

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(OTHMAN, C.J., KIMARO, J.A., And MUSSA, J.A.)

CIVIL APPEAL NO.122 OF 2015

MWAJUMA AHMADA MZEE.....APPELLANT

VERSUS

1. HADIA AHMADA MZEE

2. AHMADA MZEE AHMADA

3. KAMISHENI YA WAKF NA

MALI YA AMANA, ZANZIBAR

..... RESPONDENTS

(Appeal from the judgment of the High Court of Zanzibar)

(Makungu, C.J.)

dated 24th March, 2015

in

Civil Case No. 30 of 2012

.....

RULING OF THE COURT

4th & 8th December, 2015

KIMARO, J.A.:-

The appellant was aggrieved by the judgment of the High Court of Zanzibar in which she lost a suit that she had filed against the respondents.

In the said suit the appellant had requested the High Court for the following reliefs:-

- a. A declaration that the appellant, the first and second respondents and their grand grand children were lawful beneficiaries of the estate of Ahmada Mzee Mabrouk who died in Zanzibar in 2007.
- b. The trial court to order the two respondents to surrender the right of occupancy in respect of the disputed houses together with receipts for gold items left as part of the estate of the deceased.
- c. An order to have the estate of the deceased be distributed to the beneficiaries in accordance to Islamic Law of Inheritance.
- d. The trial court was also asked to order the first respondent to surrender T shs.12,400,000/=being accumulated rent for five years he received so that the same could be distributed to the beneficiaries in accordance to Islamic Law.
- e. Costs for the suit.

The appellant filed several grounds of appeal which we need not refer to at the moment because of a preliminary objection filed by first respondent, notice having been given earlier on under rule 107 (1) of the Court of Appeal Rules, 2009. The point of preliminary objection raised is that the appeal is incompetent because it is not accompanied by a proper decree.

When the appeal came for hearing, the appellant appeared in person. Mr. Rajab Abdalla Rajab learned advocate, appeared for the first respondent. He was assisted by Mr. Juma Shabani learned advocate. The second respondent also appeared in person. The third respondent defaulted appearance despite service and we ordered the appeal to proceed in his absence under rule 112(2) of the Court of Appeal Rules, 2009.

Arguing in support of the preliminary objection, Mr. Juma Shabani, learned advocate submitted that the appeal is incompetent because of want of a properly drawn decree. He said the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar, Order XX111 Rule 7 requires the date on the decree to be the same as the one on the date the judgment was delivered.

He said whereas the date on the judgment shows that the judgment was delivered on 24th March 2015, the date on the decree is 19th June 2015. He said since Rule 96(1)(h) of the Court Rules makes it mandatory for the record of appeal to contain a copy of the decree, the improperly drawn decree makes the record of appeal defective and hence renders the appeal incompetent. In support of his submissions he relied on two decisions of this Court issued in the cases of **Ramadhani A. Kidagaa V Mayasa Abdallah and Asia Abdallah** Civil Appeal No. 19 of 2005(unreported) and **Mechmar Corporation (Malaysia) Berhard V VIP Engineering and Marketing Ltd** Civil Application No. 9 of 2011(unreported). Since the defect is obvious, said the learned advocate, the appeal should be struck out with costs.

The second respondent had nothing to say in respect of the preliminary objection.

On his part the appellant shifted the blame to the Court. She said when she requested the Court to be supplied with the necessary documents for purposes of filing the appeal, she was told to use the same

decree that had been requested by the first respondent. She said attempts to have the same rectified were not fruitful.

On our part, and with greatest respect to the learned Chief Justice, we do not hesitate to hold that the preliminary objection has merit. There is a long line of authorities from the Court laying down a rule of law that an appeal which does not comply with rule 96(1) (h) of the Court of Appeal Rules 2009 is incompetent. The record of appeal at page 123 shows that the judgment appealed against was delivered on 24th March, 2015. The decree at page 126 also shows that the judgment was delivered on 24th March 2015 but the learned Chief Justice signed the decree indicating that the judgment was delivered on 19th June 2015. That is definitely wrong. Order XX111 Rule 7 of the Civil Procedure Decree provides:

“The decree shall bear the date of the day on which the judgment was pronounced, and, when the Judge or, in the High Court, a Registrar has satisfied himself that the decree has been drawn in accordance with the

judgment, he shall sign the decree.”(Emphasis added).

The Court dealt with the same issue of decrees and judgments bearing different date in the case of **Ramadhani A. Kidagaa** (supra). Citing the cases of **Tanzania Revenue Authority V Njake Enterprises Ltd** Civil Appeal No. 122 of 2004 and that of **Haruna Mpangaos and 902 others v Tanzania Portland cement Co. Ltd** Civil Appeal No. 10 of 2007 (both unreported), the Court held that the issue of defective decrees is now settled.

“We are satisfied, and Mr. Taslima has indeed conceded, that the appeal is incompetent for lack of properly drawn order. We accordingly sustain grounds (a) and (b) of the preliminary objection”.

Regarding the complaint made by the respondent in respect of being supplied with improperly drawn decree, the observation we make here is that although the record of appeal at page 129 shows that the appellant wrote a letter requesting to be supplied with the proceedings and the judgment, a decree is not mentioned therein. There is also no document

indicating when the requested documents were supplied and which documents were supplied. We think it is important for the Registry to improve its services to avoid hindrance in access to justice. Supply of necessary and properly drawn documents goes hand in hand with prompt access to justice.-*

With what we have said, we uphold the preliminary objection and declare that the appeal is incompetent and strike it out with costs to one counsel only.

DATED at **ZANZIBAR** this 5th day of December, 2015

M. C. OTHMAN
CHIEF JUSTICE

N. P. KIMARO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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



J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL