

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 200 OF 2008

SHANGWA, NYERERE, MRUKE, JJJ

RAMADHANI MWIGOLE AND 38 OTHERS APPELLANTS

VERSUS

TRC (NOW) RELI ASSETS HOLDING CO. LTD RESPONDENT

Date of last Order : 3/11/2009

Date of Ruling : 17/12/2009

RULING

SHANGWA J.

On 15th December, 2008, the Appellants presented a Memorandum of Appeal for filing which contains four grounds of appeal against the decision of the Industrial Court given by Mrs. William, Deputy Chairperson in Trade Enquiry No 28 of 2005.

On 23rd February, 2009, learned counsel for the Respondent Mr. Kariwa filed a notice of preliminary objection against the appeal in which he raised one point of preliminary objection namely that the Appeal is incompetent for not attaching a decree as required by law.

On 29th April, 2009, we ordered that the Preliminary Objection should be disposed of by way of written submissions and it was so done by counsel for the parties namely Mr. Kariwa for the Respondent and Mr. Kashumbugu for the Appellants.

Mr. Kariwa submitted that the Appeal is incompetent because it is not accompanied by a copy of the decree or award. He referred this court to O.39 r.1 of the Civil Procedure Code [Cap. 33 R.E. 2002] which requires that a Memorandum of Appeal should be accompanied by a copy of the decree. Also, he cited the case of **H. J. Stanley and Sons Ltd Vs Ally Ramadhani Kumyamale (1988)**

TLR 250 in which Maira, J (Rtd) held that it is mandatory that a Memorandum of Appeal should be accompanied by a copy of the decree and that where a Memorandum of Appeal is not accompanied by a copy of the decree there is no legal presentation of the Appeal at all and so the appeal is incompetent and should be dismissed. Mr. Kariwa cited another case in support of his submission. That is the case of **Mariam Abdallah Fundi V. Kassim Abdallah Fundi [1996] TLR 196** where his Lordship Ramadhani, J.A as he then was, dismissed the appeal because the Appellant omitted to attach a copy of the decree when he appealed to the High Court against the decision of the District Court. With these authorities, Mr. Kariwa requested this court to dismiss the appeal on grounds of being improperly before this court and on grounds of being incompetent.

In reply, Mr. Kashumbugu, submitted that the cases cited by Mr. Kariwa are inapplicable to appeals arising from the decisions of the Industrial Court as the Industrial Court never issues decrees but awards as per the Industrial Court Act, 1967. He said that the

cases cited by counsel for the Respondent are intended to mislead this court because they are applicable to appeals arising from the decisions of the District Court which issues decrees as per the Civil Procedure Code [Cap 33 R.E. 2002].

In our considered view, we think that although the Industrial Court issues an award and not a decree after passing its decision, every Memorandum of Appeal filed in this court against the decision of the Industrial Court has to be accompanied not only by a copy of the judgment but also by a copy of the award.

In this case, the Memorandum of Appeal was accompanied by a copy of the judgment only. That is not proper. As the appeal is against the award of the Industrial Court which was given to the Appellants as per the judgment of the Industrial Court, it goes without saying that the Memorandum of Appeal filed in this court ought to have been accompanied by a copy of the award.

It is true as argued by Mr. Kashumbugu that the Industrial Court do not issue decrees such as the District Court does. It is true also that there is no authority which requires that the Memorandum of Appeal filed against the decision of the Industrial Court should be accompanied by a copy of the award. However, as an award issued by the Industrial Court is equivalent to the decree issued by the District Court in the sense that an award and a decree involve a formal expression of an adjudication by the court which conclusively determines the rights of the parties to the dispute, by analogy, every Memorandum of Appeal against the decision of the Industrial Court should be accompanied by an award.

We hold therefore that the case of **H. J. Stanley & Sons Ltd V. Ally Ramadhani Kумыamale [1988] TLR 250** and the case of **Mariam Abdallah Fundi V. Kassim Abdallah Fundi [1996] TLR 196** are not misleading authorities in this case but are important precedents concerning the necessary documents that have to be attached to the Memorandum of Appeal filed in this court to challenge the decisions of the courts from which an appeal lies in

this court. Both authorities interpret the provisions of OXXX IX r. 1 (1) of the Civil Procedure Code which inter – alia provides as follows and we quote:

Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as “ the court”)..... and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the court dispenses therewith) of the judgment on which it is founded.”

One important thing we would like to point out here is that before appealing to this court, the Appellants should have applied for revision of the judgment of a single chairperson to the full bench of the Industrial Court as provided for under S. 28 (1) & (2) of the Industrial Court Act, 1967. He may wish to do so now after

applying before the same court for extension of time to do so and after being granted such extension.

As we have already stated, a copy of the award is a very crucial document which ought to have been attached to the Memorandum of Appeal which was filed in this court against the decision of the Industrial Court in Trade Enquiry No. 28 of 2005. We hold therefore that as a copy of the award was not attached to the Memorandum of Appeal, the Appeal is improperly before this court and is incompetent. However, instead of dismissing it as it was done in the case of **H. J. Stanley & Sons Ltd V. Ally Ramadhani Kумыamale**, we do strike it out. Each party to bear its own costs.



A. Shangwa

JUDGE



A. Nyerere

JUDGE



Z. Muruke

JUDGE

17/12/2009

Delivered in open court this 17th day of December, 2009 in the presence of the Appellants and in the absence of the Respondent.



A. Shangwa

JUDGE



A. Nyerere

JUDGE



Z. Muruke

JUDGE

17/12/2009