

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

**(CORAM: MBAROUK, J.A., LILA, J.A., And MWAMBEGELE, J.A.)**

**CIVIL APPEAL NO. 23 OF 2015**

**ZAINAB AJIT PATTNI ..... APPELLANT**  
**VERSUS**

**PATRICIA F. MWANUKUZI ..... RESPONDENT**  
**(Appeal from the Judgment of the High Court of Tanzania (Land Division)**  
**at Dar es Salaam)**

**(Fikirini, J.)**

**Dated the 30<sup>th</sup> day of September, 2013 delivered on 11<sup>th</sup> October 2013 by**  
**(Mgeta, J.)**

**in**

**Land Case No 158 of 2006**

.....

**RULING OF THE COURT**

**MWAMBEGELE, J.A.:**

When the appeal was called on for hearing today, Mr. Mluge Karoli Fabian, the learned counsel who appeared for the appellant intimated to the Court that he was conceding to the two-point preliminary objection notice of which had earlier been filed by the respondent on 26/03/2015. The learned counsel prayed that due to the ready concession, there should be made no order as to costs.

Mr. Michael Ngalo, the learned counsel who appeared for the respondent, had no qualms with the concession and was of the submission that the appeal was rendered incompetent and was liable to

be struck out. ~~As for the costs, the learned counsel submitted that they~~ prepared for the hearing of the appeal including lodging a list of authorities and serving upon the appellant, which meant incurring expenses which should be reimbursed by way of costs. He thus prayed that the appeal be struck out with costs.

We have considered the argument by the learned counsel for the parties. Indeed the appellant has conceded to, *inter alia*, the point that the date of the judgment and that of the decree are at variance thereby offending the mandatory provisions of Order XX rule 7 (1) of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002. The ailment, upon a plethora of authorities, renders the appeal incompetent – See for instance, **Elizabeth Stephen & another v. the Attorney General**, Civil Appeal No. 4 of 2007. This appeal therefore, will not escape the wrath of being struck out on incompetence.

As for costs, we, despite the ready concession by Mr. Fabian, agree with Mr. Ngalo that the respondent spent time and resources in preparation for today's appearance and hearing of the preliminary objection as well as filing a list of authorities thereof. We think those expenses incurred by the respondent should be re-embursed by way of costs.

As the first point of the preliminary objection disposes of the matter, we will not consider the second point to which Mr. Fabian also readily conceded.

In the upshot, this incompetent appeal is struck out with costs to the respondent.

It is so ordered.

**DATED** at **DAR ES SALAAM** this 1<sup>st</sup> day of October, 2018.

M. S. MBAROUK  
**JUSTICE OF APPEAL**

S. A. LILA  
**JUSTICE OF APPEAL**

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

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

  
E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**