to the law for a case to be pending without the filing fees being paid. She prayed she be allowed to pay the court fees.

In rejoinder Mr. Kamyaiile did not accept the prayer by the appellant. He insisted the appeal be dismissed.

According to the court record, judgment of the District Land and Housing Tribunal was delivered on 09/09/2020. The petition of appeal was received by the District Land and Housing Tribunal on 06/11/2020. Proceedings in

this court commenced on 26/02/2021. So, this case has been pending in this court since then without court fees being paid.

Admittedly, in **Gregory's** case it was held by this Court, Luanda, J., as he then was, inter alia:

*"... and the filing process is complete when the petition of appeal is filed upon payment of the requisite court fees."*

So, to date, the filing process is incomplete. The Misc. Land Appeal No. 7 of 2021 is, therefore, incompetent before this court. What befalls an incompetent case was clearly stated in **MIC Tanzania Ltd v Minister for Labour and Youth Development and Attorney General Civil Appeal No. 103/2004**, (CAT At SDM):

*The nothingness of incompetent proceedings was underscored by this Court in the case LEONSI SILAYO NGALAI V HON. JUSTINE ALFRED SALAKAMA AND THE ATTORNEY GENERAL, CIVIL APPEAL NO 38 OF 1996 (unreported) This court said:*

*... The second aspect is whether this Court may adjourn an appeal which is incompetent, in order to allow the appellant to take necessary steps to cure the incompetency. This court has*

said it before that ***an incompetent appeal amounts to no appeal***. It follows therefore that the court cannot adjourn what it does not have. Under such circumstances, what the court does is to strike the purported appeal off the register (emphasis is ours).

In the circumstances, I am left with no other option but to strike out this appeal off the register of this court. The respondent has to have his costs.

It is so ordered.

**DATED** at **SUMBAWANGA** this 17<sup>th</sup> day of February, 2022.



  
**J. F. Nkwabi**  
**Judge**