

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

**(CORAM: KIMARO, J.A., LUANDA, J.A., And MANDIA, J.A.:)**

**CIVIL APPEAL NO. 27 OF 2007**

**TATU MANYOKA..... APPELLANT**

**VERSUS**

**CHARLES KABERUKA.....RESPONDENT**

**(Appeal from the Decision of the High Court of Tanzania  
at Mwanza)**

**(Masanche, J.)**

**dated the 2<sup>nd</sup> day of September, 2005**

**in**

**Civil Appeal No 50 of 2001**

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**RULING OF THE COURT**

**5<sup>th</sup> October & 11<sup>th</sup> October, 2010**

**MANDIA, J.A.:**

On 9<sup>th</sup> January, 2007, the appellant TATU MANYOKA filed a memorandum of appeal challenging a decision of the High Court of Tanzania sitting at Mwanza in Civil Appeal No 50 of 2001. The decision of the High Court was rendered on 14/8/2003. Accompanying the judgment of the High Court is a decree dated 26<sup>th</sup> January, 2006. On 30<sup>th</sup> September, 2010, the respondent lodged a preliminary objection challenging the

competency of the appeal filed by the appellant. The respondent raised a point of law that the appeal filed is incompetent because it is accompanied by a decree which offended Orders XX Rule 7 of the Civil Procedure Act, chapter 33 R.E. 2002 of the laws.

When the appeal came up for hearing Mr. Vedastus Laurean, learned advocate representing the respondent, reiterated the point of law raised in the preliminary objection filed on 30/9/2010. Mr. Vedastus Laurean, learned advocate, pointed out that since the date on the judgment differs from the date of the decree this makes the appeal incompetent and the Court should strike out the appeal. The appellant, who appeared in person, retorted to the point of law raised by the respondent giving the following reasons:-

- (a) that she is a lay woman and cannot be held responsible for the different dates which appear in the judgment and decree respectively since she did not write any of them.

- (b) that a decree is a strange thing to her and she does not know what it is
- (c) that legal proceedings should not be vitiated on grounds of irregularity only as this will lead to defeat of justice.

We have examined the record before us. Indeed the judgment of the High Court is dated 14<sup>th</sup> August, 2003 and the decree is dated 26<sup>th</sup> January, 2006. As pointed out by Mr. Vedastus Laurean, learned advocate, the decree offends Order XX Rule 7 which reads thus:-

"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."

Mr. Vedastus Laurean, learned advocate, went on to point out that the matter at hand originated from the Court of Resident Magistrate at

Mwanza where judgment was pronounced on 2/7/1995 and the decree signed on 16/1/1996. On a prompting by the Court Mr. Vedastus Laurean conceded that the proper provision for decrees in appeal is Order XXXIX Rule 35(1) of the Civil Procedure Act, Chapter 33 R.E. 2002 of the laws.

Order XXXIX Rule 35(1) reads thus:-

“35. The decree of the Court shall bear the date of the day on which the judgment was pronounce.”

This is a second appeal. The first appeal was the High Court against the judgment and decree of the Court of Resident Magistrate of Mwanza in the exercise of its original jurisdiction in Civil Case No. 101 of 1992. We have said earlier that judgment in the suit was delivered on 2/7/1995 and the decree was signed on 26/1/1996. For there to be a valid appeal order XXXIX Rule 1(1) of the Civil Procedure Code provides thus:-

“1.- (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to

the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the Court dispenses therewith) of the judgment on which it is founded.

An appeal from a subordinate Court to the High Court must, under Rule 1(1) of Order XXXIX, mandatorily comprise of a memorandum of appeal and a valid decree and, optionally, the copy of judgement. For a decree to be valid it must comply with Order XX Rule 7. The appeal to the High Court based on Civil Case No 101 of 1992 was based on a defective decree. This makes the appeal to the High Court incompetent.

The same default is evident in the appeal from the High Court to this Court since the decree in appeal offended Order XXXIX Rule 35(1) of the Civil Procedure Code.

For the incompetent proceedings in the High Court, we invoke the jurisdiction vested in us by section 4(2) of the Appellate Jurisdiction Act, Chapters 141 R.E. 2002 of the Laws, and quash and set aside the proceedings in Civil Appeal NO 50 of 2001 of the High Court at Mwanza as well as the judgment, decree and orders made therein. Coming to the appeal before us we are persuaded by the argument that the decree of the High Court ought to bear the same date as the date of judgment which is 14<sup>th</sup> August 2003. Since the decree bore the date 26<sup>th</sup> January, 2006, it is incurably defective. This renders the appeal before us incompetent. Various decision of this Court have laid down the rule of law that an incurably defective decree resulting in an incompetent appeal renders the appeal subject to being struck out. Amongst these authorities are:-

**1. Abdalla Rashid Abdallah v Sulubu**

**Kidogo Amour and Said Issa Said Civil**

Appeal No. 94 of 2006;

2. **Jovin Mtagwaba and 85 others vs Geita Gold Mining Ltd**, Civil Appeal No 109 of 2005;
3. **Haruna Mpangaos and 902 Others vs Tanzania Portland Cement Co, Ltd**, Civil Appeal No 10 of 2007
4. **Zanzibar Insurance Corporation vs Paul Mwita Chacha**, Civil Appeal No 83 of 2006; and
5. **Uniafrica Ltd and 2 Others vs Exim Bank (T) Ltd**, Civil Appeal No 30 of 2006,  
**(all unreported).**

We therefore allow the preliminary objection, and strike out the appeal before us as incompetent.

In the normal course of things, costs follow the event. We have, however, observed that Mr. Vedastus Lawrean, learned advocate, did not

touch on the question of costs when he addressed us. We note that the respondent is a lay woman. In the particular circumstance of this case, we make no order as to costs.

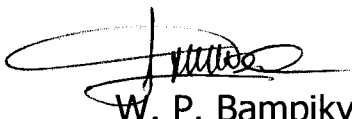
DATED at MWANZA this 6<sup>th</sup> day of October, 2010.

**N. P. KIMARO**  
**JUSTICE OF APPEAL**

**B. M. LUANDA**  
**JUSTICE OF APPEAL**

**W. S. MANDIA**  
**JUSTICE OF APPEAL**

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

  
W. P. Bampikya  
**SENIOR DEPUTY REGISTRAR**