

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**CIVIL APPEAL NO. 21 OF 2010**

**(CORAM: RUTAKANGWA, J.A., KIMARO, J.A., And ORIYO, J.A.)**

**TANZANIA FISH PROCESSORS LIMITED.....APPELLANT**

**VERSUS**

**CHRISTOPHER LUHANYULA.....RESPONDENT**

**(Appeal from the judgment of the High Court of Tanzania**

**at Mwanza)**

**(Masanche J.)**

**dated the 8<sup>th</sup> day of October, 2010**

**In**

**(HC) Civil Appeal No.37 of 1999**

**.....**

**RULING OF THE COURT**

4 & 11 October, 2011

**KIMARO, J.A.:**

Tanzania Fish Processors Limited, the appellant, through legal services of Mr. Magoiga learned advocate, filed an appeal in the Court against Christopher Luhanyula, the respondent. Together with the

memorandum of appeal, the appellant also filed written submissions in support of the appeal under Rule 106(1) and 2(b) of the Court of Appeal Rules. 2009 (The Rules). The respondent was promptly served with the two documents.

When the appeal was called on for the hearing, Mr. Dominick Kashumbugu, learned advocate who represented the respondent argued a preliminary objection, notice of which he had filed earlier, on 27<sup>th</sup> September, 2011. His preliminary objection has two points. **One**, the record of appeal served on the learned advocate is not a proper record of appeal for Civil Appeal No.21 of 2010 because it does not comply with form No F in the Court Rules. **Second**, the learned advocate claimed that in terms of rule 106(1) of the Rules, he was not served with the written submissions of the appellant for Civil Appeal No.21 of 2010.

In support of the preliminary objection the learned advocate said the record of appeal served on him does not show the serial number of the appeal. It only shows the number of the year and that is 2010. He said that Form F to the Rules requires the appellant to show the number of the appeal. Since he was served with the record of appeal which then had no

number, contended the learned advocate, that infringed the Rules and no justice was done to him. He insisted that the responsibility of having the respondent served with proper documents was solely that of the appellant and he had no role to play in getting the proper number of the appeal for purposes of filing his reply to the written submissions filed by the learned advocate for the appellant.

As for the second point of objection his complaint was the same. The written submissions served on him had no number of the appeal. He also lamented that they had two different dates. The one on top of the written submissions showed that they were filed in Court on 3<sup>rd</sup> January 2010, before the judgment was delivered, while at the back they showed that they were filed in Court on 3<sup>rd</sup> January 2011. He said that confused him, and that is the reason for not being able to file a reply to the written submissions. For this omission, he prayed that the appeal be dismissed. In the event the Court would not agree with him, he prayed that he be granted an extension of time to file a reply to written submission before the appeal is heard.

Responding to the submission by the learned advocate for the respondent, Mr. Stephen Magoiga, learned advocate for the appellant prayed that the preliminary objection be dismissed. He said the only complaint being based on the omission to show the number and the year of the appeal does not justify for the dismissal of the appeal. Citing Rule 19(3) of the Rules, the learned advocate for the appellant said the Rules require any record of appeal filed in the Registry or sub registry of the Court of Appeal be allotted a number immediately after filing. However, the learned advocate contended that the process does not take place immediately. If the appeal is filed in a sub registry as it was done in this appeal, the sub registry has to communicate with the main Registry in Dar-es-Salaam to get the number. His strong opinion was that missing the number of the appeal could not have prevented the learned advocate for the respondent from filing the reply to his written submission as the number of the appeal could be filled in at any time when it was made available. He said to the appellant what was important, was to comply with the time limit set for the preliminaries in filing the appeal. That was done and the respondent was served in time.

Regarding the different dates shown on the written submissions, the learned advocate said it was only the slip of the mind. In his considered opinion, the date that was endorsed by the Registrar at the last page of the submissions should be taken to be the proper date for filing the submissions. He reiterated his prayer for having the preliminary objection dismissed.

On our part the important question we ask is whether the omission to show the number of appeal on the documents served on the learned advocate for the respondent can entitle him to the prayer he made. With great respect to the learned advocate for the respondent we must at the outset say that the prayer is farfetched. While it is not disputed that the documents were served on him before the number of the appeal was allotted, that did not prevent him from making a reply to the submissions made by the learned advocate for the appellant.

The learned advocate for the respondent submitted correctly that Rule 19(3) of the Rules requires an appeal to be allotted a number and year immediately after it is filed. But did the missing number on the record of appeal and the submissions affect the learned advocate for the

respondent from responding to the submissions. In our considered opinion it did not. Why? Rule 96(2) (a) to (f) of the Rules gives the contents of the record of appeal. That is the memorandum of appeal, the record of the proceedings , the judgment or the ruling, the decree or order and the notice of appeal. Looking closely at the record of appeal, it clearly shows that it is an appeal between the appellant and the respondent as indicated at the title of this ruling. It is an appeal against the judgment of the High Court (Masanche, J.) dated 8<sup>th</sup> October, 2010 in Civil Appeal No. 37 of 1999. The proceedings of the District Court in which the trial of the case took place and the judgment are all contained in the record of appeal. Equally contained in the record of appeal, are the proceedings and the judgment of the High Court on appeal. With these documents being in possession of the learned advocate for the respondent but missing only a number, they could not have prevented the learned advocate for the respondent from knowing that the appeal was filed by whom, and was in respect of which case. For this reason alone, we find the first limb of the preliminary objection has no merit. At this juncture , we also find the need of laying an emphasis on the learned advocates being more objective

in pursuing their cases in the Courts rather than using minor technicalities to defeat expeditious disposal of cases.

On the second limb of the preliminary objection on the dating of the written submissions, we entirely agree with the learned advocate for the appellant that, that was entirely a slip of the mind. Furthermore, the date which the Court looks at, is the one endorsed by the Registrar and not the one which is normally stamped at the top of the record of appeal. Even in this case where a contradiction in the dates is apparent, the date in which the judgment was delivered, that is 8<sup>th</sup> October, 2010, and the date endorsed by the Registrar, 3<sup>rd</sup> January, 2011, clearly shows that the date that was shown on the front page of the submissions made by the learned advocate for the appellant could not have been the correct date because by then the judgment sought to be appealed against had not been delivered. We thus find the second limb of the preliminary objection also having no merit. Eventually, both points of preliminary objections are dismissed with costs. The learned advocate for the respondent is granted leave to file his reply to the written submissions in a period of two weeks from the date of the delivery of the ruling. The appeal should be cause listed for hearing in the next sessions. It is ordered.

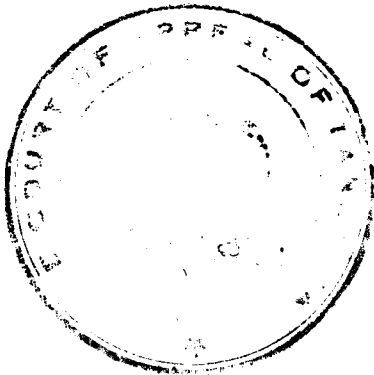
DATED at MWANZA this 06<sup>TH</sup> day of October, 2011.

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

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

**K. K. ORIYO**  
**JUSTICE OF APPEAL**

I certify that this is the true copy of the original



A handwritten signature in black ink, appearing to read "J.S. MGETTA".

**J.S. MGETTA**  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**