

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

(CORAM: MUNUO, J.A., LUANDA, J.A., And MJASIRI, J.A.)

CIVIL APPEAL NO. 83 OF 2008

GOBANYA F. HEZWA.....APPELLANT

VERSUS

THE COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY.....RESPONDENTS

**(Appeal from Judgment of the High Court of Tanzania
at Mbeya)**

(Mrema, J.)

Dated the 20th day of September, 2007

in

Civil Case No. 2 of 2002

RULING OF THE COURT

20th & 23rd July, 2010

LUANDA, J.A.:

The above named appellant is dissatisfied with the finding of the High Court sitting at Mbeya in Civil Case No. 2 of 2002. He duly processed his appeal by first lodging his notice of appeal and eventually on 23/11/2007 filed his appeal.

On 7th March, 2008 the respondent filed a preliminary objection under the then Rule 100 of the Court of Appeal Rules, 1979 to the effect that the appeal is incompetent for failure to comply with Order XX, Rule 7 of the Civil Procedure Act, Cap 33. The above stated Rule deals with decree.

When the matter came up for hearing, Mr. Evarist Mashiba, Legal Officer with the respondent informed the Court that their counsel has travelled outside the country. He prayed that the matter be adjourned to another date.

Having gone through the record and having perused the copy of the decree, we were of the view that the objection is meritorious. Instead of adjourning the matter, we asked Mr. Victor Mkumbe learned counsel for the appellant whether he conceded to the point raised. Mr. Mkumbe did not. He was of the view that the decree is properly dated and signed. So, the appeal is properly before the Court, he submitted.

Rule 89(1) of the Court Rules, 1979 enumerates documents which are mandatorily required to be embodied in the record of appeal from matters arising from the High Court in its original jurisdiction. One of such document is a copy of a decree (see paragraph (h) of sub-Rule1 of Rule 89 of the Rules). A copy of decree from matters originating from High Court is required to be properly dated and signed.

This is provided under Order XX, Rule 7 of the Civil Procedure Act, Cap 33 RE 2002. The Rule reads.

7. The decree shall bear the date of the day on which the judgment was pronounced, and, when the judge or magistrate has satisfied himself that the decree has been drawn up in accordance with the judgment he shall sign the decree.

There is a chain of authorities to the effect that the record of appeal which contains a decree which is not properly dated and/or signed renders the appeal incompetent and such appeal is liable to be struck out (see:

Bahadnarali E. Shamji & another V The Treasury Registrar, Ministry of Finance & 4 Others Civil Appeal No. 4 of 2003, **Uniafrico Ltd & 2 Others V Exim Bank (T) Ltd** Civil Appeal No. 30 of 2006; **Mkama Pastory V TRA Civil Appeal No. 95 of 2006; Ami (TZ) Ltd V OTTU on behalf of P.L. Assenga and 106 others** Civil Application No. 72 of 2002; **Haruna Mpangaos and 902 others V Tanzania Portland Cement Co. Ltd** Civil Appeal No. 10 of 2007 and **Kashemeza Phares Kabuye V. Choya Anatory Kasazi** Civil Appeal No. 110 of 2007 (all unreported).

In **Uniafrico Ltd** case cited *supra*, the Court held, we quote:

“Under the Rule, it is clear that a decree must unambiguously set the date on which the judgment was given. So, the decree must bear the same date as the judgment. The date of the decree is the date on which judgment was delivered – see **Sarkar on Civil Court Practice Procedural Manual**, Tenth Edition, at page 205. The date is important for

purposes of limitation because the period of limitation for an appeal from a judgment runs from the date on which it was pronounced”.

In the instant case the decree, which does not comply with the court forms either, reads as hereunder:-

DECREE

The Plaintiff prays for the following orders:-

- (a) Payment of TShs 603,423,452/= as claimed above in the plaint.*
- (b) Interest of 1% per day of the Decretal current from the date of filing this suit till when payment is made in full.*
- (c) An order that the Plaintiff was wrongfully retired by the Defendant.*
- (d) An order that the Plaintiff be reinstated in service at full pay from the date of retirement till the date of compulsory retirement which is 30th day of June, 2004.*

- (e) *Costs of this suit paid by the defendant.*
- (f) *Any other order(s) this court deems fit to grant.*

*This case coming on this **20th day of September, 2007** for final disposal before Honorable A. C. Mrema, Judge in the presence of the Plaintiff his Advocate Mr. Mashiba learned counsel for Tanzania Revenue Authority Defendant.*

IT IS ORDERED that:

For fairness and interest of Justice, I hereby direct that PW1 submit to Tanzania Revenue Authority his proper transport costs by 1st class train from Mwanza to Kigoma via Tabora and then by road to Makamba Village in Kasulu District. Such costs should include subsistence allowances as well as costs for the approved luggage. The rate should be

those applicable in the market in 1999 when PW1 retired. If the total costs for repatriation will surplus (sic) the amount admitted to have been paid to PW1 when he vacated office, then the difference should be paid to him forthwith. As regards costs, I am of the view that the nature of the suit is not one justifying this court to order costs against the plaintiff who has lost the suit.

In sum the suit is hereby dismissed save for the exception on repatriation allowance as directed above. I make no order as to costs.

*GIVEN under my hand and the seal of the Court this **19th day of October, 2007.***

A.C. MREMA

JUDGE

*Signed on 5th day of November, 2007 by
Hon. S. B. Lukelelwa, Judge on grounds that
the presiding Judge has vacated office by
virtue of achieving the compulsory retirement
age.*

Signed

S. B. LUKELELWA

JUDGE

(Emphasis supplied)

In the instant case the judgment was delivered on 20/9/2007; whereas the "decree" bears three different dates at different places as reproduced above. The decree was sealed on 19/10/2007 but was signed on 5/11/2007. Obviously, the date of the decree differs from the date the judgment was pronounced. Taking the "decree" as it is, it is clear that the

mandatory requirements of Order XX, Rule 7 of the Civil Procedure Code, Cap. 33 were not complied with.

We would have ended here. But we would like to point out, in passing, that even the decree itself was not substantially drawn in conformity with the forms in use under the Indian Code of Civil Procedure 1908 which are in force in Tanzania by virtue of section 101(3) of the Civil Procedure Code, Cap. 33 as the same are yet to be replaced. The section reads:

101(3) All forms heretofore in use in connection with proceedings under the Indian Code of Civil Procedure, 1908, as in force in Tanzania shall, where applicable and subject to such variations as may be necessary, be deemed to be forms approved by the Chief Justice for use in connection with proceedings under this Code until replaced by

forms prescribed or approved by the Chief Justice under subsection(1).

In **Uniafrico** case the Court reproduced a decree form and it reads:-

DECREE IN ORIGINAL SUIT
(ORDER 20, RULES 6,7)

Title

Claim for.....

This suit coming this day for final disposal before.....

in the presence offor the plaintiff

and offor the defendant, it is

ordered and decreed that..... and

the sum of Rs.....be paid by the

to theon account of the

costs of this suit with interest thereon at the rate of

.....per cent per annum from this

date to the date of realization.

*Given under my Hand and seal of the court
this.....day of2010.*

Judge

As already said the drawn decree in this appeal was not drawn as per the above form.

In sum as the record of appeal does not contain a valid decree, the appeal is incompetent. The same is struck out. Since it is the Court which played a big role in disposing the preliminary objection, we think it is prudent that each party to bear its own costs.

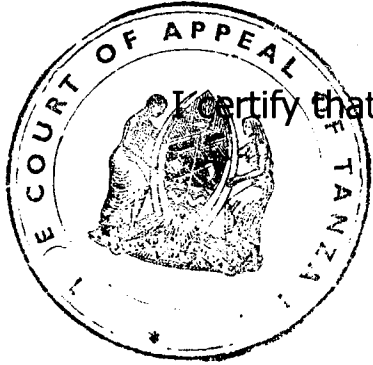
It is so ordered.

DATED at MBEYA this 21st day of July, 2010.

JUSTICE OF APPEAL

JUSTICE OF APPEAL

JUSTICE OF APPEAL



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


I. P. Kitusi

SENIOR DEPUTY REGISTRAR