

**IN THE COURT OF APPEAL OF TANZANIA  
AT DODOMA**

**(CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.)**

**CIVIL APPEAL NO. 117 OF 2015**

**ONESMO MHUTYE ..... APPELLANT**

**VERSUS**

**SIMON MACHAKA ..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania  
(Land Division) at Dodoma)**

**(Mwangesi, J.)**

**dated the 25<sup>th</sup> day of November, 2010**

**in**

**Land Case Appeal No. 49 of 2009**

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**ORDER OF THE COURT**

**KILEO, J.A.:**

At the hearing of the appeal, Mr. Francis Nkoka learned advocate appeared for the appellant and Reverend Kuwayawaya S. Kuwayawaya learned advocate appeared for the respondent. Before the matter had proceeded Rev. Kuwayawaya informed the Court that he was abandoning a notice of objection that he had earlier on filed.

On the other hand, upon being prompted by the Court the learned counsel for the appellant conceded that the appeal before the Court was incompetent in account of two factors.

- (a) The record of appeal did not incorporate a certificate of point of law as required under rule 96 (2) of the Court of Appeal Rules, 2009 and section 47 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 which requires an appellant whose appeal originates from the Ward Tribunal (as is the case in this appeal) to seek for a certificate from the High Court certifying that there is a point of law involved in the appeal.
- (b) The record of appeal did not incorporate a valid Notice of Appeal.

Mr. Nkoka in the circumstances asked that the appeal he struck out with no order as to costs. Rev. Kuwayawaya in response did not object to the striking out of the appeal. As for the issue of costs he left the matter to the Court to decide.

There is no gainsaying that the appeal before us is incompetent for reasons already stated above. In the circumstances we strike it out. We

shall make no order as to costs as the issue of incompetence was initially raised by the Court.

It is ordered accordingly.

**DATED** at **DODOMA** this 5<sup>th</sup> day of April, 2016.


E.A. KILEO  
**JUSTICE OF APPEAL**

K.K. ORIYO  
**JUSTICE OF APPEAL**

I.H. JUMA  
**JUSTICE OF APPEAL**

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



  
E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**