

**IN THE UNITED REPUBLIC OF TANZANIA  
IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**PC CIVIL APPEAL NO. 46 OF 2017**

*(Originated from the Decision of Ilala District Court in Matrimonial Cause No. 137 of 2013)*

**AISHA HASSAN YUSUPH .....APPELLANT**

**VERSUS**

**MICKIDADI KHAMIS.....RESPONDENT**

**RULING**

**03<sup>RD</sup> MAY 2018**

**R.K SAMEJI, J.**

In this Appeal, Aisha Hassan Yusuph, the appellant, is appealing against the decision of the Ilala District Court issued by Hon. C. Kiyoja – (RM) on 7<sup>th</sup> March 2016 in respect of *Civil Appeal No. 15 of 2015* and has lodged a Petition of Appeal accompanied with two (2) grounds, couched to the effect that:-

- (a) the Honourable court erred in law and facts by not considering the appellant's contribution in acquisition of matrimonial property;*

- (b) *the Honourable Magistrate erred in law and facts by failing to evaluate and analyze the evidence adduced by the parties.*

On the other side, the respondent has lodged a notice of preliminary objection that, the *Appeal is hopeless time barred.*

At the hearing of the matter, both parties appeared in their personal capacities and fended for themselves.

Submitting in support of the preliminary objection the respondent indicated that, the judgement which the appellant is appealing against was issued on 7<sup>th</sup> March 2016 and the Appeal before this Court was filed on 6<sup>th</sup> April 2017. He further submitted that, dates indicated in the Judgement and the ones indicated in the Decree therein are different. He as such contended that, the appeal was filed out of time and the Decree attached to it is defective.

The appellant did not have much to say, but only told the Court that, she is not able to read and write, the documents were prepared through the assistance of TAWLA where she is getting the legal aid services. She said she did not check as whether the dates of the Judgement and that of the Decree were different. The mistake must be of the trial court.

I have perused the record of the case and the preliminary objection raised by the respondent. It is obvious that, the respondent has

raised a point of law. It is on record that the Judgement of Ilala District Court, which the appellant is appealing against was delivered on 7<sup>th</sup> March 2016, however the Decree for the said Judgement is dated 17<sup>th</sup> March 2017.

Now, since the Judgment that is appeal from was delivered on 7<sup>th</sup> March 2016, the decree extracted therefrom ought to bear the same date. I have as well observed that, the said Judgement was certified on 16<sup>th</sup> June 2016, but the date for the proceedings, which is not clear as it seems to have been altered, is indicated as being certified on 20<sup>th</sup> March 2017. All these have since created doubts.

Pursuant to Order XX Rule 7 of the Civil Procedure Code, Cap. 33 [R.E.2002], "***the decree shall bear the date of the day on which the judgement was pronounced and, when the Judge or Magistrate has satisfied himself that, the decree has been drawn up in accordance with the judgement he shall sign the decree***". [Emphasis added].

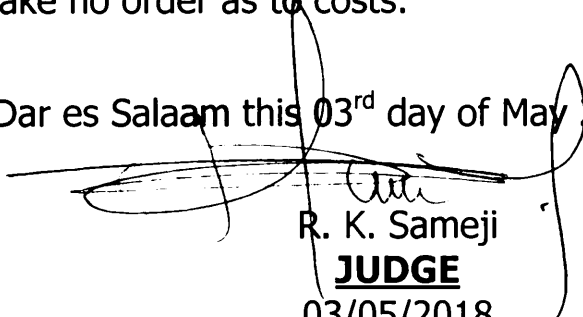
Now, taking into account that the decree before this Court bore a different date from the day on which the Judgement of the trial court was pronounced, it is incurably defective and as such, the entire appeal is incompetent before this Court. See the decision of the Court of Appeal in the case of **Daniel Samuel V Zachariah Ngapondwa and another**, Civil Appeal No. 18 of 2010 CAT Iringa where the Court held that:-

***"The **decree** of the High Court in the exercise of its original and appellate jurisdiction **shall bear the date of the day on which the judgment was pronounced. If the decree is not so dated it is incurably defective and would not form a basis of a competent appeal in this court**"***  
[Emphasis added].

Following the above authority and the provision of the law cited above, the appellant and her learned Counsel, before lodging this Appeal, they were required to check if the decree availed to her was valid. Furthermore, they were as well required to seek leave of this court to file the same out of time.

Consequently, the entire appeal fails and is hereby struck out for being incompetent before this Court. Considering the nature of this matter I make no order as to costs.

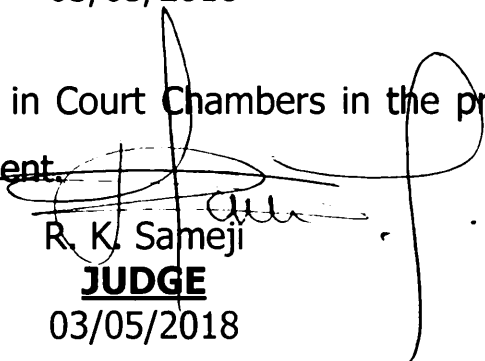
DATED at Dar es Salaam this 03<sup>rd</sup> day of May 2018.

  
R. K. Sameji

**JUDGE**

03/05/2018

**Court** – Ruling delivered in Court Chambers in the presence of the appellant and the respondent.

  
R. K. Sameji

**JUDGE**

03/05/2018