

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

(CORAM: KIMARO, J.A., MANDIA, J.A., And KAIJAGE, J.A.)

CIVIL APPEAL NO. 9 OF 2012

RICHARD KWAYU..... APPELLANT

VERSUS

ROBERT BULILI RESPONDENT

**(Appeal from both Judgment and Decree of the High Court of Tanzania
Tabora Registry sitting in Tabora)**

(H.T. Songoro, J.)

Dated the 2nd day of August, 2012

In

Land Appeal No. 8 of 2010

RULING OF THE COURT

7th & 9th May, 2013

MANDIA, J.A.:

On 1/2/2008 the applicant and the respondent entered into a lease agreement where the applicant lent his premises to the respondent for operating a bar business. Apart from the monthly rent of sh. 10,000/= per month for two rooms, each room at sh. 5,000/= per month, the two parties agreed for the respondent to construct toilet facilities in the premises, and that the cost of construction would be deducted from the monthly rent which the respondent was to pay for renting the two rooms. It is in evidence that the respondent advanced the applicant

amounts of money so that the construction could be carried out, but the applicant did not spend the money for the agreed purpose. The toilet was therefore not built, and when the respondent inquired from the applicant why the agreement was not carried out, the applicant locked up the premises, thus preventing the respondent from doing business. The accumulated loss amounted to sh. 4,896,000/= and the respondent sued for the amount in the District Land and Housing Tribunal for Tabora at Tabora. The Tribunal found for the respondent but reduced the decretal amount to sh. 364,000/= only. The Tribunal ordered the applicant to open the premises which he had locked up so that the respondent takes away his personal property locked therein. The Tribunal also condemned the applicant to costs. The applicant was aggrieved by the judgment and decree of the Tribunal and he preferred an appeal to the High Court of Tanzania, Land Division, at Tabora. The High Court also found for the respondent and dismissed the appeal with costs to the respondent. Undeterred, the applicant has filed the present appeal.

The appellant has filed a memorandum of appeal containing two grounds as follows:-

- “1. That the trial judge erred in law and facts by failing to evaluate properly the adduced evidence that led him to the wrong decision thereto.
2. That the trial judge erred in law not properly findings that the Respondent’s act of remaining with the keys for prove that 3 years during his tenancy period amounted to full occupation of the tenancy period and therefore not entitled to any reimbursement.”

At the hearing of the appeal both parties appeared in person, unrepresented, to argue their respective appeals. Apart from asking the Court to do justice to him, the appellant had nothing to add.

A close scrutiny of the record of appeal before us has revealed that the judgment of the High Court on which this appeal is based was delivered on 2/8/2012. The decree drawn from the judgment was signed on 3/8/2012, thus making one day’s difference between the date of delivery of the judgment and the date when the decree was signed. This

Court has said time and time again that where the date on which a judgment is pronounced differs from the date on which the decree or drawn order is signed the competency of the appeal is affected. The following cases underscore this principle:-

- 1. DHOW MERCHANTILE (EA) LTD APPELLANT**
Versus
ABDIRIZZAK S. TUKE RESPONDENT,
Civil Appeal No. 93 of 2004,
- 2. PRESIDENTIAL PARASTATAL**
SECTOR REFORM COMMISSION APPELLANT
Versus
1. MEECO UNISYS LTD
2. TANZANIA ELECTRIC SUPPLY CO. LTD.....RESPONDENTS,
Civil Appeal No. 65 of 2005,
- 3. HARUNA MPANGAOS AND 902 OTHERSAPPELLANTS**
Versus
TANZANIA PORTLAND CEMENT CO.LTD RESPONDENT
Civil Appeal No. 10 of 2007,
- 4. SIMON NCHANGWA APPELLANT**
Versus
MAJALIWA BANDERESPONDENT,
Civil Appeal No. 126 of 2008

At page 51 of the record the District Registrar of the High Court issued an exemption certificate showing that on 3/8/2012 the appellant applied in writing for certified copies of proceedings, judgment and decree

and that these were supplied to the appellant on 9/10/2012. The District Registrar therefore exempted the dates 3/8/2012 to 9/10/2012 from the limitation period. This means, the period of limitation for the appellant started to run from 10/10/2012. The appellant lodged the memorandum of appeal on 7/1/2013 which is 88 days from the day when, for him, limitation started to run. Under Rule 90 of the Court of Appeal Rules, the appellant was required to file his appeal within sixty days of the period when limitation started to run against him. The case of Haruna Mpangaos and 902 Others (supra) cited above illustrates this point. In the present case the appellant lodged his appeal twenty eight days after the period of limitation had elapsed. His appeal was therefore time-barred.

We also note that the appellant wrote a letter to the High Court applying for copies of proceedings, judgment, and decree etc. but did not copy this letter to the respondent. Rule 90 (2) clearly lays it down that an appellant cannot rely on the exemption clause in Rule 90 (1) unless his application for copy is served on the respondent. The appellant's letter was not served on the respondent which means he cannot rely on the exemption. This is in addition to the observation we made earlier that even if the appellant was allowed to rely on the exemption he would still be

time-barred by 28 days. The case of **HAMIS LUGA KITEGILE versus THE LOANS AND ADVANCES REALISATION TRUST**, Civil Appeal No. 17 of 1999 illustrates this point. In this case this Court was interpreting Rule 83 of the Court of Appeal Rules, 1979 which is in pari material with Rule 90 of the Court of Appeal Rules, 2009 and is therefore good law.

Lastly, the record shows that the appellant filed his appeal without first seeking leave from the High Court of Tanzania, Land Division, as provided for in Section 47(1) of the Land Disputes Act, Chapter 216 R.E. 2002 of the laws. Asked to explain this default, the appellant said he is a layman and he did not know that he first had to seek leave of the High Court, Land Division, before lodging his appeal in this Court. This Court has however emphasized that failure to observe Section 47(1) of the Land Disputes Act makes an appeal to the Court of Appeal incompetent. We have said so much in the following decisions:-

- 1. DERO INVESTMENT LIMITED APPELLANT**
Versus
HEYKEL BERETE RESPONDENT,
Civil Appeal No. 92 of 2004,
- 2. SALMA KIKWETE APPELLANT**
Versus
MOHAMED SHOMARI RESPONDENT
Civil Appeal No. 9 of 2009

Versus

TANZANIA REVENUE AUTHORITYRESPONDENT

Civil Application No. 7 of 2011

From the foregoing, we are satisfied that there is no valid appeal before us.

We adjudge the appeal lodged by the appellant incompetent and strike it out with costs to the respondent.

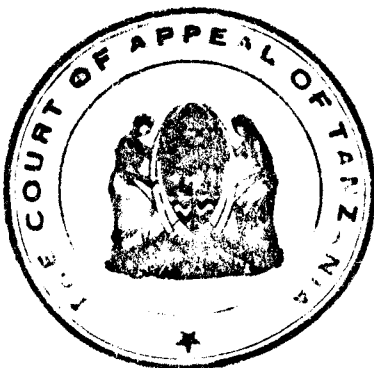
DATED at TABORA this 8th day of May, 2013.

N.P. KIMARO
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

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



M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL