

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

**(CORAM: MASSATI, J. A., MUSSA, J. A. And MWARIJA, J. A.)**

**CIVIL APPEAL NO. 147 OF 2015**

**BOSCO PETER TETI ..... APPELLANT**

**VERSUS**

**1. LIFE MUSHI**

**2. A/INSP ASTERIKO MAHIGA**

**3. D468 D/COPL. JOHN STONE**

**4. E9235 DET COPL. GODLOVE**

**5. THE ATTORNEY GENERAL**

**..... RESPONDENTS**

**(Appeal from the Decision of the High Court of Tanzania, at Tabora)**

**(Songoro, J.)**

**dated the 5<sup>th</sup> day of June, 2015**

**in**

**Civil Case No. 10 of 2006**

.....

**RULING OF THE COURT**

6<sup>th</sup> & 11<sup>th</sup> April, 2016

**MUSSA, J.A.:**

In the High Court of Tanzania, at Tabora, the appellant unsuccessfully sued the respondents for general damages amounting to a sum of shs. 500,000,000/= which allegedly arose from libel, trespass, false imprisonment and malicious prosecution. As it were, the court dismissed the claim with costs (Songoro, J.), in a judgment that was handed down on the

5<sup>th</sup> day of June, 2015. The appellant is aggrieved and presently seeks to impugn the decision of the trial court in a lengthy memorandum which is comprised of eight points of grievances.

At the hearing before us, the appellant was represented by Mr. Musa Kwikima, learned Advocate. The first respondent was fending for himself, unrepresented, whereas the remaining respondents had the services of Mr. Ildephonse Mukandara, learned State Attorney. It is, perhaps, pertinent to observe that the second respondent did not enter appearance personally and, as it turned out, he could not be located at his previous address. Nonetheless, both counsels were agreed and, in our view, rightly so, that his absence was sufficiently remedied by the appearance of the learned State Attorney in terms of Rule 30 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). In the result, it was so ordered that the hearing proceeds in his absence.

From the very outset, the Court, *suo motu*, prompted the learned counsel for the appellant to comment on the competency of the appeal, specifically in view of the fact that the date of the judgment does not agree with that of the decree. It is noteworthy that whereas the judgment is

indicated to have been delivered on the 5<sup>th</sup> June, 2015, the decree is dated the 3<sup>rd</sup> day of November, 2015. Having noted the infraction, Mr. Kwikima readily conceded that the same goes to the root of the appeal itself which is, in the result, rendered incompetent. The learned counsel for the appellant, accordingly, prayed that the appeal be struck out. For his part, Mr. Mukandara went along and supported the prayer.

Indeed, the differing dates clearly contravene the provisions of Order XX Rule 7 of the Civil Procedure code which stipulate:-

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

There is a chain of authorities to the effect that the record of appeal which contains a decree which is not properly dated and/or signed renders the appeal incompetent and such appeal is liable to be struck out (See: **Bahadnarali E. Shamji & another vs The Treasury Registrar, Ministry of Finance & 4 Others**, Civil Appeal No. 4 of 2003; **Uniafrico**

**Ltd & 2 Others vs Exim Bank (T) Ltd**, Civil Appeal No. 30 of 2006; **Mkama Pastory vs TRA**, Civil Appeal No. 95 of 2006; **Ami (TZ) Ltd vs OTTU on behalf of P. L. Assenga and 106 Others**, Civil Application No. 72 of 2002; **Haruna Mpangaos and 902 Others vs Tanzania Portland Cement Co. Ltd**, Civil Appeal No. 10 of 2007 and **Kashemeza Phares Kabuye vs Choya Anatory Kasazi**, Civil Appeal No. 110 of 2007 (all unreported). In **Uniafrico Ltd** (*supra*) the Court held and, we quote:-

*"Under the Rule, it is clear that a decree must unambiguously set the date on which the judgment was given. So, the decree must bear the same date as the judgment. The date of the decree is the date on which judgment was delivered – see **Sarkar on Civil Court Practice Procedural Manual**, Tenth Edition, at page 205. The date is important for purposes of limitation because the period of limitation for an appeal from a judgment runs from the date on which it was pronounced."*

To this end, to the extent that the record of appeal is accompanied by a defective decree, this appeal is incompetent and we, accordingly, strike it out. Since the discrepancy was raised by the court, *suo motu*, we give no order as to costs.


**DATED** at **TABORA** this 8<sup>th</sup> day of April, 2016.

S. A. MASSATI  
**JUSTICE OF APPEAL**

K. M. MUSSA  
**JUSTICE OF APPEAL**

A. G. MWARIJA  
**JUSTICE OF APPEAL**

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

  
P. W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**