

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KIMARO, J.A., MASSATI, J.A., And MZIRAY, J.A.)

CIVIL APPEAL NO.98 OF 2013

PASTORY MBEETA.....APPELLANT

VERSUS

TANZAIA BREWERIES LTD.....RESPONDENT

(Appeal from the judgment of the High Court of Tanzania
at Dar es Salaam)

(Masengi, J.)

dated 13th December, 2011

in

Civil Case No.64 of 2008

.....

RULING OF THE COURT

6th & 18th November, 2015

KIMARO, J.A.:

The appellant, Pastory Mbeeta, unsuccessfully filed a suit in the High Court of Tanzania claiming for damages amounting to T. shillings 250,000,000/= being compensation for suffering and pain after consuming a beer produced by the respondent. He believed that the beer was contaminated.

Being aggrieved by the judgment, he filed twelve grounds of appeal faulting the learned trial judges' finding.

When the appeal was called on for the hearing, the appellant appeared in person. The respondent was represented by Mr. Peter Swai, learned advocate. The Court '*suo moto*' raised the issue of the correctness of the date of the judgment which the appellant was seeking to impugn. This issue arose because the first page of the record of appeal, the index, the certificate and the address for service and the notice of appeal at page 106 show that the appellant is impugning a decision given on 13th December 2011. However, the record of appeal at page 103 shows that the judgment was delivered on 12th December, 2011 and the decree at page 105 bears the same date.

The appellant was not very helpful in explaining the difference in the dates in the record of appeal apart from blaming the trial court for not being diligent in supplying correct documents. He prayed that the Court do justice to the matter.

Mr. Swai learned advocate conceded that the date given on the documents mentioned above differs with the one that is given when the

judgment was delivered, as well as the decree. He said an appeal must be preceded by a notice of appeal under Rule 83 of the Court of Appeal Rules 2009. Form D of the Schedule to the Court of Appeal Rules requires the appellant to show the date of the decision he /she intends to impugn. Since the appellant has given in the notice of appeal a date different from ~~the one contained in the judgment, said the learned advocate, the appeal~~ is incompetent. He prayed that the appeal be struck out. The appellant could not make any useful rejoinder.

The record of appeal indicates clearly that the notice of appeal is defective for containing a date different to that of the judgment the appellant is seeking to appeal against. As said earlier, the judgment was delivered on 12th December, 2011 and the decree that was extracted from the judgment also reads that the judgment was delivered on 12th December 2011.

Among mandatory documents which form part of the record of appeal under Rule 96(1) (j) of the Court of appeal Rules, 2009 is a notice of appeal. As observed above, form D to the schedule requires the notice of appeal to bear the date of the delivery of the judgment. Since in this case the notice of appeal bears a different date, the notice of appeal is

defective. Because of the defect, the notice of appeal vitiates the record of appeal. With a defective record of appeal the appeal is incompetent. We hereby struck out the appeal for incompetency. There is no order for costs because the issue arose out of the Court's observation.


DATED at DAR ES SALAAM this 10th day of November, 2015.

N.P.KIMARO
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

R.E.MZIRAY
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL