IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And ORIYO, J.A.)

CIVIL APPEAL NO 20 "A" OF 2009

JOHN D. MMARI..... APPELLANT

VERSUS

EBENEZER A. KIRANGO.....RESPONDENT

(Appeal from the Decision and order of the High Court of Tanzania at Moshi)

(Lyamuya, PRM-E.J.)

dated the 15th day of December, 1998

in

Civil Appeal No. 29 of 1998

RULING OF THE COURT

10th & 15th November, 2011

LUANDA, J.A:

The above named respondent **EBENEZER KIRANGO** unsuccessfully sued the appellant one **JOHN MMARI** in the District Court of Hai for a number of reliefs in connection with a piece of land situated at Sanya Juu. Dissatisfied, he appealed to the High Court of Tanzania, Moshi Registry.

The High Court (Lyamuya, PRM- Extended Jurisdiction) overturned the decision of the District Court. **JOHN MMARI** was also dissatisfied, hence this appeal.

When the appeal was called on for hearing, the Court *suo motu* wished to know whether the decree of the trial court which is one of the essential documents in instituting an appeal in the High Court is in order. We posed that question because the judgment of the trial District Court was handed down on 9/4/1998, whereas the decree bears the date of 13/5/1998. We did so because we had in mind Order 39, Rule 1 (1) and Order 20, Rule 7 of the Civil Procedure Code, Cap 33 R.E. 2002.

Mr. Peter Jonathan learned advocate for the appellant told the Court that the date of the decree must tally with the date of the judgment. Since the date of decree and that of the judgment differed, then the High Court ought not to have entertained the appeal. So the decision of the High Court was a nullity and that this appeal has no leg to stand. He urged us to

quash the decision of the High Court and strike out this appeal. He did not cite any law.

The respondent, on the other hand who fended for himself, asked the Court not to nullify and quash the proceedings of the High Court and strike out this appeal as it was not his mistake. He further prayed that the appeal be heard.

In terms of Order 39, Rule1 (1) of the Civil Procedure Code, Cap. 33 (henceforth the Code) if one intends to appeal to the High Court on matters of civil nature originating in the Court of the Resident Magistrate or District Court he is required to do so by way of lodging a memorandum of appeal. And the memorandum of appeal must contain a copy of decree appealed from. The Rule reads:

> *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 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.*

(Emphasis supplied).

The word **shall** in this context is mandatory. And the decree must bear among, other things, the date of the day on which the judgment was pronounced. This is provided for under Order 20, Rule 7 of the Code. The Rule provides:

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 and he shall sign the decree. (Underscore ours)*

In our case we have seen that the judgment of the District Court was delivered on 9/4/1998 while the decree bears the 13th day of May, 1998 which is a different day all together. It goes without saying that that infringes the mandatory provisions of Order 20, Rule 7 reproduced *supra.* It follows therefore that the decree is defective. And as the accompanying decree to the memorandum of appeal is defective, which document is essential to the lodgement of an appeal in the High Court, it is crystal clear that in law there is no valid appeal lodged in that court.

The respondent said it was not his mistake. We agree and symphasize with him. But the law must be complied with or followed to the letter.

In sum, in the exercise of revisional powers of the Court under Section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 we declare the entire High Court proceedings a nullity. The same are quashed. In view of the above, this appeal has no leg to stand, we strike it out. We award no costs.

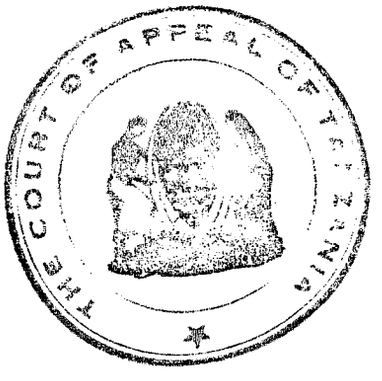
DATED at **ARUSHA** this 12th day of November, 2011

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

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



Z. A. Maruma
DEPUTY REGISTRAR