

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 217 OF 2023**

*(Arising from Land Application No. 226 of 2009 of the District Land and Housing  
Tribunal for Kinondoni)*

**DIONIIS BALTAZAR RUHINDUKA..... APPELLANT**

**VERSUS**

**MILLIAN MAKELE.....RESPONDENT**

**R U L I N G**

*Date of Last Order:17/07/2023*

*Date of Ruling:31.07.2023*

**T. N. MWENEGOHA, J:**

The respondent above named raised a point of objection against the present Appeal on the ground of non-citation of enabling provisions in the memorandum of appeal. His learned Counsel, Michael Kabuzya, insisted in his written submissions that, the appellant ought to have cited the relevant provisions of the law for her to move the Court in this Appeal. He mentioned the said provisions to include, **Section 41(1) and (2) of the Land Disputes Courts Act, Cap 216 R. E. 2019, Regulation 24 of the Land Disputes Courts(The District Land and Housing Tribunal) Regulations of 2002 and Order XXXIX Rules I and 2 of the Civil Procedure Code, Cap 33 R. E. 2019.** Also cited the case of **John Marco versus Seif Joshua Malimbe, Misc. Land Application No. 66 of 2019, High Court of Tanzania at Mwanza** (unreported).

In reply, Advocate Desdery Ndibalema, for the appellant insisted that, the objection raised by the respondent is frivolous and a wastage of Court's time. He went on to argue that, the Appeal is not an Application. The issue of non-citation on enabling provision of law does not apply to Appeals. That, the respondent's counsel is aware of that but he still raised this objection to waste the Court's time. That, the case of **John Marco versus Seif Joshua Malimbe**, (supra), is distinguishable with the case at hand.


In rejoinder, the respondent's counsel reiterated his submissions and prayers.

Indeed, I agree with the appellant's counsel. This objection is unfounded. It appears to me that the respondent's counsel is confusing an application that comes by way of Chamber Summons supported by an affidavit, and an Appeal which is brought either by a Memorandum of Petition of Appeal as the case may be. In my opinion, the respondent's counsel is introducing a new practice as far as the Appeals are concerned, hence, his objection attracts arguments. Having so observed, I find it falling short of a preliminary objection as per **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd, (1969) EA.**

Therefore, the same is overruled accordingly for lacking merits. The main case shall proceed to be heard until its final determination. The respondent shall bear the costs.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**

**31/07/2023**