

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 4 OF 2015

(From the Decision of the District Land and Housing
Tribunal of Iringa District at Iringa in Land Case
Appeal No. 75 of 2014 and Original Ward Tribunal
of Ilula in Application No. 24 of 2009)

BURTON SANGA APPELLANT

VERSUS

MICHAEL KIWONE RESPONDENT

10/11/2015 & 26/11/2015

RULING

Kihwelo J.

The appellant in the instant case filed an appeal from the ruling of the District Land and Housing Tribunal for Iringa in Miscellaneous Land Application No. 75 of 2014 delivered by Honourable A. Mapunda, Chairman on 10th November, 2014.

The brief background to this appeal is that the respondent on 22nd March, 2011 obtained a judgment before the District Land and Housing Tribunal against the appellant in Land Appeal No. 19 of 2010. The appellant appealed to this Court unsuccessful hence the respondent filed an application seeking to execute the Decree of the Ward Tribunal, which was confirmed and upheld by the District Land and Housing Tribunal. The appellant objected to the execution of the Decree on account that the appellant has never trespassed the respondent's property and that while the respondent claimed 2 acres at the District Land and Housing Tribunal at the appeal he claimed 8 acres.

Upon hearing the application the District Land and Housing Tribunal granted the application for execution and allowed the appellant to be forcefully evicted. Dissatisfied by the decision of the District Land and Housing Tribunal the appellant came before this Court with the present appeal.

Before this Court the appellant was represented by Mr. Zuberi Ngoda, learned Counsel while the respondent was under the services of Mr. Edson Rwechungura, learned Counsel.

When the matter came for hearing of the appeal the court directed parties to address it on the propriety of the present appeal.

Mr. Ngoda, learned Counsel for the appellant was very brief, he contended that the instant appeal is appropriate before this court as the appellant is challenging the decision/ruling of the District Land and Housing Tribunal in Miscellaneous Case No. 75 of 2011 in which the appellant objected to the execution of the Decree.

In response Mr. Rwechungura spiritedly argued that Section 41 and 51 of the Land Disputes Courts Act Cap 216 RE 2002 requires that all appeals from the District Land and Housing Tribunal in exercise of its original jurisdiction shall be referred to the High Court and that the High Court in exercise of its jurisdiction shall apply the Civil Procedure Code, Cap 33 RE 2002. Mr. Rwechungura went on to argue that Section 74 of the Civil Procedure Code when read together with Order XL of the Civil Procedure Code provides for orders which are subject to appeal but there is no mention of an order for execution. To buttress his argument Mr. Rwechungura referred to the case of **Mariam Dorina & Another V Kisha Lugemalila**, PC Civil Appeal No. 31 of 2003, High Court of Tanzania at Dar es Salaam (unreported) and strenuously submitted that the present appeal against an order of execution was unfounded and not maintainable because it was not among the order subject to appeal. He therefore submitted that the present appeal is not properly before this Court.

When requested whether the impugned order was attached along with the Memorandum of Appeal Mr. Ngoda on his part hastily

argued that the impugned order was not attached. On the other hand Mr. Rwechungura valiantly argued that the order subject of the appeal was not attached to the memorandum of appeal contrary to the provision of Order XXXIX of the Civil Procedure Code Cap 33 RE 2002.

It is crystal clear as rightly pointed out by Mr. Rwechungura that a right of appeal is a creature of statute. Oriyo J. (as she then was) stated in the case of **Mariam Dorina** (supra) that:

“There is no right of appeal where a statute does not specifically provide for one.”

In my respectful opinion since the appellant sought to move the Court by way of appeal in order to challenge the order for execution of the Decree which is not within the ambit of Section 74 and Order XL of the Civil Procedure the present appeal is nothing but an empty shell not worth of consideration.

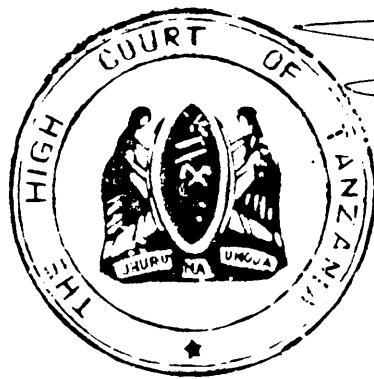
Needless to say, an order appealed from is an important document to be accompanied with the Memorandum of Appeal even if the order was appealable. This position of the law has since been settled in the case of **Stanley Kalama Mariki V Chihiyo Kwis Nderingo Ngomuo** [1981] TLR 143 in which the court religiously held;

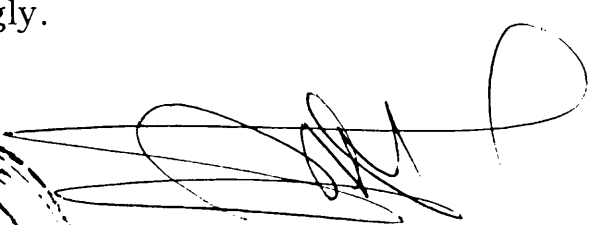
“That a memorandum of appeal must be accompanied by a copy of the order appealed from (vide Order 39 rule 1(1) and Order

40 rule 2 Civil Procedure Code). It is established procedure of our courts that where such a copy is not attached the appeal is incompetent.”

In my respectful opinion the irregularities and omissions taken together and individually are so glaring such that the appeal is incompetent and not properly before this court as such the purported incompetent appeal is hereby struck out with costs.

Ordered accordingly.




P. F. KIHWELO
JUDGE
26/11/2015