

TANZANIA / JUDGMENT

RULING Christopher Claudius Kihwili vs

COURT
TANZLIIDECIDED
17 September 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA SONGEA
SUB - REGISTRY AT SONGEA LAND APPEAL NO. 27613 OF 2024 (Appeal from the decision of the
District Land and Housing Tribunal for Songea at Songea in Application No. 19 of 2019 dated 17th
September, 2024) CHRISTOPHER CLAUDIUS KIHWILI APPELLANT
VERSUS ELIAS SALVATORY GAMA RESPONDENT

RULING

13th and 17th March, 2025 KAWISHE, J.: On 13th March, 2025, this appeal was scheduled for hearing. At the hearing of the appeal, the appellant appeared in person, unrepresented while the respondent was represented by Mr. Dickson Ndunguru, learned counsel. Having heard the submission from the appellant, Mr. Ndunguru was invited to make a reply. Before making his reply to the appellant's submission, the learned counsel informed this court that, from the appellant's submission, he has noticed that this appeal is 1 incompetent before this court for two main issues. One, that the names of the parties in this appeal are different from those in the impugned decision attached in the petition of appeal which the appellant has been referring to in his submission. Two, the case number which is named in the petition of appeal is different from that found in the copy of judgment attached in the petition of appeal which the appellant has been referring to in his submission. From those irregularities, Mr. Ndunguru prayed for this appeal to be strike out with costs. Responding to the respondent's learned counsel submission, the appellant conceded to the preliminary point of objection raised. However, he prayed for the leave of this court to be allowed to amend the petition of appeal and file afresh. He also prayed for the court to waive the order for costs prayed by the respondent's counsel. In his rejoinder submission, Mr. Ndunguru insisted for this appeal to be strike out and the appellant be ordered to pay even half of the costs incurred in this appeal. The submission made by the parties has prompted this court to revisit the copies of the impugned decision and the original records. 2 Upon securitizing them, it has been revealed that, before the trial Tribunal, the appellant and respondent sued under the capacity of the administrators of the estates of the deceased, (Christopher Cladius Kiwhili (Administrator of the estate of the late Cladius Joseph Kihwili) vs Elias Salvatory Gama (Administrator of the estate of the late Salvatory Gama), but in this appeal, they have appeared in their personal capacities. Also, it has revealed that, the Case Number in the original records is Land Application No. 91 of 2019 different from that referred by the appellant in his petition of appeal Land Application No. 19 of 2019 which has been referred in his

submission. Having made those observations, under such circumstances, the narrow but pertinent issue is whether the above shortcomings are curable. The appellant has prayed for the amendment of the petition of appeal contrary to what was submitted by the respondent's counsel that the appeal deserves to be struck out. The prayer made by the appellant to make an order for amendment is no longer feasible because it was made after the objection had been taken and argued by the respondent's counsel. Granting the prayer will have the effect of defeating the preliminary objection. This legal position was broadly explained in the case of Standard Chartered Bank & Another vs. 3 VIP Engineering & Marketing Ltd & Others (Civil Application 222 of

2016) [2021] TZCA 344 (2 August 2021). The Court of Appeal stated as follows: "It is trite principle that where a party has raised a preliminary objection in a case, the other party cannot be allowed to rectify the defect complained of by the party who raised the objection. This is because to do so would amount to pre-empting that preliminary objection. In the case of Method Kimomogoro i/. Board of Trustees of TANAPA (supra) cited by Mr. Ngalo, the Court stated as follows: "This Court has said in several times that it will not tolerate the practice of an Advocate trying to pre-empt a preliminary objection either by raising another objection or trying to rectify the error complained of." For the foregoing legal position, this court concurs with what has been submitted by the respondent's learned counsel that this appeal is incompetent before this court. On the pinpointed anomalies, it seems the appellant is trying to challenge a non-existing decision and parties thereto. In short, the appeal was not properly presented and could not be entertained. The only available remedy under the circumstances of the matter at hand is for the appeal to be struck out. This court had the same position in Ngoni- Matengo Cooperative Marketing Union Ltd vs. Ali Mohamed Osman [1959] E.A 577, William Godfrey Urassa vs. TANAPA Arusha (Misc. Civil Appeal No. 12 of 2000) (2009) TZHC 238 (2 June 2009), The Registered Trustees of the Catholic 4 Diocese of Arusha vs. The Board of Trustees of Simanjiro Pastoral Education Trust, Civil Case No. 3 of 1998 (unreported) and Rev. Benson John Kitonka vs. Amina N. Makalagi @ The District Commissioner of Nyamagana & Another (Miscellaneous Civil Application No. 68 of 2023) [2024] TZHC 163 (5 February 2024) TanzLII. In the upshot, I find the preliminary objection has merits and it is accordingly upheld. Consequently, this appeal is strike out for being incompetent. Since the appellant prayed to amend the petition, he is granted 14 days from today to file afresh if he so wishes. Considering that the appellant conceded to the preliminary point of objection, thus parties to bear their own costs. It is so ordered. DATED and DELIVERED at SONGEA on this 17th day of March, 2025. E. L. KAWISHE JUDGE 5 Court: Ruling delivered in the presence of Mr. Christopher Cladius Kihwili, the appellant and in the presence of Mr. Elias Salvatory Gama, the respondent. E.L. KAWISHE JUDGE 17/03/2025 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/335872/source_file/4ba7f1dd663f2eb1/RULING_Christopher_Claudius_Kihwili_vs._Elias_Salvatory_Gama_1.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/christopher-claudius-kihwili-v-elias-salvatory-gama-preliminaryobjection-tanzlii-2024--6a3ea5243b1caa912981a633>

Prepared on 14 October 2026 · Esheria