

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 88 OF 2008

ELIZABETH THOMAS.....APPELLANT

VERSUS

STEPHEN JOHN & ANOTHER.....RESPONDENT

R U L I N G

MWARIJA, J.

The 2nd respondent in this appeal raised a preliminary objection to the effect that the appeal is incompetent for the reason that the accompanied decree is defective for non-compliance with O.XX. r. 7 of the Civil Procedure Code, Cap. 33 R.E. 2002 (hereinafter referred to as “the CPC”). The preliminary objection was argued by way of written submissions. The 2nd respondent was ordered to file his submissions in support of the objection on or before 11/11/2010. The appellant was required to file his replies

on or before 25/11/2010 and rejoinder, if any, was to be filed by the 2nd respondent on or before 2/12/2010.

The 2nd respondent who was represented by Mr. Nyabiri, learned Counsel filed his submission timely on 11/11/2010. On the other hand, the appellant failed to file replies within the time fixed by the court and instead filed his submissions on 3/12/2010. Submissions filed out of the time prescribed by the court are not worth consideration. They should be ignored. In the case of **Tanganyika Motors Ltd. & 4 Ors. V. Bahadurali Ebrahim Shaniji**, Civil Application No. 65 of 2001, the Court of Appeal held that the submissions which were filed late should be taken to be not before the court. Since the appellant filed his submissions after the date on which he was ordered to file them, such submissions are not properly before the court. I shall not, therefore, consider them.

In his written submissions, Mr. Nyabiri, learned counsel argued that since the decree which was attached to the memorandum of appeal bears the date which is different from that on which the judgment appealed against was pronounced, the appeal is incompetent. He submitted, that while the judgment was pronounced on 11/4/2008 the date of the decree was shown to be 7/5/2008. It was his submission that the decree is, under the circumstances, defective as it contravenes the provisions of O.XX r. 7 of the CPC.

Having considered the submissions by the learned counsel for the 2nd respondent, I have no hesitation holding that the appeal is incompetent. As submitted by Mr. Nyabiri, under O.XXXIX r.1 of the CPC, it is mandatory that an appeal must be accompanied by a copy of the decree. Again under OXXX r.7 a decree must bear the date on which the judgment appealed against was pronounced.

Since in this appeal the date of the decree is different from that on which the judgment was pronounced, the decree is invalid and as such the appeal which is supported by an invalid decree is incompetent.

On the basis of the reasons stated above, this appeal which has been found to be incompetent, is hereby struck out. No order as to costs.


A.G. Mwarija

JUDGE

21/2/2011

Date – 21/2/2011

Coram: A.G. Mwarija, J.

For the Appellant – Present in person

For the 1st Respondent – Absent

For the 2nd Respondent – Mr. Nyabiri

CC: Butahe

Ruling delivered


A.G. Mwarija

JUDGE

21/2/2011