

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

(CORAM: OTHMAN, C.J., KIMARO, J.A. And KAIJAGE, J.A.)

CIVIL APPEAL NO. 109 OF 2015

BETWEEN

MOHAMED HAMIS MAWAAPPELLANT

VERSUS

**SELEMANI OMARY KIKWALA1ST RESPONDENT
OMARY MMANGA NDUMBU.....2ND RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania
Land Division at Mtwara)**

(Mipawa, J.)

dated 4th day of September, 2012

in

Land Case Appeal No. 5 of 2011

RULING OF THE COURT

01st & 02nd August, 2016

OTHMAN, C.J.:

When the appeal was called on to a hearing, the Court, *suo motu*, sought the position of the parties on the competence or otherwise of the appeal.

Mr. Wilson Ogunde, learned Advocate for the appellant readily conceded that the record of appeal was defective in that it did not incorporate any of the 2nd Respondent's exhibits tendered by DW3 (Muhibu Omari Mnnaga Ndumbu) before the District Land and Housing Tribunal. These he acknowledged, were important in understanding the proceedings at the trial Tribunal. That their non-incorporation in the record of appeal breached Rule 96(2)(c) of the Court of Appeal Rules, 2009.

On their part, the respondents, lay persons, did not have much to add to the point of law raised by the Court.

Going by the record of appeal, it is evident as admitted by Mr. Ogunde that the eight (8) Exhibits, i.e. Exhibits D1-D8, tendered by DW3 before the District Land and Housing Tribunal on 8/2/2011 are glaringly absent in the record of appeal. They were relied upon by the Tribunal and the High Court in reaching their respective decisions. No doubt, they are essential documents, which should have been incorporated in the record of appeal, to allow a proper reading of the proceedings and concurrent decisions of the Tribunal and the High Court and ultimately the proper determination of the appeal. Their non-incorporation in the record of appeal offended Rule 96(2) and renders the record of appeal fatally defective.

Accordingly, we are constrained to find the purported appeal incompetent, and hereby strike it out without costs.

Ordered accordingly.

DATED at **MTWARA** this day of 01st August, 2016.

M. C. OTHMAN
CHIEF JUSTICE

N. P. KIMARO
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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

E. Y. MKWIZU
DEPUTY REGISTRAR