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THE OVERRIDING OBJECTIVE

ELEVEN recent landmark cases on the
principle



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1. GASPAR PETER V. MTWARA URBAN WATER SUPPLY, COURT OF APPEAL, MTWARA (2019).

- Missing documents in the record of appeal - it was held that from the particular circumstances of this appeal, the omission to include them in the record is not a fatal irregularity. The grounds of appeal raise issues of law which can be determined without recourse to the missing documents (p. 12). The Court also applied the principle of overriding objective in curing that defect (p. 13).

2. YAKOBO MAGOIGA GICHERE V. PENINAH YUSUPH, COURT OF APPEAL, MWANZA (2018)

- With the advent of the principle of overriding objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [Act No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantial justice; section 45 of the Land Disputes Courts Act shall be given more prominence to cut back on over-reliance on procedural technicalities (pp. 13 - 14).

3. MONDOROSI VILLAGE AND OTHERS V. TANZANIA BREWERIES AND OTHERS, COURT OF APPEAL, ARUSHA (2018)

- The overriding objective principle cannot be applied blindly against the mandatory provisions of procedural law which go to the foundation of the case (p. 14-15).
- The Court referred to a Bill of an Amending Act in interpreting the objects and reasons of introducing the overriding objective principle (p. 15).

4. ALLIANCE ONE TOBACCO AND ANOTHER V. MWAJUMA HAMISI AND ANOTHER, HIGH COURT, DAR ES SALAAM (2019).

- It is the current law of the land that Courts should uphold the overriding objective principle and disregard minor irregularities and unnecessary technicalities so as to abide with the need to achieve substantive justice (p. 3).
- The Court observed that upholding the preliminary objection on the wrong citation of the law would be a punishment to the client for the mistake done by its counsel (p. 4) – therefore the Court overruled the objection (p. 5).
- Wrong citation of the law – the Court observed that the defect did not affect its jurisdiction to grant the orders sought (p. 3) – as a result the Court applied the overriding objective principle by allowing the applicant to insert the proper provision of the law by hand (p. 5).

5. MEDITERANEAN SHIPPING V. AFRITEX LIMITED, COURT OF APPEAL OF TANZANIA, DAR ES SALAAM (2020).

- Defective certificate of delay – the Court decided not to strike out the appeal because the defect in the certificate of delay was committed by the Registrar of the Court (although the counsel for the appellant was duty bound to ensure correctness of the certificate of delay before including it in the record of appeal). In doing so, the Court applied the overriding objective principle (p. 5). Consequently, the appellant was allowed to obtain and include in the record of appeal, a properly drawn certificate of delay (p. 6).

6. KIKO RAJABU KIKO AND ANOTHER V. BAKARI RAJABU KIKO, HIGH COURT, MOSHI (2019)

- The *jurat* of attestation of an affidavit did not show whether the officer before whom it was taken knew the deponent or was introduced to him - the Court applied the overriding objective principle in curing that anomaly (p. 7).
- The Court used the overriding objective principle (also referred to as the oxygen principle) to overrule a preliminary objection on improper citation of enabling provisions (p. 13). In arriving at that conclusion, the Court observed that the days when one could almost invariably get away with technical points of law and avoid going into merits of a case are part of history (p. 12). The Court ordered the applicant or the applicant's advocate to amend the chamber summons by deleting the wrong provisions and substituting them with the proper provision, and endorsing the same with their signature in the margins (p. 16).
- Purpose of the oxygen principle - the principle was meant to bring back to life an otherwise dead case so long as in doing so no injustice is occasioned to any of the parties (p. 16).

7. CHARLES S. KIMAMBO V. CLEMENT LEONARD KUSUDYA AND ANOTHER, COURT OF APPEAL OF TANZANIA, DODOMA (2019).

- The Court applied the overriding objective principle in allowing the applicant to amend a defective application which contained some anomalies, uncertainties, misleading and confusing information (pp. 7-9).

8. MARIAM SAMBURO V. MASOUD MOHAMED JOSHI AND OTHERS, COURT OF APPEAL OF TANZANIA, DAR ES SALAAM (2019).

- The overriding objective principle does not require the Court to disregard jurisdictional matters which go to the root of the suit (pp. 8 – 9).
- The overriding objective principle cannot be applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case (p. 9).

9. CHARLES BODE V. THE REPUBLIC, COURT OF APPEAL OF TANZANIA, DAR ES SALAAM (2019).

- Succession of judges in criminal cases - the successor judge did not explain to the appellant his rights stipulated under S. 299(1) of the CPA when he was commencing proceedings as a second judge (*rights to have the witnesses or any of them be re-summoned and re-heard*) – guided by the overriding objective principle, the Court observed that the omission is not fatal because it did no occasion any injustice (p. 12).

10. STEPHEN MALIYATABU V. SARAH ISSAYA DYOYA, HIGH COURT, TABORA (2018).

- Principle of the Overriding Objective requires courts to deal with cases justly, speedily and to have regard to substantive justice. The principle also tries to avoid prioritization of procedural technicalities in the process of justice administration (p. 14).

**11. MARTIN D. KUMALIJA AND OTHERS V. IRON AND STEEL LIMITED,
COURT OF APPEAL, DAR ES SALAAM (2018).**

- The overriding objective will not help a party to circumvent mandatory rules of the Court (p. 9).
- The Court of Appeal refused to apply the principle of overriding objective in favour of the respondent since doing so would bless the respondent's inaction and render superfluous the rules of the Court that the respondent thrashed so brazenly (p. 9).