

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

MISC LAND APPLICATION NO. 542 OF 2023

(Arising from Land Appeal No. 240/2023, Land Division)

OLIVE OSWALD MOSHA.....APPLICANT

VERSUS

ROMAN SELASIN SWAI.....1ST RESPONDENT

FREDRICK JERY HUNT.....2ND RESPONDENT

RULING

29/09/2023 to 03/10/2023

E.B. LUVANDA, J

The First Respondent named above raised two points of preliminary objection; One, the application is bad in law and incompetent for not being accompanied with the decree contrary to the provision of Order XLII rule 1(1), (3) relied upon by the Applicant; Two the application is bad in law as the court is *functus officio* in that the court's hands are tied from departing from its final order.

Mr. Edward George Mtaki learned Counsel for Respondent abandoned the second point of objection. For ground number one, the learned Counsel submitted that the application for review did not comply with the mandatory

requirements of Order XLII rule 1 (1) and (3) of Civil Procedure Code, Cap 33 R. E. 2019, for reason that it was not accompanied by a copy of decree or order being challenged. He cited the case of **Grace C. Rubambey vs. CMC Automobiles Limited**, Civil Appeal No. 316/2020 CAT pages 10 and 11.

Mr. Stephen Mosha and Mr. Nafikile Mwamboma learned Advocates for the Applicant submitted that attaching a copy of a decree or order in an application for review, has never been a legal requirement. They cited the case of **Chiku Hussein Lugonzo vs. Brunnids S. Paulo** [2001] TLR 498.

In rejoinder, the learned Counsels for Respondent submitted that the case of **Chiku Lugonzo** (supra) is distinguishable, arguing therein the ruling and drawn order were formerly made available to the parties for collection and there was no necessity to attach a copy of the drawn order which was available in the court file. He submitted that in the instant application only the judgment is present in the court file and no decree has been made available by the Court for collection. He submitted that the absence of the decree is not in dispute.

To my view, the learned Counsels for Respondent they are unnecessarily overstressing their concern and complaint. The alleged decree in appeal

was extracted on 28/08/2023, therefore it is available for collection. If parties did not collect it, is their own fault and at any rate it cannot be attributed as a ground of concern for non attaching herein. Moreover, the learned Advocates for the Respondent did not state as to when they last visited the court file for their attestation that a decree is missing therein. Neither asserted if they paid for perusal fees. Be as it may, the apex Court had ruled and made it clear that attaching drawn order or decree in the application like the instant one, is not a legal requirement. For brevity I quote **Chiku Lugonzo** (supra) at page 498, the apex Court ruled, I quote a relevant part,

"There is no provision under the Civil Procedure Code which requires a drawn order to accompany an application for review; Order XLII, rule 3 of the Civil Procedure Code 1966 only requires the form of preferring appeals to apply, mutatis mutandis, to be used in application for review".

I therefore go along with the argument of the learned Advocates for the Applicant that attaching a copy of a decree to the application for review, is not a legal requirement according to the Court of Appeal which we are bound by it. In so far the case of **Grace Rubambey** (supra) was dealing with decree as essential or pre requisites

documents in lodging the appeal, it is therefore distinguishable for being irrelevant in our situation at hand.

The preliminary objection is overruled. No order for costs.



E.B. LUVANDA
JUDGE
03/10/2023

Ruling delivered in the presence of Mr. Fredrick Mpanju learned Advocate for Applicant and Mr. Edward Mtaki learned Advocate for First Respondent.



E.B. LUVANDA
JUDGE
03/10/2023

ORDER:

1. Submission in chief on 17/10/2023.
2. Reply on 31/10/2023.
3. Rejoinder on 07/11/2023.
4. Ruling on 09/11/2023, at 10:00 hours through virtual court.



E.B. LUVANDA
JUDGE
03/10/2023