

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IRINGA DISTRICT REGISTRY  
AT IRINGA**

**CIVIL APPEAL NO. 04 OF 2022**

1. EAGLE MICROCREDIT TANZANIA LIMITED }  
2. HUGO BRIXIO LUGENGE } ..... APPELLANTS

**VERSUS**

**OSWARD JOHN NJOLE ..... RESPONDENT**

**(Being an appeal from the Judgment and Decree of Resident  
Magistrate Court of Iringa at Iringa)**

**(Hon. E.A. Nsangalufu, SRM)**

**dated the 15<sup>th</sup> day of February, 2022**

**in**

**Civil Case No. 08 of 2020**

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**RULING**

**Date of Ruling: 09.08.2022**

**S.M. KALUNDE, J.:**

This appeal was scheduled for hearing on 09.08.2022. The appellants were represented by Mr. Leonard Sweke, learned advocate whilst the respondent enjoyed the representation of learned counsel Mr. Mosses Ambindwile.

Before commencement of hearing Mr. Ambindwile pointed out a point law relating to the contradiction of dates on the impugned judgement and the decree drawn therein. Elaborating on the

irregularity the counsel submitted that the judgment was dated 15.03.2021 whilst it indicated that it was delivered on 15.02.2022. in addition to that the counsel submitted that the decree indicated that it was signed on 15.02.2022. In view of difference Mr. Ambindwile submitted that it is settled that the judgment and decree must bear the same date and that a contradiction between the date of judgment and decree renders the two documents defective and hence affecting the competence of the appeal. He prayed the appeal be struck out to allow the appellant to seek for correction of errors in the judgment and decree.

Mr. Sweke was candid we conceded on the defects discovered and he left the matter to the court to decide.

On my part, I propose to start with the obvious. Under Order XXXIX Rule 1(1) of the Civil Procedure Code, Cap 33 R.E 2019 (henceforth "the Code") a copy of the decree or order sought to be appealed against is an essential document in the record of appeal. Lack of such document renders the record of appeal defective, and the appeal itself incompetent. Order XXXIX Rule 1(1) of the Code reads:

*"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.” [Emphasis is mine]*

On several occasion the Court of Appeal has issued directions that for such a copy of the decree to be valid it must in form and substance comply with O XX r. 7 of the Code. If it does not, the decree is defective. A defective decree is as good as no decree. The respective O XX r. 7 reads:

*"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.” [Emphasis is mine]*

The above view was taken by the Court of Appeal in the case of **Robert Edward Hawkins and Another vs. Patrice P. Mwaigomole**, Civil Appeal No. 48 of 2006 (unreported) which cited the cases of **Juma Ibrahim Mtale vs. K.G. Karmali** (1983) TLR 50 (CA) and **Tanzania Motor Services Ltd. vs. Tantrack Agencies Ltd.**, Civil Appeal No. 61 of 2007 (unreported). Also see **Anthony Joseph @ Kabula versus Hamisi Maganga**, Civil Appeal No. 150 of 2020 (unreported).

In the present case, since both parties agree, and correctly so, that the purported appeal was based on an ineffectual judgment and decree, it is incompetent.

For the reasons stated, I sustain the respondent's preliminary objection, and strike out the purported appeal without costs.

It is so ordered.

**DATED at IRINGA this 09<sup>th</sup> day of AUGUST, 2022.**



A handwritten signature in blue ink, appearing to read "S. M. Kalunde".

S. M. Kalunde

**JUDGE**