

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

**CIVIL APPEAL NO. 68 OF 2006**

**(CORAM: NSEKELA, J.A. LUANDA, J.A. And MJASIRI, J.A.)**

**INFOSYS IPS (T) LTD ..... APPELLANT**

**VERSUS**

**AZANIA BANCORP LTD..... 1<sup>ST</sup> RESPONDENT**  
**RECEIVER & MANAGER, FINTRUST (T) LTD..... 2<sup>ND</sup> RESPONDENT**  
**MOHAMED ENTERPRISES (T) LTD..... 3<sup>RD</sup> RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania  
(Commercial Division) at Dar es Salaam)**

**(Bwana J.)**

**Dated 4<sup>th</sup> day of January, 2006  
In**

**Commercial Case No. 288 of 2002**

**RULING OF THE COURT**

**16<sup>th</sup> & 25th March, 2011**

**LUANDA, J. A:**

A month after the appellant had instituted this appeal in this Court, Mr. David Ntonge, learned counsel who represented the third respondent raised a preliminary objection, a notice of which had been given as dictated by Rule 100 of the Court of Appeal Rules, 1979. The preliminary objection raised consists of two points namely:-

- (i) The purported decree found at page 239 of the Record of Appeal is not dated. In the premise it is not a decree within the meaning of the Civil Procedure Code.
- (ii) The Record of Appeal is incomplete in that it doesnot contain the testimony of DW2, Aisha Bade (page 99 of the record) DW3 Gulam Dewj (examination in chief at page 102 of the record)

As regard the first ground, Mr. Ntonge submitted that the decree is defective in that it is not dated at all. This he went on to say, contravenes the mandatory provision of Order XX, Rule 7 of the Civil Procedure Code, Cap. 33 (henceforth the Code). He referred us to **John Niaman Mushi versus Kombo Rural Cooperative Society Limited** Civil Appeal No. 45 of 2006 CAT (unreported) where the court struck out the appeal because the decree was wrongly dated. In our case, he went on to say the situation is more serious- it is not dated at all.

Arguing the second ground, Mr. Ntonge said the record of appeal is incomplete. The record of appeal doesnot show at pages 99 and 102 what had transpired in court. It is his submission that what had been transpired in court should be reflected in the record. The omission contravened Rule

96(1)(d) of the Court of Appeal Rules, 2009 he submitted. He cited **M/S Bunda Oil Industries Limited versus Dunia Worldwide Trading Company** Civil Appeal No. 31 of 2008 CAT (unreported) to buttress up his case where the court struck out the appeal for incompleteness of the record.

For the appellant, Mr. Hubert Nyange, learned advocate appeared. Responding to the first point, Mr. Nyange said the decree satisfies the requirement of O.XX. Rule 7 of the Code; it is dated. Mr. Nyange submitted that Rule 7 of O.XX of the Code provides two parts. The first part, according to him, deals with the date of the decree. It must bear the date of which the judgment was pronounced. And the second one concerns with the signing of the decree after the judge is satisfied that the decree has been drawn up in accordance with the judgment. So, according to Mr. Nyange page 240 at the top with the words "this case coming up for final disposal on 4<sup>th</sup> day of January, 2005 before Hon.Dr. J.S. Bwana" satisfies the requirements of Rule 7 of O.XX of the Code. It is his submission that the law doesnot demand that the dating shall appear after the signature of the judge. The Court having in mind section 101 of the

Code, asked Mr. Nyange whether he is aware of a format of a decree. Mr. Nyange was frank enough and informed the Court that he is not aware. After reading the section he reiterated his position and said that the decree is properly dated.

Reacting to the second ground, basically Mr. Nyange shared the same views expressed by Mr. Ntonge. He went further and described the situation as unique and asked the court to exercise its revisional powers by ordering a retrial.

In rejoinder, Mr. Ntonge reiterated his position that the appeal be struck out with costs.

We start with the first ground. Under Rule 96(1) (h) of the Court of Appeal Rules, 2009, one of the essential documents to be contained in the record of appeal from the High Court in its original jurisdiction is a decree properly dated and signed. This is provided under Order XX.Rule 7 of the Code. It reads:-

*'7. The decree shall bear the date the day of 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.'*

In terms of the above cited Rule, the decree shall agree with the judgment, then the date of the decree must be that of the judgment.

In the instant case the judgment was delivered on 4/1/2006. And the date of the decree appears at the top of the decree. The decree reads:-

### **DECREE**

**WHEREFORE** *the plaintiff prays for judgment and decree against the defendant jointly and severally for:-*

- (a) An order that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have breached the contract of sale and for order of specific performance to issue against them.*

- (b) *An order that the Defendants deliver vacant possession of the said premises situate at Plot No. 788 Mattaka Street, Upanga Area, Dar es salaam to the plaintiff.*
- (c) *That the defendants pay damages as provided for in paragraph 10 of the plaint.*
- (d) *Costs of this suit be paid by the Defendant*
- (e) *Any other relief this Hon. Court deems fit to grant.*

***This case coming for final disposal on 4<sup>th</sup> day of January 2006 before Hon. Dr. J.S. Bwana, Judge, in the presence of Mr. Ngalo/Ringia Advocate for the plaintiff. Ngalo, Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and Dr. Lamwai Advocate for the 3<sup>rd</sup> Defendant. [Emphasis supplied]***

***THIS COURT DOTH HEREBY ORDER THAT***

1. *There existed a valid contract between the plaintiff and the first two Defendants for the purchase of the suit premises.*

2. *The said contract was subject to the lease agreement that existed between Fintrust-the former owner of the premises – and the third Defendant, the sitting tenant as reconfirmed by Ihema, Judge (supra)*
3. *The said lease agreement was for duration of 25 years with rent payable in 4 yearly installments.*
4. *Since there is no sufficient proof for the 16m/= claim for alternative accommodation, the same is not awarded.*
5. *Each party to this suit to bear its costs.*

***Sgd.  
Judge.***

The question for consideration and decision is whether the date appearing in the above reproduced “decree” is properly placed. To put differently whether the date shown above satisfies the requirement of Order XX, Rule 7 of the Code. And this in turn takes us as to a format of a decree and what it looks like.

In **Uniafrico Limited and two others versus Exim Bank (T) Limited** Civil Appeal No. 3 of 2006 CAT (unreported) this Court observed *inter alia*, we reproduce:

*"There is yet one other point we have to mention have in connection with the date of a decree. Under section 101(3) of the Code forms heretofore in use in connection with proceedings under the Indian Code of Civil Procedure, 1908, as in force in Tanzania, shall be deemed to be forms approved by the Chief Justice for use in connection with proceedings under our Code until replaced by forms prescribed or approved by the Chief Justice. To the best of our knowledge, forms under the Indian Code of Civil Procedure have not been replaced by forms prescribed or approved by the Chief Justice. Thus, a decree form under Order XX, Rules 6 and 7 of the Indian Code of Civil Procedure reads:-*

**DECREE IN ORIGINAL SUIT**

**(ORDER 20, RULES 6, 7)**



*Title*

*Claim for.....This suit coming on this day for final disposal before.....in the presence of.....for the plaintiff and of .....for the defendant, it is ordered and decreed that .....and that the sum of Rs.....be paid by the.....to the .....on 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 the seal of the court, this.....day of 19.../20..*

*Judge"*

This form and other forms in the appendices to the Indian Code of Civil Procedure, 1908 continue to be part of our Code by virtue of section 101(3) of our code as the Chief Justice has not approved different forms under sub-section (1) of the same section (**Shell and BP Tanzania Ltd versus The University of Dar es Salaam** Civil Application No 68 of 1999 CAT (unreported)).

And such forms shall be followed in all cases with such variations as the circumstances of the case require.

The section reads:-

- 101 (1) Subject to any prescribed forms the Chief Justice may approve for use forms for applications, proceedings, processes, notices, orders, decrees, precepts, memoranda, bonds, commissions, letters of request or other documents required to be prepared, executed, filed, issued or otherwise used in connection with proceedings under this code.*
- (2) Where any form is prescribed or approved for use by the Chief Justice it shall be followed in all such cases to which it applies with such variations as the circumstances of the case require.*
- (3) All forms heretofore in use in connection with proceedings under the Indian Code of Civil Procedure, 1908, as in force in Tanganyika,*

*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).*

So, there is a format of a decree which requires to be followed. The decree should conform with the features indicated in the said format. To underscore the importance of sticking to the format of the decree, this Court in **Uniafrico case** cited *supra* observed, we quote:-

“For our purposes therefore a typical decree must be drawn, as far as possible in conformity with the above form. We may add that the above form has certain features which are important for purpose of a decree in this matter. **The first one is the fact that there is only one place in which a date is to be inserted, that is after the words “Given under my hand and the seal of the Court this.”** We think this is significant because this means that ideally

in a decree the "date of the decree" is the one appearing after the words "Given under my hand and the seal of the Court this". In similar vein, it occurs to us that the words "this day" in the decree refer to the date appearing after the above words"

**[Emphasis supplied]**

We have gone through the "decree"; it does not conform with the aforestated format. In actual fact the date of the purported decree has no connection with the decree. The date shown therein for all intents and purposes sounds as a preamble indicating the date when the judgment was delivered. We are unable to accede to Mr.Nyange`s argument that the date shown therein satisfies the requirements of O.XX,Rule 7 of the Code. One may rightly agree with Mr. Ntonge that no date of the decree is shown. We are of the settled opinion that the decree is neither properly drawn nor dated. It offends the mandatory provision of O. XX,Rule 7 of the Code. The same is defective.

Since the decree is defective, it follows therefore that the appeal is incompetent. We sustain the first ground to the preliminary objection

raised. And as that disposes the matter, we find no need of discussing the second ground.

In the upshot, the appeal is struck out with costs.

It is so ordered.

DATED at DAR ES SALAAM this 17<sup>th</sup> day of April, 2010.

H.R. NSEKELA  
**JUSTICE OF APPEAL**

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

S. MJASIRI  
**JUSTICE OF APPEAL**

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



J. S. MGETTA  
**DEPUTY REGISTRAR**