

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

**AT SUMBAWANGA**

**DC CIVIL APPEAL NO. 01 OF 2020**

***(Originating from Civil No. 145 of 2019 from Mpanda District Court)***

**LUGODISHA JINOGHILE .....1<sup>ST</sup> APPELLANT**

**JINOGHILE BURUBA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**MASHAKA MIHAMBO LUSANA ..... RESPONDENT**

*Date of last Order: 07/01/2021*

*Date of Ruling: 22/02/2021*

**RULING**

**C.P. MKEHA, J**

The present ruling is in respect of two Preliminary Points of Objection raised by the respondent on non-maintainability of the present appeal. In arguing the points of Preliminary Objection, the respondent was represented by Mr. Lawrence John learned advocate. On the other hand the appellant was represented by Mr. Kilingo Hassan learned advocate.

The learned advocate for the respondent submitted in respect of the first Preliminary Point of Objection that, whereas the decision appealed against was delivered by the District Court of Mpanda, the decree appealed against appears to have been issued by the Resident Magistrate's Court of Katavi. In

view of the learned advocate, doing so was going contrary to Order XX Rule 6 (1) of the Civil Procedure Code which insists that the decree should agree with the judgment.

The learned advocate submitted in respect of the 2<sup>nd</sup> point of objection that, although the present case originated from Mpanda Urban Primary Court, the present appeal was directly filed at the High Court contrary to what section 25 (3) of the Magistrate's Courts Act instructs, that, the same be filed in the District Court from which the decision or order in respect of which the appeal is brought.

In the appellant's reply submissions, it is agreed that the decree and judgment appealed against are not in agreement. However, in view of the appellant, the error does not go to the root of the matter hence it ought to be ignored. The appellant did not attempt to reply in respect of the 2<sup>nd</sup> point of objection.

It is not disputed that both provisions for which the appellant is condemned to be in contravention of are couched in mandatory terms. The appellant had an obligation of conforming with Order xx Rule 6 (1) of the Civil Procedure Code as well as section 25 (3) of the Magistrate's Courts Act. For failure of the appellant to conform with mandatory provisions of the law, the appeal is held to be incompetent. Both points of objection are sustained. The appeal stands struck out for reasons of incompetence. I make no order as to costs.

Dated at **SUMBAWANGA** this 22<sup>nd</sup> day of February, 2021.



  
**C.P. MKEHA**

**JUDGE**

**22/02/2021**

**Court:** Ruling is delivered in the presence of the parties.



  
**C.P. MKEHA**

**JUDGE**

**22/02/2021**