IN THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

(CORAM: JUMA, C.J., SEHEL, J.A. And GALEBA, J.A.)

CIVIL APPEAL NO. 150 OF 2020

ANTHONY JOSEPHAT @ KABULA .....APPELLANT

VERSUS

HAMISI MAGANGA.....RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Kigoma)

(Matuma, J.)

dated the 19th day of August, 2019
in
DC Civil Appeal No. 3 of 2019

.....

ORDER OF THE COURT

30th June & 2nd July, 2021

GALEBA, J.A.:

At the hearing of this appeal on 30.06.2021, the appellant was represented by Mr. Method Kabuguzi, learned advocate and the respondent had the services of Mr. Daniel Rumenyela, also learned advocate.

Prior to the commencement of hearing, Mr. Kabuguzi, rose up to inform the Court that on his part he would not be able to proceed with hearing of the appeal because his record of appeal

incorporated a decree which had a date different from that of the judgement. He added further that even the certificate of delay which was accessed to him by the High Court was defective. Mr. Kabuguzi, informed us that he had however managed to procure the rectified decree and certificate of delay from the High Court only that the documents are not yet in the record of appeal before the Court. In the circumstances, he prayed for adjournment of the hearing and for leave of the Court to file a supplementary record of appeal so that he incorporates the valid decree and a certificate of delay before the matter can be scheduled for hearing. He based the prayer for leave to lodge a supplementary record on Rule 96(7) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules).

On his part, Mr. Rumenyela had no objection to the prayers made by counsel for the appellant, save that he prayed for costs of the adjournment.

In rejoinder, particularly on the issue of costs, Mr. Kabuguzi, contended that, his client deserved waiver of costs because the omission to issue authentic decree and certificate of delay was

essentially caused by the Registrar's office at High Court and not any of the parties. He moved the Court to order each party to bear his own costs of the adjournment.

On our part, we have considered the non-contested prayers of the appellant's counsel and the prayer for costs by Mr. Rumenyela.

Our careful examination of the decree and the certificate of delay reveals that indeed, the decree of the High Court in the record of appeal is dated 21.08.2019 whereas the judgement is dated the 19.08.2019. That difference in dates of the decree and that of the judgement offends the provisions of Order XX Rule 7 of the Civil Procedure Code [Cap 33 R.E. 2019] (the CPC). That rule provides as follows:

> *"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."*

Clearly, that rule makes it mandatory for the decree to bear the same date as the judgment from which it was extracted. There

is a long list of authorities in which this Court has consistently held that a decree with a date at variance with that in the judgement is defective. Some of such decisions include, **Tanzania Motor Services Ltd v. Tantrack Agencies,** Civil Appeal No. 61 of 2007, **Robert Edward Hawkins and Another v. Patrice P. Mwaigombe,** Civil Appeal No. 48 of 2006 and **Puma Energy Tanzania Limited v. Ruby Roadways (T) Limited,** Civil Appeal No. 3 of 2018 (all unreported).

In respect of the certificate of delay, while the appellant's advocates requested for certified copies of the proceedings, judgement and decree on 21.08.2019, the certificate of delay shows that he requested for the documents on 26.11.2019. That means the certificate of delay, has an error hence, defective. According to numerous decisions of this Court including **Kantibhai Patel v. Dahyabhai Mistry,** [2005] TLR 237 a defect in a certificate of delay is not a technicality, it is a serious irregularity that goes to the root of the very certificate and vitiates its authenticity unless it is rectified. In that case this Court held that:-

> "*The very nature of anything called a certificate requires that it be free from error* ***and should an error crop into it, the certificate is vitiated.*** *It cannot be used for any other purpose because it is not better than a forged document. An error in a certificate is not a technicality which can be conveniently glossed over; it goes to the very root of the document. You cannot sever the erroneous part from it and expect the remaining part to be a perfect certificate;* ***you can only amend it or replace it altogether as by law provides.***"

A keen observation of the above quotation reveals two vital points that stand out very clearly. The points are **first,** that a defective certificate of delay is invalid and it cannot be relied upon in any legal proceeding for it is no better than a forged document and **second,** although irregular, a defective certificate of delay can, in law, be rectified.

In observance of the above points, this Court has been granting leave in favour of the appellants for them to rectify certificates of delay and lodge a supplementary records of appeal

containing proper certificates. Some of this Court's decisions in this respect are **Mediterranean Shipping Co. (T) Ltd v. Afritex Limited,** Civil Appeal No. 165 of 2017, **Universal Electronics and Hardware (T) Limited v. Strabag International GmBH (Tanzania Branch),** Civil Appeal No. 122 of 2017, **Ecobank Tanzania Limited v. Future Trading Company Limited,** Civil Appeal No. 82 of 2019, **Geita Gold Mining Limited v. Jumanne Mtafuni,** Civil Appeal No. 30 of 2019 and **Daudi Hagha v. Salum Ngezi and Damian Toyi,** Civil Appeal No. 313 of 2017 (all unreported).

In all the above decisions, the appellants were permitted to go back to the High Court and procure rectified certificates, compose and lodge supplementary records of appeal in a bid to blow the breath of life in the otherwise, defective and incompetent appeals. In this case, the situation is even better because Mr. Kabuguzi has already procured the rectified documents from the High Court, so he only needed leave to lodge a supplementary record.

Rule 96(7) of the Rules we just made reference to above and that Mr. Kabuguzi relied upon provides that;

> *"Where the case is called on for hearing, the Court is of opinion that document referred to in rule 96(1) and (2) is omitted from the record of appeal, it may on its own motion or* ***upon an informal application grant leave to the appellant to lodge a supplementary record of appeal."***
>
> [Emphasis added].

The above Rule, 96(7) of the Rules goes hand in hand with sections 3A (1) and 3B (1) (c) of the Appellate Jurisdiction Act, [Cap 141 R.E. 2019] (the AJA) when it comes to rectification of and or inclusion of missing documents in the record of appeal. Those sections of the AJA provide thus:-

> *"3A.-(1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by this Act.*
>
> *3B.-(1) For the purpose of furthering the overriding objective specified in section 3A, the*

Court shall handle all matters presented before it with a view to attaining the following-

(a) and (b) N/A;

(c) timely disposal of the proceedings in the Court at a cost affordable by the respective parties.

We have briefly observed earlier on that the above quoted provisions, of the Rules and of the AJA, go hand in glove to cure defects in relation to documents in a bid to ensure speedy delivery of substantive justice. That was the position of this Court in **Puma Energy Tanzania Limited** (supra), when it observed: -

"We think it will now be clear that rule 96(7) was added with a view to giving effect to the overriding objective particularly section 3B (1) (c) of the AJA and Rule 2 of the Rules which enjoin the Court to handle all matters before it with a view to attaining timely disposal of the proceedings at a cost affordable by the respective parties. That explains why, instead of striking out the appeal for being incompetent which would have meant that the appellant

starting the appeal process afresh, it granted leave to lodge a supplementary record."

In the past, defects in copies of decrees or certificates like in this appeal, would have led the Court to mercilessly strike out the entire appeal with no reservations. However, with the enactment of Rule 96(7) of the Rules in 2019, which Mr. Kabuguzi relied on, and considering a clear declaration of the overriding objective introduced at sections 3A and 3B both of the AJA, we can no longer strike out any appeal on such grounds. This Court is enjoined, in the spirit and inspiration of the above provisions of law and the decisions cited, to take a corrective, positive and forward-looking step instead of imposing punitive and frustrating measures with a net effect of prolonging litigation thereby making justice unnecessarily expensive to litigants. Likewise in this matter, with respect to the defective decree and the certificate, in a bid to give life to the otherwise, incompetent appeal, we will pursue a similar course as taken by this Court in the decisions referred to earlier on.

The second aspect which had a bit of contest was in relation to costs of the adjournment. In that respect, Mr. Rumenyela

prayed for costs because his client had hired him and, on his part, he had taken up instructions and appeared for hearing of the appeal. In response Mr. Kabuguzi prayed for waiver of the costs because defects in the documents was occasioned by mistakes at the office of the Registrar of the High Court.

On this point we are in agreement with Mr. Kabuguzi that, the variance in dates on the judgement and the decree on one hand and wrong dates in the certificate of delay on the other, were not caused by him or his client, but the office of the Registrar at the High Court. In our view, it will not serve the interest of justice to punish litigants or any of them for acts or omissions that are not theirs. In the circumstances, we are unable to grant costs as prayed by Mr. Rumenyela.

Consequently, based on the above reasons we allow the appellant to lodge a supplementary record of appeal containing a rectified decree and certificate of delay. The appellant shall lodge the said supplementary record of appeal to this Court in sixty (60) days from the date of this order. In the meantime, hearing of this appeal is hereby adjourned under Rule 38A (1) of the Rules, to a

date to be fixed by the Registrar. As for costs of this adjournment, we order that each party shall bear his own costs.

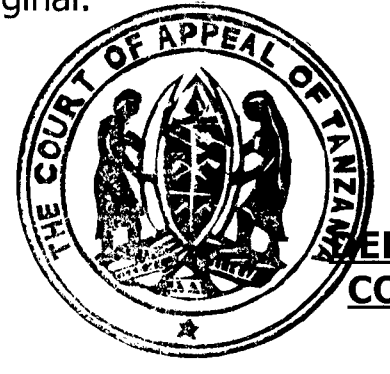
DATED at **KIGOMA**, the 2nd day of July, 2021.

I. H. JUMA
CHIEF JUSTICE

B. M. A. SEHEL
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

This order delivered this 2nd day of July, 2021 in the presence of Mr. Danniel Rumenyela holding brief for Mr. Method kabuguza, learned counsel the Appellant and Mr. Daniel Rumenyela, learned counsel for the respondent, is hereby certified as a true copy of the original.



E. G. Mrangu
DEPUTY REGISTRAR
COURT OF APPEAL