

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: RAMADHANI, C.J., MUNUO, J.A., RUTAKANGWA, J.A.,  
KIMARO, J.A., And BWANA, J.A.)**

**CIVIL APPEAL NO. 4 OF 2007**

**ELIZABETH STEPHEN.....1<sup>ST</sup> APPELLANT**  
**SALOME CHARLES.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**THE ATTORNEY GENERAL.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)**

**(Massati, Mihayo, Shangwa, JJ.)**

**dated the 8<sup>th</sup> day of September, 2006  
in**

**Miscellaneous Civil Cause No. 82 of 2005**

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**RULING OF THE COURT**

7<sup>th</sup> & 28<sup>th</sup> December, 2010

**MUNUO, J.A.:**

The appellants, through the services of the Women's Legal Aid Centre (WLAC) lodged the present appeal to challenge the dismissal of their petition on the 8<sup>th</sup> September, 2006 in the High Court of Tanzania at Dar es Salaam in Miscellaneous Civil Cause NO. 82 of 2005.

Ms Magdalena Rwebangira, Geneveive Kato, Nakazaeli Tenga and Mr. Mohamed Tibanyendera, learned advocates, represented the appellants.

The learned Attorney General was represented by Mr. Michael Kamba, learned Principal State Attorney, assisted by Ms A. Mbuya, learned Senior State Attorney.

Before the hearing commenced, Mr. Kamba brought an oral preliminary objection to the effect that the written submission filed by the appellants' advocates is time barred in that it was filed after the expiry of the sixty days period of limitation provided for under the provisions of Rule 106(1) of the Tanzania Court of Appeal Rules, 2009. The said Rule 106(1) states *inter-alia*:

*"106(1).A party to a civil appeal, application or other proceeding shall within sixty (60) days after lodging the record of appeal or filing the notice of motion, file in the appropriate registry a written submission in support of or in opposition to the appeal or the cross-appeal or application, as the case may be."*

The learned Principal State Attorney urged us to strike out the appeal for non-compliance with the provisions of Rule 106(1) which omission rendered the appeal incompetent.

Learned counsel for the appellants conceded that Rule 106(1) of the Court Rules was not complied with. They, however, maintained that the appeal was filed in September, 2006, long before the current Court Rules were enacted. In this regard, counsel for the appellants contended, it was impracticable to comply with the provisions of Rule 106(1) which was not in existence at that time. Hence, counsel for the appellants argued, the written submission was filed on the 2<sup>nd</sup> December, 2010 under the provisions of Rule 34(2) (c) of the Court Rules, 2009 which states verbatim:

*"34. (2) The written submission in respect of  
 appeal or application shall be accompanied  
 by a list of authorities which shall be –  
 (a) .....  
 (b) .....  
 (c) the submission shall be lodged forty  
 eight hours before the appeal or  
 application is due to be heard."*

The written submission, counsel for appellants insisted, is thence, properly before the Court.

We need not be detained by the above oral preliminary objection. To begin with the provisions of Rule 129 of the Tanzania Court of Appeal Rules, 2009 revoked the Court Rules, 1979, under which the appeal was filed. Nonetheless, Rule 130(a) of the Tanzania Court of Appeal Rules, 2009 has a transitional provision which reads:

*"130. In all proceedings pending whether in the Court or High Court, preparatory or incidental to, or consequential upon any proceeding in court at the time of the coming into force of these rules, the provisions of these rules shall thereafter apply, but without prejudice to the validity of anything previously done;*

*Provided that:*

*(a) if and so far as it is impracticable in any such proceedings to apply the provisions of these rules, the practice and procedure therefore obtaining shall be followed; "*

We agree with counsel for the appellants that it was impracticable to comply with Rule 106(1) of the Court Rules, 2009 which was, at the time of instituting the appeal, not yet in existence. The written submission was,

therefore, properly filed under Rule 34(2) (c) of the Tanzania Court of Appeal Rules, 2009.

We would have overruled the oral preliminary objection and proceeded with the hearing but for one obvious defect on the Drawn Order which forms part of the record at pages 107 to 109. The Drawn Order is wrongly dated in that it bears two different dates. We, *suo mottu*, pointed out the defect to the parties. The respective counsel conceded that the Drawn Order bears two different dates but they contended that the defect is saved in view of the provisions of Government Notice No. 223 of 2010.

The issue is whether the said wrongly dated Drawn Order is saved by Rule 2 of Government Notice No. 223 of 2010 which allegedly amended the provisions of Order XX Rule 7 of the Civil Procedure Act, Cap. 33 R.E 2002.

Until the enactment of Government Notice No. 223 of 2010, the Court held that defective decrees and drawn orders in terms of wrong signatures, and or dates rendered the appeal incompetent. There are numerous authorities on this; the cases of **Kiboro versus Posts and Telecommunications (1974) E.A 155; National Bank of Commerce**

**versus Methusela Magongo (1996) TLR 394; Fortunatus Masha versus William Shija and Another (1997) TLR 41; Robert Mugo versus Adam Mollel, Civil Appeal No. 2 of 1990, Court of Appeal of Tanzania (unreported); and Haruna Mpangaos versus Tanzania Portland Cement Company Ltd. Civil Appeal No. 10 of 2007, Court of Appeal of Tanzania (unreported),** to name but a few such decisions.

Indeed Government Notice No. 223 of 2010 was enacted to arrest the problem of defective decrees and drawn orders. However, it appears to us that amendment to Order XX Rule 7 by adding sub-rule(2) did not attain the intended goal. By adding sub-rule(2) to Rule 7, Order XX Rule 7 now reads:

*"7. (1) 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.*

*(2) The decree shall bear the date on which the decree was extracted from the decision."*

We are of the settled mind that the provisions of sub-rules (1) and (2) of Rule 7 of Order XX of the Civil Procedure Act, Cap. 33 R.E. 2002 as amended by Government Notice No. 223 of 2010 are contradictory. The Court held the same in the case of **Simon Nchagwa versus Majaliwa Bande, Civil Appeal No. 126 of 2008, Court of Appeal of Tanzania (unreported)** wherein the Court observed, and we quote;

*"Government Notice No. 223 of 2010 was published on 18<sup>th</sup> June 2010. It shows that it was made under Rule 81. That must have a slip of the pen. It is section 81 of the Civil Procedure Act which empowers the Chief Justice with the consent of the Minister responsible for legal affairs to amend the Civil Procedure Rules contained in the First Schedule....."*

*What is immediately noted from the amendments is that the content of the provision of Order XX Rule 7 in existence before the amendment did not change. It remained intact.*

*It has now been re-designated as Order XX Rule 7(1) instead of the previous Order XX Rule 7. So in terms of content nothing has changed. Instead, the amendment has brought in confusion....."*

We affirm the above decision. Under the circumstances, the drawn order at pages 107 to 109 of the record of appeal is wrongly dated so it renders the appeal incompetent. We accordingly strike out the appeal with liberty to properly refile the same without payment of fees.

DATED at DAR ES SALAAM this 22<sup>th</sup> day of December, 2010.

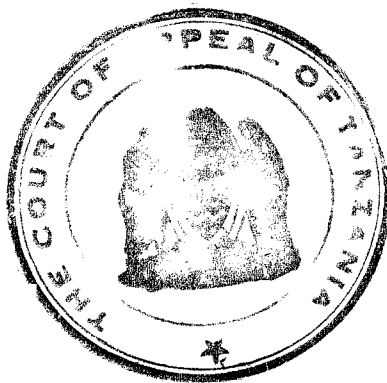
A. S. L. RAMADHANI  
**CHIEF JUSTICE**

E. N. MUNUO  
**JUSTICE OF APPEAL**


E. M. K. RUTAKANGWA  
**JUSTICE OF APPEAL**

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

S. J. BWANA  
**JUSTICE OF APPEAL**



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

  
(J. S. Mgetta)  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**