

IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: RUTAKANGWA, J.A; MJASIRI, J.A., And MASSATI, J.A.)

CIVIL APPEAL NO 62 OF 2008

KHADIJA ABDUL KADIR APPELLANT

VERSUS

**THE ADMINISTRATION OF
HINDU UNION HOSPITAL..... RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania
at Mwanza)**

(Mlay, J.)

**dated the 13th day of May, 2003
in
Civil App. No. 18 of 2004**

RULING OF THE COURT

11 & 15 FEBRUARY, 2011

MJASIRI, J.A.:

This is an appeal from the decision of the High Court of Tanzania
(Mlay, J.) sitting at Mwanza which was delivered on May 13, 2004.

The appellant is unrepresented, appearing in person. The Respondent is represented by Mr. P. Rugaimukamu, learned advocate.

When the appeal was called on for hearing, Mr. Rugaimukamu, counsel for the Respondent raised a preliminary objection a notice of which had earlier been filed under Rule 100 of the then Court of Appeal Rules 1979, (the Rules). The following grounds were raised in the said preliminary objection:-

- i. The appeal is improperly before this Court as it is time barred by virtue of Rule 83 (1) of the Court of Appeal Rules 1979.*
- ii. The appeal is incompetent before the Court as the record of appeal does not contain the High Court Decree against which the appellant states to be aggrieved.*

Mr. Rugaimukamu dealt only with ground No. 2. He submitted that the appeal was incompetent as the record of appeal did not contain a copy of decree. He pointed out that for any appeal to be properly before the Court, the record of appeal must contain a copy of the decree appealed from. He made reference to Rule 89(2) of the revoked Rules 1979. He urged the Court to strike out the appeal for being incompetent.

The appellant on her part readily conceded that the record of appeal did not contain a copy of the decree.

On our part, we have no reason to differ with the position taken by the learned Advocate. The law on the issue is well settled. It is mandatory that a copy of a decree should form part of the record of appeal. It is evident that the appellant has not complied with the requirements under Rule 89 (2)(v). A decree is one of the essential documents required by the rules. See **Kiboru v. Posts and Telecommunications Corporation** (1974) E.A 155.

Consequently, we hereby sustain the preliminary objection and we accordingly strike out the appeal. As the respondent did not press for costs we make no order as to costs.

It is so ordered.

DATED at MWANZA this 14th day of February, 2011.

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

J.S. MGETTA
DEPUTY REGISTRAR
COURT OF APPEAL