**Kafunga v Sambila**

**Division:** Court of Appeal of Tanzania at Mbeya

**Date of judgment:** 2 June 2004

**Case Number:** 39/04

**Before:** Ramadhani, Nsekela and Msoffe JJA

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*[1] Civil procedure – Court of Appeal Rules – Effect of failure to include a copy of the decree or order*

*in the record of appeal.*

**Editor’s Summary**

The respondent’s advocate raised a preliminary objection to the appeal in terms of rule 100 of the Court of Appeal Rules. The essence of his argument was that the record of appeal did not contain a decree, hence the appeal was incompetent.

**Held** – Rule 89(1)(*h*) and (2)(v) set out a list of documents to be included in the record of appeal and include “the decree or order”. Failure to extract the decree in terms of these rules renders the appeal incompetent and results in the striking out of the appeal. (*National Bank of Commerce v Methusela Magongo* [1996] TLR 394; *Lamwai v Attorney-General and another* Civil appeal number 56 of 1997; *Masha v Attorney-General and another* Civil appeal number 43 of 1996 followed). Appeal struck out

**Cases referred in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Lamwai v Ngula another* Civil appeal number 43 of 1996 (UR) – **F**

*Masha v Shija and another* (UR) – **F**

*National Bank of Commerce v Magongo* [1996] TLR 394 – **F**