IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPEAL NO. 5 "B" OF 2015

(CORAM: OTHMAN, C.J., MASSATI, J. A. And, MUGASHA, J. A.)

KILOMBERO SUGAR COMPANY LIMITED.....APPELLANT

VERSUS

COMMISSIONER GENERAL OF
TANZANIA REVENUE AUTHORITY..... RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal of Tanzania at Dar es Salaam)

(Hon. H. Mataka, Vice Chairman, Mr. W. Nyetabula and Prof. J. Doriye, Members)

dated the 30th day of April, 2014
in
Tax Appeal No. 32 of 2013

RULING OF THE COURT

16th February, & 22nd August, 2016
OTHMAN, C.J.

The respondent, relying on Rule 21 of the Tax Revenue Appeals Tribunal Rules, 2001 (the Rules) raises a preliminary objection to the effect that the appellant's appeal is bad in law as neither the decision nor the decree incorporated in the record of appeal were signed by all the members of the Tribunal who heard the appeal.

Mr. Juma Beleko, learned Advocate for the respondent submitted that the words "*Sgn*" appearing after the name of each of the members of the Tribunal in the copy of the decision contained in the record of appeal did not amount to the decision having been signed by them. For a decision to be a proper decision in law, it must bear the signature of the members. The words "*Sgn*", he urged, were insufficient to constitute a signature under Rule 21.

Furthermore, Mr. Beleko submitted that a valid decree of the Tribunal is also one that must bear the signatures of all the members who heard the appeal. The decree in the record of appeal only contained the signature of the Vice-Chairman. As the record of appeal must contain a decree, the one included was invalid for lack of the members' signatures. This rendered the purported appeal incompetent and it ought to be struck out with costs. He relied on **Mbeya Intertrade Company Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 68 "A" of 2010 and **SCB Tanzania Limited v. The Commissioner General of Tanzania Revenue Authority**, Civil Appeal No. 32 of 2007; and **Ami Port Operations (T) Limited v. The Commissioner for Income Tax**, Civil Appeal No. 28 of 2005 (All CAT, unreported).

Resisting, Mr. Ayoub Mtafya, learned Advocate for the appellant submitted that the words "Sgn" on the certified copy of the decision meant that it was properly signed by the members. He pointed out that the decision was also signed by all the members as indicated in the stamp that was affixed on it, titled "Certified Copy of the Original proceedings, Judgment, Ruling, Order" which beared the signatures of the Vice-Chairman and the two members who heard the appeal. That Rule 21 was complied with.

On the impugned decree, Mr. Mtafya referring to section 25(1) of the Tax Revenue Appeals Tribunal Act, Cap. 408, R.E. 2010 (the Act) and Rule 24(1), strenuously submitted that as an appeal lies to the Court of Appeal against a decision or judgment of the Tribunal, it was sufficient to appeal only against a decision. There was, he contended, no requirement to appeal to the Court against a decree. He submitted that Rule 21, strictly read, only covers a decision, not a decree. If the Rule had intended to cover a decree, it should have clearly said so. That in **Mbeya Intertrade Company Limited case**, the learned Advocate for the respondent had misled the Court in relying on Rule 21 and importing under Rule 24(3), the Appellate

Jurisdiction Act, Cap 141 R.E. 2002 and the Court of Appeal Rules, 2009 the requirement that a decree must be signed by the members.

In addition, Mr. Mtafya submitted that the decree was also valid under section 32(2) and (3) of the Act, because it had the Tribunal's seal affixed on it, which authenticated and rendered it a valid instrument. He invited us to dismiss the preliminary objection with costs.

The first issue to be resolved is whether the typed words "*Sgn*" on the certified copy of the decision are sufficient to constitute a signature under Rule 21. The Black's Law Dictionary defines the word **sign** as:

> *"To identify (a record) by means of a signature, mark or other symbol with intent to authenticate it as an act or a judgment of a person identifying it"; and*
>
> *a **signature** as:*
>
> *"Any name, mark, or writing used with the intention of authenticating a document".*

We would agree with Mr. Beleko that the typed words "*Sgn*" in the record of appeal in themselves could not constitute a signature and one which was capable of identifying their author or authenticating the decision concerned. In our respectful view, Rule 21 was not complied with.

Second, in an attempt to scheme around the mandatory requirement of incorporating a decree in the record of appeal as an essential document, Mr. Mtafya submitted that because section 25(1) of the Act and Rule 24(1) grants a party a right of appeal to the Court against a decision of the Tribunal, a decree was not an essential document in the record of appeal. With respect, this proposition is untenable. The Civil Procedure Code, Cap.33 R.E. 2002, which under Rule 23(2) mandatorily applies to the execution of the decree or order of the Tribunal defines a **decree** in section 3 as:

> *"3. the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit",*

and a **judgment** as:

"the statement given by a Judge or a Magistrate of the grounds for a decree or order".

The Black's Law Dictionary, 9th Ed; defines a **decision** as:

"A judicial or agency determination after consideration of the facts and the law; esp) a ruling, order or judgment pronounced by a court when considering or disposing of a case",

and an **appellable decision** as:

"A decree or order that is sufficiently final to receive appellate review.....".

Succinctly put by B.M. Prasad and M. Mohan in **The MLJ, MANUAL OF THE CIVIL PROCEDURE CODE**, Vol. I, 15th Ed, pp. 1630:

"a decision does not operate as a decree".....

"unless and until decree is formally drawn up in terms of the Judgment, there can neither be an appeal nor execution".

In **The Registered Trustees of the Mariam Faith Healing Centre @ WANAMAOMBI V. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007, (CAT, unreported) the Court had occassion to state:

> *"a decree constitutes the final adjudication of the matters in dispute whereas a judgment is merely a statement of the reasons in support of the decree.*
> .....
> *the decree and judgment are composite documents which together constitute the adjudication of the court. It is no wonder that nomally an appeal lies against a decree which is the formal adjudication of the court expressing it. In this sence, it is evident that the decree follows the judgment".*

More precisely, in **Zepharia Letashu v Moruo Ndelamia**, Civil Appeal No. 31 of 1998, (CAT, unreported) the Court stated:

> *"A decree is a vital and central part of the record of appeal since the appeal is granted on it, hence its absence is fatal to the whole exercise".*

All considered, in our respectful view, a decree remains an essential document in an appeal emanating from the Tribunal and must be brought on the record of the Court in a record of appeal as required by Rule 96(1)(h) and 96(2)(e) of the Court of Appeal Rules, 2009.

Third, Mr. Mtafya submitted that a decree issued under Rule 23(2) is only for the purpose of execution and not for an appeal. With respect, this cannot find favour with us. Rule 23(2) does not limit the end use of the decree by a party. No doubt, a party can only enforce a valid decree. However, a plain reading of Rule 23(2) shows that it does not bar a party from applying to the Tribunal for the issuance of a valid decree for an appeal or any other purpose. To say that it does, is to stretch the construction of Rule 23(2) beyond its breaking point.

Fourth, in our considered view, section 32(2) and (3) of the Act cannot save the defective decree, signed only by the Vice-Chairman and not all the members. The purported authentication of the decree by affixing on it the seal of the Tribunal cannot validate an already defective decree. Validity cannot be granted to what was already patently invalid in law.

For all the above reasons and going by **Midcom Tanzania Limited v. Commissioner General (TRA), Civil Appeal No. 13 of 2011 (CAT, unreported) and Mbeya Intertrade Company Ltd.** case, we are constrained to find the decree not having been signed by all members of the Tribunal, defective. This renders the purported appeal incompetent. Accordingly, we proceed to strike it out with costs.

Ordered accordingly.

DATED at **DAR ES SALAAM** this 23rd day of February, 2016.

M. C. OTHMAN
CHIEF JUSTICE

S. A. MASSATI
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

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

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL