



**THE HON ATTORNEY GENERAL AND 3 OTHERS v.
NOBERT YAMSEBO**

**COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

**(RUTAKANGWA, J.A., BWANA, J.A., AND JUMA, J.A.)
CONSOLIDATED CIVIL APPEALS NO. 1 & NO. 5 OF 2013**

(Appeal from the judgment of the High Court of Tanzania at Sumbawanga before
Mmila, J.)

*Election Petition – procedures during hearing – preliminary objection – whether hearing
can proceed when a preliminary objection is raised.*

*Election Petition – incompetent case – whether striking out a case prevents a party from
pursuing the matter.*

*Election Petition – Appeals – powers of Appellate Court – whether Appellate court has
powers to reevaluate evidence and interfere with the trial court's findings.*

*Election Petition – Nullification of election results – noncompliance as a ground -
Whether non-compliance alone can affect the results of an election.*

*Election Petition - Evidence – witnesses - Whether failure to call a material witness is
fatal.*

This is an appeal arising from an election petition. The matter traces back to the general elections held throughout Tanzania in October 2010. The Respondent had contested the parliamentary seat for Sumbawanga Urban Constituency, where he was declared unsuccessful, losing to Mr. Aeshi Hillary (4th Respondent). Dissatisfied with the election outcome, the Respondent filed an election petition in the High Court of Tanzania at Sumbawanga, seeking to nullify the election of Mr. Hillary, which he succeeded and the 4th Respondent's win was nullified.

The Appellants later filed a Notice of Appeal challenging the High Court's decision. The Respondents raised preliminary objections on two broad grounds. The first ground was that the Notice of Appeal had procedural defects. It was filed at the Court of Appeal, Sumbawanga Sub-Registry, instead of the High Court at Sumbawanga, contrary to the rules. The Appellants did not serve the Notice on the first Respondent, and a later copy



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served was undated with no indication of lodging. Additionally, the filing fee was paid a day after the Notice of Appeal was lodged, which violated the rules.

The second ground concerned non-compliance with appeal requirements. The Appellants had not paid the prescribed fee for appealing, nor had they paid security for costs. It was also argued that, since the initial appeal had been struck out, the High Court lacked jurisdiction to allow a new Notice of Appeal.

The Court of Appeal overruled the preliminary objections, finding them without merit, and proceeded to consider the merits of the appeal. On the merits, the Appellants advanced multiple grounds of appeal, which were consolidated into three main complaints. The first complaint arose from alleged irregularities during the election campaign, where the High Court had found the election not free and fair due to chaotic incidents in Kisumba Village and Mtimbwa Village. The second complaint concerned corruption and undue influence. The High Court found that Mr. Hillary, through his agents, convened a meeting at Kantalamba Primary School where money was distributed to voters, and the third complaint centered on procedural irregularities before the hearing, with the contention that the High Court fixed the hearing date before the respondent had deposited security for costs.

Ultimately, having reevaluated the evidence of the trial court, the Court of Appeal allowed the consolidated appeals with costs, setting aside the High Court judgment and decree, and effectively restoring the original election outcome.

Held

- (i) Where a preliminary objection is raised against the hearing of the appeal, the same must be taken first.
- (ii) Striking out a matter does not amount to a refusal; it indicates the matter is incompetent, and the proper remedy is to rectify the procedural error and re-lodge the matter in the same court.
- (iii) A Court of first appeal has the duty to re-evaluate all evidence presented before the trial court and arrive at its own independent decision.
- (iv) The appellate court cannot interfere with trial court findings of fact unless there is a misapprehension of evidence, misdirection, non-direction on evidence, miscarriage of justice, or violation of law or practice



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- (v) Not every failure to comply with electoral provisions invalidates an election; the non-compliance must be significant enough to affect the election result.
- (vi) The prosecution is under a prima facie duty to call witnesses who can testify to material facts; failure to call available witnesses without sufficient reason allows the court to draw an adverse inference.

Appeal Allowed

Statutory provisions and Laws considered

- (i) National Elections Act Cap 343.

Cases and authorities relied on by the Court

- (ii) Pita Kempap Ltd v. Mohamed I.A. Abdulhussein Civil Application No. 128 Of 2004 C/F No 69 Of 2005
- (iii) Juma Kilimo v. The Republic, Criminal Appeal No. 70 Of 2012 At Tanga

