

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

**(CORAM: BWANA, J.A; MANDIA, J.A; And ORIYO, J.A.)**

**CIVIL APPEAL NO. 62 OF 2013**

**FRIDA KANULE MWIJAGE ..... APPELLANT**

**VERSUS**

**THE TANZANIA BUILDINGS AGENCY (TBA) ..... RESPONDENT**

**(Appeal from the judgment and decree of the**

**High Court of Tanzania at Arusha)**

**(Nyerere, J.)**

**Dated the 22<sup>nd</sup> day of February, 2011**

**in**

**Land Appeal NO. 12 of 2008**

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**JUDGMENT OF THE COURT**

**24 & 28, February, 2014**

**BWANA, J.A.:**

The appellant, Frida Kanule Mwijage, was an employee of the now defunct Tanzania Wildlife Corporation (TAWICO). By virtue of her position in TAWICO, she was given a residential house. She became a service tenant in the sense that her house rent was directly deducted from her salary. She occupied a house situate on Plot No. II Block 2, Singira Road, Corridor Area, Arusha. Following the dissolution of TAWICO, the current respondent (TBA) took over all the assets of the former, including the residential premises occupied by the appellant. However, following the

dissolution of TAWICO, the appellant could not pay a house rent as was the case originally.

Given the failure to pay the said house rent, TBA gave notice to the appellant to vacate the premises and deliver vacant possession. She resisted and filed a case before the Arusha District Land and Housing Tribunal at Arusha. She was unsuccessful. The Tribunal's judgment to that effect was delivered on **6<sup>th</sup> March 2008** followed by a decree **dated 14<sup>th</sup> March 2008**. The conflicting dates between the date of judgment and that of a decree forms the basis of one of the grounds of appeal as it is alleged that it contravenes the mandatory provisions of Order XX Rule 7 of the Civil Procedure Code (the CPC).

The appellant's first appeal before the High Court of Tanzania at Arusha was again, unsuccessful. The said High Court upheld the trial Tribunal's decision and dismissed the appeal. Undaunted, she preferred this second appeal raising one main ground of appeal and four others in the alternative. In her memorandum of Appeal, the appellant raised the following major ground of appeal:-

*That the Hon. Judge erred in law and in fact in not finding that Land Appeal No. 12 of 2008 was incurably defective for being accompanied by a defective decree.*

We have noted with the seriousness it deserves that the above ground of appeal indeed touches on the position of the appeal and would, therefore, form the basis of our decision. Before us the appellant was represented by Mr. John Materu, learned counsel while Mr. Karim Rashid, learned State Attorney, represented the respondent, TBA.

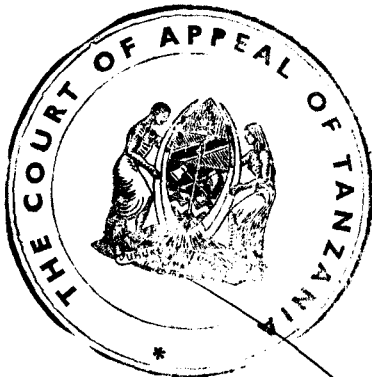
Going by the record and as stated earlier, the District Land and Housing Tribunal's judgment was delivered on 6 March, 2008 while the decree was drawn up on 14 March 2008. The two differing dates clearly contravened Order XX Rule 7 which stipulates thus:-

*"The decree **shall** bear the date of the day on which the judgment was pronounced and when the judgment or magistrate has **satisfied himself that the decree has been drawn up in accordance with the judgment and shall sign the decree...***" (Emphasis provided).

Therefore the decree herein drawn up on 14<sup>th</sup> March 2008 was defective and incompetent and the first appellate court, the High Court, should have corrected that defect by striking out the appeal for contravening Order XX Rule 7 of the CPC. It did not. Instead, it proceeded to entertain the appeal as if the said appeal was competent.

In our considered view, since the decision of the trial tribunal was incompetent, there was no competent appeal before the High Court. The first appellate court had only one option: to strike out the appeal. We do further note that the appellant lodged her appeal to this Court on merits, based on the supposition that the appeal from the tribunal to the High Court was competent. However, as stated above, since those proceedings were incompetent, we invoke our revisional jurisdiction pursuant to the provisions of section 4(2) of the Appellate Jurisdiction Act, 1979 (Cap 141), quash and set aside the proceedings before the High Court. We declare them to be a nullity. In view of the foregoing, there is no competent appeal before us. We accordingly strike it out with no order as to costs.

DATED at ARUSHA this 26th day of February, 2014.



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

W.S. MANDIA  
**JUSTICE OF APPEAL**

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

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

M.A. MALEWO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**