

**IN THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**LAND CASE APPEAL NO 108 OF 2020**

**BARNABAS KATONDO..... APPELLANT**

**VERSUS**

**ALLY CHAMANI .....RESPONDENT**

**(Appeal from the decision of the District Land and Housing  
Tribunal at Bukoba in Application No. 12 of 2011)**

**JUDGMENT**

**22 & 26 July, 2021**

**MGETTA, J:**

Aggrieved by the decision handed down on 26/7/2018 by the District Land and Housing Tribunal at Bukoba, (henceforth the district tribunal) in the exercise of its original jurisdiction, one Barnabas Katondo (henceforth the appellant) through a legal service of Joseph Bitakwate, the learned advocate, lodged "petition" of appeal complaining against the decision of the district tribunal that:

1. The district tribunal erred in law in failing to invite the assessor (s) to give opinions before reaching the judgment contrary to law, making the whole proceedings and judgment a nullity.
2. The district tribunal erred in fact and in law in holding for respondent who did not produce any tangible evidence to prove his title over the suit land.

3. The district tribunal erred in law and in fact in not considering the fact that the appellant had stayed in the suit land since the year 1982 uninterruptedly making the case time barred.

When the appeal was called on for hearing, Mr. Bitakwate appeared to represent the appellant; while, the respondent, Mr. Ally Chamani, appeared in person, unrepresented. I allowed the parties to argue for and against the appeal. They finished their respective submissions, then I set to prepare the judgment.

In the course of composing this judgment, I noticed that the judgment and decree issued by the district tribunal were dated differently. I summoned the parties to come and address me on the propriety and legality of the appeal.

Mr. Bitakwate had readily conceded that the "petition" of appeal is attached with judgment bearing different date with that on the decree. In agreement with the respondent, he stated that the remedy available in the circumstance is to strike out this appeal for being incompetent. The respondent had a similar position and added that the matter was raised by this court *suo motu*, thus each party has to bear its own costs.

It is on the record that the impugned decision of the district tribunal was delivered on 26/7/2018; the attached decree to the “petition” of appeal was given under the hands of the district tribunal chairman and sealed on 29/3/2018. This defect in dating the decree and judgment differently implies perhaps that was not a required decree which was extracted from the impugned judgment. If that is the case, its legal impact is that there is good as no attached decree to “petition” of appeal. Hence, the appeal is rendered incompetent.

The Court of Appeal of Tanzania have had in different occasions over and over again emphasized the requirement of the judgment to bear same date with its extracted decree; and, therefore holding a stance that the appeal being brought with the decree bearing different date from the judgment, such appeal is rendered incompetent and therefore be struck out. See: **Mantrac Tanzania Limited V. Raymond Costa**; Civil Appeal No. 74 of 2014, (CA) (Mwanza) (unreported).

In that cited case, the Court of Appeal emphasized the requirement on the provision of **Order XX rule 7 of the Civil Procedure Code Act, 1966 Cap. 33** which requires the decree to bear the date of the day on which the judgment was pronounced. 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. For ease of reference, I quote **Order XX rule 7 of Cap 33** as hereunder:

*"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 drawn up in accordance with the judgment he shall sign the decree".*

Much being said, the decree bearing different date from the judgment is fatal and incurable; and, even there cannot be legal execution from it. Both parties to this appeal conceded that such defective decree renders that appeal incompetent.

In the event, this incompetent appeal is accordingly struck out. Each party has to bear its own costs.

Order accordingly.



**J.S. MGETTA  
JUDGE  
26/7/2021**

**COURT:** This judgment is delivered today this 26<sup>th</sup> July, 2021 in the presence of Mr. Joseph Bitakwate, the learned advocate for the appellant and in the presence of the respondent in person.



A handwritten signature in black ink, appearing to read 'J. S. MGETTA', is written above the printed name.

**J. S. MGETTA  
JUDGE  
26/7/2021**