

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MBAROUK, J.A., MZIRAY, J.A., And MWAMBEGELE, J.A.)

CIVIL APPEAL NO. 195 OF 2016

PETRO KAZI APPELLANT

VERSUS

JOHN RAMADHANI RESPONDENT

(Appeal from the judgment of the High Court at Dodoma)

(Rutatinisibwa, PRM (Ext. Jurisdiction.)

dated the 15th day of February, 2013

in

PRM DC Civil Appeal No. 5 of 2012

RULING OF THE COURT

7th & 12th March, 2018

MZIRAY, J.A.:

This is an appeal from the judgment of R.I. Rutatinisibwa, PRM with extended jurisdiction dated 18/2/2013, arising from Civil Case No. 3/2011 of the District Court of Iramba. It was a case of tort on which the District Court of Iramba awarded damages to the respondent in the sum of Tshs. 767,500/= with costs for malicious prosecution. The appellant unsuccessfully appealed to the PRM with Extended jurisdiction at Dodoma.

Prior to the civil litigation, sometimes in September, 2010 the appellant had reported the respondent to the police station at Kiomboi for alleged offence of cattle theft and following the said allegations the latter was arrested, incarcerated in remand and subsequently charged at Kiomboi Mjini Primary Court. At the end of the trial, the respondent was acquitted. It is this background which prompted him to resort to civil litigation on a tort of malicious prosecution.

The criminal and civil litigations both ended in favour of the respondent. The appellant having lost his appeal before the PRM with Extended Jurisdiction opted for an appeal before this Court to challenge the award of Tshs. 767,500/= with costs in favour of the respondent. His appeal before us is with a single ground framed this way:

"That the Appellate Honourable court erred in law and in fact for not considering the matter question of whether the appellant suffered damages or not".

At the hearing of the appeal both parties appeared in person, unrepresented. Before the start of the hearing of the appeal, the Court invited the parties to address us on the competency or otherwise of the

appeal, the focus being on the Notice of Appeal filed on 27/2/2013 in the Sub-Registry of the Court of Appeal of Tanzania at Dodoma. Specifically, the Court noted that the impugned judgment was delivered on 15/2/2013 while the Notice of Appeal shows that the said decision was given on 18/2/2013.

In his address, the appellant did not waste the precious time of the Court. He conceded to the defect. Apart from that, he raised another pertinent issue as to the propriety of the first appeal which was heard by Rutatinisibwa, PRM with extended jurisdiction for him to sit in the High Court and proceed to hear that appeal. Outrightly, the appellant stated that Rutatinisibwa, PRM with extended jurisdiction was to sit in the Resident Magistrates' Court and had no capacity to sit in the High Court.

On the part of the respondent, he left the entire issue in the hands of the Court to decide arguing that it was a legal issue on which his knowledge was very rudimentary.

We start with the first point raised by the Court suo motu on the apparent defect on the Notice of Appeal. As the record reveals, the appellant having been dissatisfied with the decision of Rutatinisibwa, PRM with Extended Jurisdiction delivered on 15/2/2013, lodged a Notice of Appeal in

this Court on 27/2/2013 expressing his intention to appeal against the whole of the said decision. In the said Notice of Appeal he categorically indicated that he was appealing against the whole decision of the High Court of Tanzania, Dodoma PRM. DC Civil Appeal No. 5/2012 (Hon. R.I. Rutatinisibwa, PRM extended jurisdiction given at Dodoma on 18/2/2013. This date clearly varies with the date of the decision as reflected at page 44 of the record of appeal. The date in the record of appeal shows that the judgement was delivered on 15/2/2013. This variance definitely renders the Notice of Appeal defective.

A Notice of Appeal in civil matters is governed by Rule 83 of the Court of Appeal Rules, 2009 (the Rules). According to Sub-Rule 6 of the said Rule, the Notice of Appeal is supposed to be substantially in conformity with Form D in the First schedule. Form D in the First Schedule is in this format:

FORM D

(Rule 83)

In the Court of Appeal of Tanzania at Criminal/Civil or Application No. of 20.....

In the matter of an intended appeal/Criminal/Civil or Appeal No. of 20.....

*Between Appellant and
Respondent*

*(Appeal from the of the High Court of at
(Mr. Justice) Dated 20.....
in Criminal/Civil Application/Appeal
No. of 20.....)*

NOTICE OF APPEAL

*TAKE NOTICE that being dissatisfied with the decision on the
Honourable Mr. Justice given at
..... on the day of 20..... intends to appeal
in the Court of Appeal of Tanzania against the whole of the said
decision/such part of the said decision as decided. The address for service
of the appellant is
It is intended to serve copies of this notice on
Dated this day of 20.....*

Signed Appellant/Advocate for the Appellant

*To: The Registrar of the High Court of Tanzania at
Lodged in the High Court of Tanzania at
this day of 20.....*

*.....
Registrar*

In the above format it is clear that the date of the decision appealed against must be shown and in a situation like in this appeal where an incorrect date is inserted in the main body on the Notice of Appeal, is a fundamental irregularity. It cannot be taken for granted that it is a minor defect as it goes to the root of the matter and affects the validity of the

Notice of Appeal which is a vital document with regard to this appeal. See **Mansoor Daya V Jenus Limited**, Civil Appeal No. 13 of 2001 (unreported).

We shift now to discuss the second point raised by the appellant on the propriety of the first appeal heard by Rutatinisibwa, PRM with Extended Jurisdiction who heard the appeal sitting in the High Court. The argument of the appellant is that it was wrong for Rutatinisibwa, PRM with Extended Jurisdiction to sit in the High Court and proceed to hear the appeal. The respondent on the other hand reserved his comment confessing that it was a technical issue which required legal knowledge.

As the record reveals, after the appellant was aggrieved by the decision of the District Court of Kiomboi in Civil Case No. 3 of 2011, he instituted an appeal before the High Court of Tanzania at Dodoma in PRM. DC Civil Appeal No. 5 of 2012. The High Court by invoking the provisions of section 45 (2) of the Magistrates Courts' Act, 1984 (the MCA) transferred that appeal to be heard by Rutatinisibwa, PRM with Extended Jurisdiction. In determining the appeal, Rutatinisibwa, PRM with Extended Jurisdiction sat in the High Court instead of sitting in the Resident Magistrates' Court as the law required. We are of the considered view that it was not proper and the entire proceedings were null and void. In the most recent decision of **Paulo Benito Mwenda**

V.R., Criminal Appeal No. 42 of 2016 (unreported), decided on this ongoing session, this Court had an occasion to deal with a very similar issue to the instant matter. The Court stated as follows:

"The effect of a Resident Magistrate with extended jurisdiction who sits in the High Court to hear an Appeal transferred to him/her renders the proceedings and the decision a nullity."

That is the stand taken by this Court in a situation where a Resident Magistrate with Extended Jurisdiction has been assigned to hear an appeal in terms of the provisions of section 45 (2) of the MCA but instead of sitting in the Resident Magistrates' Court as it is supposed to be, sits in the High Court and determines an appeal. By all standards, the High Court cannot be put in the same level with any subordinate Court, so a resident magistrate has no powers to sit in the High Court.

In the end, we find that the appeal before us is incompetent. We have given two reasons for that. One, the Notice of Appeal is fundamentally defective for having an incorrectly inserted date of the decision desired to be appealed against. Two, The PRM with Extended Jurisdiction

(Rutatinisibwa) had no powers to sit in the High Court and proceed to hear the appeal.

For the foregoing reasons, the appeal being incompetent, it is accordingly struck out. We make no order as to costs as one issue on the incompetency of the appeal was raised by the Court.

DATED at **DODOMA** this 10th day of March, 2018.

M.S. MBAROUK
JUSTICE OF APPEAL

R.E.S. MZIRAY
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