

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

**DC CIVIL APPEAL No.22 OF 2007**

**(Originating from Korogwe District Court  
Civil Case No. 11 of 2003)**

**HIOZZA SHEHOZZA HOZZA .....APPELLANT**

**VERSUS**

**HASSANI BAKARI SHEKIBUA .....RESPONDENT**

**RULING**

*Date of last order: 5/5/2010*

*Date of Ruling: 18/5/2010*

**R.A. Teemba, J.**

The appellant, Hozza Shehoza Hozza is appealing against the decision and decree of the District Court of Korogwe in Civil case No.11 of 2003. He filed a suit in the District Court claiming for shs.1,500,000/= as general damages and costs for malicious prosecution. The appellant was charged of a criminal offence of cattle theft and the District Court found him guilty. He was convicted and sentenced to five years imprisonment. On appeal to the High Court, his appeal was allowed. As a result the judgment and conviction of the trial court were quashed and sentence set aside. It is from that decision, the appellant sued the respondent for damages. The suit was dismissed with costs, hence this appeal.

The respondent is represented by Mr. Mramba, learned counsel. When served with the Memorandum of appeal, the learned defence counsel raised four points of Preliminary Objection:

1. That this appeal is time barred.
2. That the appeal is bad in law in that no copy of decree accompanied the Memorandum of Appeal.

3. That as the judgment and decree in the case bear different dates there is in effect no proper decree in the case and the appeal is therefore bad in law.
4. That the suit in the lower court was time barred.

It was argued by Mr. Mramba that the judgment appealed against was delivered on 19<sup>th</sup> February, 2007 in the presence of both parties. That the appeal was filed on 15/11/2007 after almost nine months. He argued that under the Law of Limitation Act, Part 2 of the First Schedule, this appeal was supposed to be filed within 90 days. He urged this court to dismiss the appeal as it is time barred. The respondent did not have many words on this point. He submitted that he filed the appeal after obtaining a copy of judgment and when he presented it in court, the Registrar did not reject it. This is a Court of record. Upon perusal of the record, I came across the copy of decree of the trial Court which is attached to the Memorandum of Appeal. It is dated 26<sup>th</sup> October 2007. This means that the appellant filed this appeal after obtaining the necessary documents required for purposes of filing an appeal. For this reason, his appeal is within time. This objection is dismissed.

As far as the second preliminary objection is concerned, I am sure the same has no merit. As I said above, the appeal is accompanied by a copy of decree which is dated 26<sup>th</sup> October 2007.

In the third point of law, Mr. Mramba submitted that Order XXXIX Rule 1(1) of the Civil Procedure Code, Cap 33 R.E 2002 was not complied with because the judgment is dated 19/2/2007 while the decree was signed on 26/10/2007. The appellant argued bitterly that as a layman he has nothing to do with the court documents as he can not correct the court in signing the documents. It is true that parties are victims in the circumstances where the court officials fail to discharge their duties judiciously, as it was in this case. The court of Appeal made it clear that this mandatory requirement has to be fulfilled otherwise it renders the appeal incompetent. In the case of **AMI (TANZANIA)**

**LIMITED vs OTTU on behalf of ASENGA & OTHERS** (DSM Registry – unreported), the appeal was struck out for being incompetent on the ground that the decree which accompanied the appeal was at variance with the date of judgment on which it was pronounced.

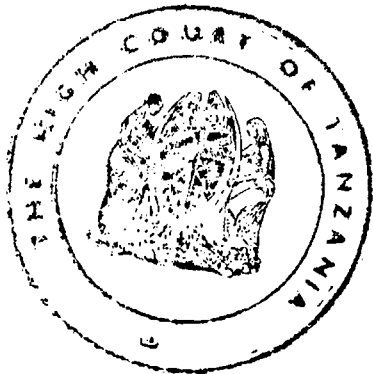
There is no dispute that the instant appeal is accompanied by an invalid decree and therefore renders the appeal incompetent. For this reason, the appeal is struck out. The appellant, if so wishes, may reinstitute the appeal after obtaining a valid decree from the District Court of Korogwe, but subject to the law of limitation. No order as to costs.



**R.A. TEEMBA, J.**  
**18/5/2010**

Date: 16/7/2010  
Coram: R.A. Teemba, J.  
Appellant present in person  
Respondent Mr. Mramba  
C/clerk: Nakijwa

**Court:** The Ruling is delivered in the presence of the Appellant and Respondent in persons Mr. Mramba for the Respondent is also present.



**R.A. TEEMBA, J.**  
**16/7/2010**