

**IN THE HGH COURT OF TANZANIA
AT TANGA
DC. CIVIL APPEAL NO. 3 OF 2010
(Originating from Korogwe District
Court Civil Case No.8 of 2009)**

HAMISI MWALIMUAPPELLANT

VERSUS

KISIKI K ISERIRESPONDENT

RULING

Date of last order: 13/10/2011

Date of Ruling: 15/12/2011

Teemba, J;

The appellant, Hamisi Mwalimu, filed this appeal challenging the decision of Korogwe District Court in Civil Case No.8 of 2009 which was delivered in favour of the Respondent. Before hearing the appeal, the Counsel for the Respondent, Mr. Mramba, lodged a notice of preliminary objection couched thus:

- a) That, the decree annexed to the Memorandum of Appeal is not a Decree in law and that the Appeal is therefore bad and incompetent in law for not containing a Decree.
- b) That, the Memorandum of Appeal is bad in law in that it has not been endorsed by its drawer.

At the hearing of the raised preliminary points of objection, the appellant appeared in person – unrepresented, whereas Mr. Mramba, learned Counsel pointed out that as the judgment is dated 8/2/2010 and as the decree is dated 9/3/2010, then under the provisions of Order XX Rule 7 of Civil Procedure Code [Cap. 33 R.E. 2002], the attached decree is not legally accepted. Mr. Mramba further pointed out that under the provisions of Order XX Rule 20 of the same CPC, the appended decree ought to have been certified. Elaborating his point, Mr. Mramba referred this court to the case of **Scandinavian Enterprises vs. Hassan M. Jemadari and Others [2002] T.L.R. 277** and submitted that a decree not certified is not a decree in law. Mr. Mramba urged this court to sustain the objection and dismiss the appeal with costs.

Arguing the second preliminary objection, Mr. Mramba submitted that, the memorandum of appeal is bad in law for not being endorsed. The Learned Counsel pointed out also that, the Memorandum of appeal does not show who prepared it or the person who drew it. In his conclusion, Mr. Mramba urged this court to dismiss the appeal with costs.

In reply, the appellant submitted that he is a layman and he does not know if the memorandum of appeal is bad in law.

Upon perusal of the record and having considered the arguments advanced by parties in this appeal, I am of settled view that, the objections raised have merit. Let me start with the first point of Preliminary objection. It is argued that the appeal is not accompanied by a decree under the law. The record shows that the judgment was delivered on 8th February, 2010 but the decree is dated 9th March 2010. There is no doubt that dates differ. Order XX Rule 7 of the Civil Procedure Code (CPC) has mandatory requirements for a proper decree. It states:

"7. 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 draw up in accordance with the judgment he shall sign the decree"

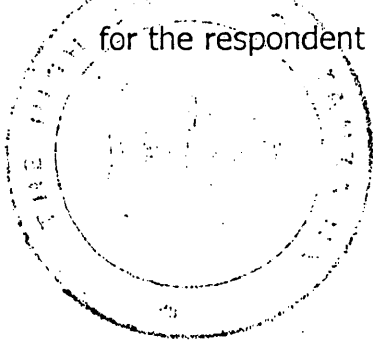
Rule 7 quoted above is mandatory that the date on the decree must be the same appearing on he day the judgment was pronounced. Thus, the objection raised by Mr. Mramba that the appeal is not accompanied by a proper decree is sustained. This is a defect which renders the appeal incompetent. Therefore, this point alone is sufficient to dispose of the appeal. Even if the other points of objection are devoid of merit, yet the appeal will remain incompetent for the memorandum of appeal is accompanied by a defective decree.

In the upshot, the appeal is incompetent and is hereby struck out with costs.


R.A. TEEMBA, J;

15/12/2011

Court: The Ruling is delivered in the presence of both parties and Mr. Mramba
for the respondent is also present.



R.A. Teemba
R.A. TEEMBA, J;
15/12/2011