

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT IRINGA**

LAND CASE APPEAL NO. 7 OF 2007

**(From the Decision of the District Land and Housing Tribunal of Iringa District
at Iringa in Land Case No. 20 of 2006)**

DANIEL CHENGULA

as a personal legal Representative of the late

EMMANUEL CHENGULAAPPELLANT

VERSUS

CONSOLIDATED HOLDING CORPORATION1ST RESPONDENT

CONSOLIDATED HOLDING CORPORATION2ND RESPONDENT

JUDGMENT

MWAMBEGELE, J.:

Daniel Chengula (hereinafter referred to as “the Appellant”); an administrator of the estates of the late Emmanuel Chengula unsuccessfully sued Consolidated Holding Corporation (hereinafter referred to as “the first Respondent”) and Charles Msigwa (hereinafter referred to as “the second

Respondent”) in the District Land and Housing Tribunal in which he craved for the following orders; namely:

1. An order nullifying the mortgage over the house standing on plot No. 104 Block “A” Ipogoro Area in the Municipality of Iringa and comprised in CT No. 3133;
2. An order compelling the Respondents jointly and severally to return the title deed in the hand of the first Respondent within a fixed time; and
3. Any other order the tribunal would deem fit and equitable to grand.

Having been dissatisfied with the decision of the District Land and Housing Tribunal which, as already said, dismissed his application, the Appellant has appealed to this Court advancing three grounds of appeal; namely:

1. That the learned Chairman erred in law when after being satisfied that Charles Msigwa and Emmanuel Chengula were two different persons and that Charles Msigwa had misrepresented himself as Emmanuel Chengula when mortgaging the suit premises to the Bank, failed to hold that the mortgage transaction of the suit premises was tainted with fraud and therefore illegally transacted;

2. That the learned Chairman erred in law and fact when he believed the 2nd respondent's story hook, line and sinker in disregard of his contradictory averments contained in his own Written Statement of Defence in RM Civil Case No. 4 of 2005 which was admitted as an exhibit to that effect; and
3. That the learned Chairman failed to evaluate the evidence on record and as a result he emerged with erroneous findings based on his own impression in his judgment.

It was the Appellant's case that the late Emmanuel Chengula had obtained a loan from the second Respondent amounting to Tshs. 320,000/= and deposited to him CT No. 3153. It happened that the second Respondent used the Certificate of Title as collateral for a loan facility from the National Bank of Commerce; the predecessor of the first Respondent. Before his death, the late Emmanuel Chengula told the Appellant that in case of his death, he should repay the loan to the Second Respondent and get the Certificate of Title back. Upon his death, the Appellant went to the second Respondent so that he could repay the loan and retrieve the Certificate of Title. To his surprise, the second Respondent told the Appellant that he did not owe the late Emmanuel

Chengula anything but intimated to him that the CT was used to obtain a loan from the Bank.

The first Respondent's case was to the effect that he knew the second Respondent and one Emmanuel Chengula to be one and the same person. That the second Respondent applied for a loan and deposited a Certificate of Title which was in the name of Emmanuel Chengula. He had sworn an affidavit deponing that he; Charles Msigwa, was also known as Emmanuel Chengula. That the Bank realised that the signature in the CT and the one in the loan agreement were different but upon enquiry, the second Respondent elucidated by affidavit that the difference was caused by lapse of time between the signing of the signatures in the Title Deed and the loan agreement. He was believed and the loan was accordingly advanced to him.

The second Respondent's case was that he and the late Emmanuel Chengula were business partners and that the latter had asked him to assist him obtain a loan from the Bank as he had no bank account. The second Respondent agreed and applied for a loan in his name and deposited the CT in dispute. The second Respondent states that it is true that he swore an affidavit stating that he was also known as Emmanuel Chengula; the name appearing in the CT.

That he obtained the loan and gave the same to the late Emmanuel Chengula but that the said Emmanuel Chengula failed to repay the loan. It was his case that Emmanuel Chengula participated fully and blessed the transaction and that members of his family were all along aware of the same. However, the late Chengula failed to repay the loan; instead he started to run away from it; stayed in Mwanza, Dar es Salaam and Mbinga until his death without making any effort to repay the loan. Efforts to repay the loan by the Respondent and the wife of the late Chengula's wife proved futile.

On the above facts, the Appellant feels that the Tribunal ought to have decided the case in his favour. I have perused the entire record of this case. It is not free from irregularity. The judgment complained of was delivered on 15.03.2007. However, the extracted decree is dated 10.05.2007. This is a non compliance with the mandatory provisions of Order XX Rule 7 of the Civil Procedure Code, Cap 33 and renders the appeal incompetent. This Rule provides:

"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”.

The anomaly in the instant case was discussed at some length with the Court of Appeal in ***Mkama Pastory Vs Tanzania Revenue Authority*** Civil Appeal No. 95 of 2006 (unreported). In the ***Mkama Pastory*** case, the Court of Appeal quoted **Mulla on The Code of Civil Procedure**, Fifteenth Edition at page 1524 commenting on rule 7 of Order XX of the Indian Code of civil Procedure which is in *pari materia* with Rule 7 of Order XX of the Cap 33 underscored the importance of the date of a decree in the following terms:

“Under this rule, the decree comes into existence on the date of the judgment, though it is signed later. Decree comes into existence as soon as the judgment is pronounced and not on the day it is signed and sealed later. For the purpose of appeal, time runs from the date of pronouncement of the judgment”.

What is the legal status of an appeal which is accompanied by an extracted decree which does not bear the date when the judgment was pronounced? This is the question to which I now turn. In this jurisdiction, an appeal which is accompanied by a decree which does not bear the date when the judgment

was pronounced is rendered incompetent and liable to be struck out [see the ***Mkama Pastory*** case (supra) and **Jovin Mtagwaba and 85 Others Vs Geita Gold Mining Limited**, Civil Appeal No. 109 of 2005 (unreported)].

The present appeal arises from a decree. It was therefore imperative that the mandatory provisions of Rule 7 of Order XX above be complied with to the letter. This provision is couched in mandatory terms. It cannot be dispensed with. In the premises, I find and hold that this appeal is incompetent for non compliance with the mandatory provisions of Rule 7 of Order XX of the Civil Procedure Code, Cap 33 of the Laws of Tanzania. All said and considered and having found and held that this appeal is incompetent; I proceed to strike it out. As the point the subject of this decision has been raised by the court *suo motu*, I make no order as to costs.

DATED at DAR ES SALAAM this 25th day of February, 2013.

J. C. M. MWAMBEGELE

JUDGE