

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And MASSATI, J.A.)

CIVIL APPEAL NO. 51 OF 2008

KIRIGITI SASI & 362 OTHERS APPELLANTS

VERSUS

GENKURU VILLAGE MANAGER RESPONDENT

**(Appeal from the Ruling and Order of the High Court of Tanzania
at Mwanza)**

(Mackanja, J.)

dated the 16th day of December, 2006

in

Civil Case No. 39 of 2001

RULING OF THE COURT

11 & 15 FEBRUARY, 2011

RUTAKANGWA, J.A.:

The appellants were aggrieved by the decision and decree/order of the High Court of Tanzania sitting at Mwanza, dated 16th December, 2006 in Civil Case No. 39 of 2001 which was dismissed with costs. On 22nd December, 2006 they duly lodged a notice of appeal in this Court. This purported appeal was lodged on 11th September, 2007.

When the appeal came up for hearing on 11th February, 2011, Mr. Silvery C. Byabusha, learned advocate for the respondents, rose to argue a point of preliminary objection, notice of which he had lodged on 17th June, 2009. Indeed, in compliance with Rule 107 of the Tanzania Court of Appeal Rules, 2009, he had earlier on (i.e on 24/1/2011) lodged in Court a summary of the written submission in support of the preliminary objection.

The gist of the objection was to the effect that this appeal is incompetent as it is supported by an incurably defective copy of the order/decreed appealed from.

In his written submission, Mr. Byabusha had contended thus:-

"The appeal is against the ruling by Mackanja, J. dated 15.12.2006. It is supported by the extract order dated 11.5.2006. The order seems to have been extracted before the ruling was delivered! ...

Under Rule 89(1)(h) of the revoked Court Rules, 1979 G.N. 103, the appeal had to contain an extract order property (sic) drawn and dated. This Honourable Court

*underscored this point in the case of **MKAMA PASTORY v. TANZANIA REVENUE AUTHORITY** CAT Civil Appeal No. 95 of 2006 (unreported). The appeal is therefore, incurably defective.”*

Relying on the decision of the Court in **KASHEMEZA PHARES KABUYE v. CHOYA ANATORY KASAZI**, Civil Appeal No. 110 of 2007 (unreported), he urged us to strike out the incompetent appeal with costs.

Mr. Vedastus Laurean, learned advocate, from M/S Magongo and Co. Advocates, appeared before us on behalf of the Appellants. He readily conceded the point of preliminary objection and submission in support of it.

On our part, we are in full agreement with the position taken by both counsel on the issue. The law is well settled that an appeal supported by a wrongly dated copy of the decree or order appealed from is incurably defective and therefore incompetent. **It ought strictly to be struck out.** This legal position was recently reiterated by the **Full Court** in its decision in the case of **ELIZABETH STEPHEN & SALOME CHARLES v. THE ATTORNEY GENERAL**, Civil Appeal No. 4 of 2007 (unreported) dated 22nd December, 2010.

For the foregoing reasons, we uphold the preliminary objection. We accordingly strike out this incompetent appeal with costs.

DATED at MWANZA this 11th day of February, 2011.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



J.S. MGETTA
DEPUTY REGISTRAR
COURT OF APPEAL