

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: LUANDA, J.A., MUSSA, J.A., And MZIRAY, J.A.)

CONSOLIDATED CIVIL APPEAL NO. 82 OF 2011 & 136 OF 2015

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|--|---|-------------------------|
| <ul style="list-style-type: none">1. JOSEPH NTOGWISANGU2. FIDELIS M. MASEKE
(Suing in Representative Capacity)3. ADELAIDE MARIJANI4. JUSTINE L. MSUKA5. MARCEL J. MAUNGO6. WAMBURA N. J. WARYUBA7. LEONCE G. MOKIWA8. AUGUSTIN M. NGUMA9. JAMES I.K. NDYETABULA10. MICHAEL METELALI11. RICHARD E. CHUNGU12. JOSEPH D. URIO13. ZEPHANIA NYAMBELE14. ARTHUR ORIO15. ANZAMEN E. MARIKI16. MATHEW M. K. ATHUMAN | } | <p>.....APPELLANTS</p> |
| VERSUS | | |
| <ul style="list-style-type: none">1. THE PRINCIPAL SECRETARY
MINISTRY OF FINANCE2. THE ATTORNEY GENERAL | } | <p>.....RESPONDENTS</p> |

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

(Msumi, JK)

dated the 11th day of July, 2001

in

Civil Case No. 289 of 1998

RULING OF THE COURT

25th November & 5th December, 2016

MZIRAY, J.A.:

Initially we had Civil Appeal No. 82 of 2011 and Civil Appeal No. 136 of 2015 both emanating from Civil Case No. 289 of 1998 of the High Court of Tanzania, Dar es Salaam Registry. Upon application by the appellants the two appeals were consolidated.

In this appeal the appellants have appeared in person, unrepresented, whereas the two respondents are represented by Mr. Vicent Tangoh, Mr. Ponsian Lukosi, both Principal State Attorneys assisted by Ms. Lilian Machage, State Attorney.

This appeal has this origin. The appellants were employed as civil servants in different capacities in the Revenue Department, Ministry of Finance. Their services were terminated by the first respondent in public interest on 30/6/1996 after the President has sanctioned the same. The appellants were issued with letters of retirement contending that their retirement were effected under Article 36(2) of the Constitution of the United Republic of Tanzania read together with section 19(3) of the Civil Service Act No. 16 of 1989 and Government Standing Orders No. 41 and F.31 of 1994. The appellants were aggrieved by the retirement and for that reason they unsuccessfully filed Civil Case No. 289 of 1998 concluded on 11/7/2001 in the High Court of Tanzania, Dar es Salaam Registry. Aggrieved, they filed this appeal. The major complaint by the appellants is that their retirement in public interest was unlawful.

At the hearing, it transpired that all exhibits admitted in court were not endorsed as mandatorily required by the law. This prompted us to

raise the matter *suo motu* so as to satisfy ourselves as to whether the appeal is properly before us.

On their part, the appellants readily conceded to the defect raised by the Court but blamed the trial court for failure to endorse the same and that since it was the trial court which did not endorse on the tendered exhibits, they lamented not to be penalized for the same. They urged the Court to disregard the defect and determine the appeal on merit.

Mr. Vicent Tangoh, learned Principal State Attorney who represented the respondents also conceded to the matter raised by the Court *suo motu*. He added that Order XIII Rule 4 of the CPC provides the manner on how exhibits should be admitted in Court and that, failure to comply with that provision, the admitted exhibits will not form part of the record. On that basis therefore, he urged this Court to strike out the appeal for being incompetent and that he will not press for costs.

On our part, as pointed herein above, the admitted exhibits were not endorsed as required by Order XIII rule 4 of the CPC which provide that:

"4(1). Subject to the provisions of the sub-rule

(2) there shall be endorsed on every document

*which has been admitted in evidence in the suit
the following particulars, namely;*

- (a). The number and title of the suit.*
- (b). The name of the person producing the
document.*
- (c). The date on which it was produced; and*
- (d). A statement of its having been so admitted,
and the endorsement shall be signed or
initialed by the judge or magistrate”.*

Since the learned judge did not comply with the rules of admissibility and endorsement then, the tendered and admitted exhibits should not form part of the record. [See **AAR INSURANCE (T) LTD. vs. BEATUS KISUSI**, Civil Appeal No. 67 of 2015 (unreported)].

That being the position, we have no option, and for the interest of justice we hereby invoke and exercise our revisionary powers conferred to us under s.4(2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 to quash the High Court proceedings commencing after mediation and set aside the decree. We order for retrial before another judge.

Since the point was raised by the Court *suo motu*, we make no order as to costs.

It is so ordered.

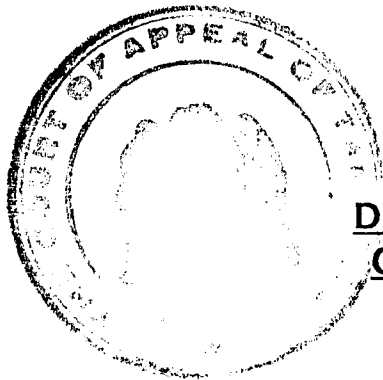
DATED at **DAR ES SALAAM** this 28th day of November, 2016.

B.M. LUANDA
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSTICE OF APPEAL

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




B.R. NYAKI
DEPUTY REGISTRAR
COURT OF APPEAL