

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 2 OF 2022

EGIDIUS CRONEL (ESTATE ADMINISTRATOR

FOR CRONEL RUGEIYAMU) APPELLANT

VERSUS

JOSEPH MATINDE RESPONDENT

(Appeal from the Judgment of the District Land and Housing Tribunal for Katavi at
Mpanda)

(G. K. Rugalema, Chairman)

Dated 14th day of December 2021

In

Land Application No. 25 of 2021

RULING

01/07 & 15/08/2022

NKWABI, J.:

The respondent, against the land appeal, advanced a preliminary objection to the effect that the appeal is incompetent and misconceived and prayed it be struck out with costs by this Court. That was raised via a notice of preliminary objection. I ordered that parties argue the preliminary objection by way of written submissions. Submission in chief and reply submission were filed. The respondent, however, did not file a rejoinder thereto.

To substantiate his preliminary objection, the respondent who was unrepresented, argued that under Order XXXIX Rule 1(1) of the Civil Procedure Code, the appellant ought to have lodged the appeal through a memorandum of appeal. That was contravened since the document lodged to institute this appeal is neither a petition of appeal nor a memorandum of appeal. Since neither the word petition nor memorandum of appeal was indicated in the document, then the respondent prayed this appeal be struck out with costs.

Mr. Emmanuel Machiya, learned counsel for the appellant conceded the anomaly assigning the fault to the appellant who is a lay person. He then quickly invoked the provisions of section, 3A (1) (2) of the Civil Procedure Code, Cap. 33 R.E. 2019 for this court to apply it so that it facilitates the just, expeditious, proportionate and affordable resolution of the civil dispute. He prayed this Court orders for amendment of the document accordingly or in the alternative the Court strikes the appeal out with leave to refile with no order as to costs.

Having considered the arguments of both parties in this preliminary objection, in my view, the question before me is does the error go to the root of the matter or not? The respondent in his submission in chief did not claim so. I am of the view that the anomaly does not go to the root of the matter and it is saved with the overriding objective principle as per **Yakobo Magoiga Gichere v Peninah Yusuph**, Civil Appeal No. 55 of 2017 CAT (unreported)m where it was held:

"With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [ACT No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice, section 45 of the Land Disputes Courts Act should be given more prominence to cut back on over-reliance on procedural technicalities."

In the premises, I find that the preliminary objection is unmerited because it does not go to the root of the case. I order for amendment of the document that instituted this appeal in accordance with the law. The same be filed

within seven days from the date of this ruling. In the circumstances, each party shall bear their own costs.

It is so ordered.

DATED at SUMBAWANGA this 15th day of August 2022.




J. F. NKWABI
JUDGE