

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

LAND APPEAL NO. 21 OF 2020

(Arising from Application No.187 of 2012 of the District Land and Housing Tribunal for Kagera at Bukoba)

YUSTO EUSTACE..... APPELLANT

VRS

JOSEPHINA KAWEGERE..... RESPONDENT

RULING

09/09/2021 & 17/09/2021

NGIGWANA J,

Before this court ventured in determining the merit of this appeal, the Respondent's counsel, Mr. Lameck John Erasto raised and argued an objection on point of law that the decree accompanying the memorandum of appeal is defective as it bears different a date from the judgment contrary to Order XX Rule 7 of the Civil Procedure Code Cap 33 R.E 2019. He was to the effect that as Order XXXIX Rule 1(1) of the same law mandatorily requires the memorandum of appeal to be accompanied with the decree thus attaching the defective decree which is dated differently from its originating judgment is as good as no decree being attached hence violation of the two cited provisions and ultimately renders the appeal incompetent. To buttress his stance, he cited the case of this court in **Idadi Sued vs Magdalena Phillipo Land Case**

Appeal No. 57 of 2016 HC at Bukoba upon which the appeal was struck out for such incompetence.

In reply of the raised objection, the appellant being self-represented conceded that the judgment was delivered on 27/02/2020 but the decree was dated 09/07/2019 but he said he did not know what happened.

In rejoinder, the respondent's counsel recapped that since the appellant had noted the defects, he had no more to re-join.

I am enjoined to determine whether the raised objection has merit?

The take-off point is visiting Order XX Rule 7 as referred by the respondent's counsel. It 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 bolded wording is my own emphasis)

Consistently Order XXXIX rule 1 (1) as referred by the respondent's counsel compliments as follows:

1.-(1) *Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and the memorandum **shall be accompanied by a copy of the decree appealed from** and (unless the Court dispenses therewith) of the judgment on which it is founded.* (Emphasize is mine)

The- provisions which require the decree to be dated similarly with the judgment are couched in mandatory terms. The said requirement resonates on the dictate of law under Order XX Rule 6 which requires the decree to agree and conform with the judgment.

The Court of Appeal in **Mantrac Tanzania Limited vs Raymond Costa, Civil Appeal No. 74 of 2014** CAT at Mwanza (Unreported) reemphasized on the requirement of the decree to bear the same date with the judgment and found such defect to be incurable where it quoted with the approval of its earlier decision in **Uniafrico Ltd and Two Others v. Exim Bank (T) Ltd, (CAT) Civil Appeal No. 30 of 2006** (unreported) where the court *succinctly stated as follows:*

*"In terms of Order XX Rule 6 of the Code the decree shall agree with the judgment **It must correctly state what is really decided and intended by the court** Since the decree must agree with the judgment, the date of the decree must be that of the judgment"*

When the Court of Appeal confronted with the same situation in above cases, the overriding objective rule was not yet introduced in our laws in particular CPC hence there was no such discussion rather the defect was found to be incurable. In the case of **Idadi Sued vs Magdalena Phillipo (Supra)** as referred to this court by the appellant my learned brother Mtulya, J striking out the appeal for similar defect had this to say:

"In any case, it is not be correct to argue that the defect is a mere technicality which could be rectified by the enactment of section 3A of the Civil Procedure Code. There is a serious warning from the Court of

*Appeal in the decision of **Victor Frank Ishebabi vs Leisure Tours and Holidays Ltd and six others, Civil Appeal No. 152 of 2004** with regard to defect affidavit"*

However, the same Court of Appeal case quoted by this court in the referred High Court case by the Respondent's counsel was also before the introduction of overriding objective rule.

The relevant authority of the apex court in Tanzania which I will drive much help is of **Martine Kumaliya & 117 Others vs Iron and Steel Ltd, Civil Application No. 70/18 of 2018** CAT at Dar es Salaam (Unreported) It was quoted that:

" While this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the court. We are loath to accept Mr. Seka's prayer because doing so would bless the respondent's inaction and render superfluous the rules of the court that the respondent thrashed so brazenly."

I have visited and highlighted the provisions of law under Civil Procedure Code (Supra) which require the decree accompanying the memorandum of appeal to conform with the judgment and in particular in our case to bear the same date with the judgment in line with the court of appeal Stance. According to the Court of Appeal authoritative case I have referred, the requirement is mandatory and can neither be waved by overriding objective to help either part nor the express mandatory rules of the court cannot be circumvented to help either party.

In the end result, I do not hesitate to hold that the decree is incurably defective which renders this appeal incompetent. I therefore uphold the objection of the respondent and strike out the appeal with costs.

Order accordingly.

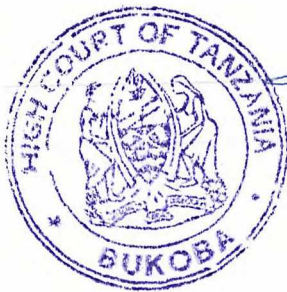


E.L. NGIGWANA

JUDGE

17/09/2021

Ruling delivered in chambers this 17th day of September, 2021 in the presence of the Appellant in person, Mr. E. M. Kamaleki, Judge's Law Assistant but in the absence of the respondent and his advocate.



E.L. NGIGWANA

JUDGE

17/09/2021