

**IN THE HIGH COURT OF TANZANIA
AT MWANZA**

MISC. CIVIL APPEAL NO. 19 OF 2007

(Originating from the District Court of Musoma at Musoma
in Employment cause No. 5 of 2005)

**OBISA OBISA & 13 OTHERS APPELLANT
VERSUS**

PRIME CATCH EXORT LTD RESPONDENT

RULING

24/11/2009 & 15/12/2009

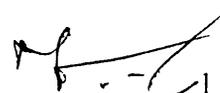
NYANGARIKA, J.

The appellants were unsuccessful before the District Court of Musoma at Musoma in Employment cause No. 5 of 2005 where they were claiming, among other things, their terminal benefits.

They have now preferred this appeal to this Court against the Decision of the District Court of Musoma at Musoma (hereinafter referred to as the trial Court).

The memorandum of appeal was filed on 22/10/2007 and on 5/6/2008 Mr. Obisa Obisa prayed for two weeks to amend the memorandum of appeal so as to disclose the names of the other appellants. No amendment was made and the appeal was fixed for hearing for the 1st time on 20/11/2008 and thereafter on 7/5/2009. On 15/9/2009, the respondent counsel prayed and was granted leave to serve the appellant with a notice of preliminary objection he has filed.

It appears that the notice of preliminary objection was served to the appellants on 19/11/2009 through the labour office of Musoma at Musoma



and therefore, on 24/11/2009 I allowed the respondent's counsel to argue the preliminary objections on points of law in the absence of the appellants.

Mr. Mutalemwa, Advocate for the respondent, argued the preliminary points of law and submitted that the present appeal is incompetent because the ruling of the trial Court was pronounced on 28/8/2007 while the extracted order/decreed is dated and signed on 3/10/2007.

The learned counsel submitted that the appeal therefore contravenes the mandatory requirement of **Order XX rule 7 of Civil Procedure Code.**

He submitted that the appeal in respect of the order also applies to decree as provided for **under order XL rule 2 of Civil Procedure Code. (Cap 38 RE 2002)**

The learned counsel referred me to the Case of **Mkama Pastory v. TRA, Civil appeal No. 95 of 2006, Mwanza Registry (CA)** (unreported) to cement his argument and invited me to struck out the appeal but with no orders as to costs.

As rightly submitted by Mr. Mutalemwa, learned counsel for the respondent, it is now settled that an appeal which is not accompanied by an order or decree which does not bear the date when the judgment was pronounced is incompetent and has to be struck out.



In this appeal, the ruling was delivered on 28/8/2007 but the decree has been extracted and signed on 3/10/2007. The date when the ruling was pronounced does not tally with the date when the decree was signed and indeed the appeal is incompetent.

I therefore sustain the preliminary objection raised by the respondent counsel and struck out the appeal. There will be no orders to costs as this appeal originates from an Employment cause.

Order accordingly.



K. M. Nyangarika
JUDGE

