CIVIL APPEAL NO. 122 OF 2004 COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (CORAM: MUNUO,J.A; MSOFFE,J.A, AND KAJI, J.A)	TANZANIA REVENUE AUTHORITY … APPELLANT VERSUS NJAKE ENTERPRISES LIMITED.. RESPONDENTS (Appeal from the Judgement and Decree of the High Court of Tanzania, Commercial Division, at Dar es Salaam) Dr. Bwana,J. Commercial Case No. 60 of 2003.	The rationale for the requirement that a decree be signed by the judge who passed the decision is best captured in the case of Robert John Mugo V. Adam Mollel,Civil Appeal No. 2/1990(unreported) where the Court stated that a decree in appeal which is not signed by a judge as required by Order 39 Rule 35(4) invalidates the purported decree and Ndwaty Philemon Ole Saibul,Civil Appeal No.68/1998(unreported). The Court said that, the Judge who decided the case or appeal is in the best position to ensure that the decree has been drawn in accordance with the judgment.

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MUNUO, J.A., MSOFFE, J.A., And KAJI, J.A.)

CIVIL APPEAL NO. 122 OF 2004

TANZANIA REVENUE AUTHORITY ..... APPELLANT
VERSUS
NJAKE ENTERPRISES LIMITED ..... RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania, Commercial Division, at Dar es Salaam)

(Dr. Bwana, J.)

dated the 10th day of May, 2004
in

Commercial Case No. 60 of 2003

RULING OF THE COURT

30 May & 14 June 2006

MSOFFE, J.A.:

The appellant, Tanzania Revenue Authority, through the services of Mr. F. K. Haule, learned advocate, has brought this appeal against the decision of the High Court of Tanzania (Commercial Division) in Commercial Case No. 60/2003 dated 10/5/2004 in which Dr. S. J. Bwana, J. declared that the seizure by the appellant's employees of the respondent's truck No. TZT 7155 and trailer No. TZT 7206 at Chalinze on 21/5/2003 was unlawful; and accordingly the said court proceeded to order (a) damages for loss of use (b) refund of insurance costs for the vehicle (c) interest, and (d) costs.

When the appeal was called on for hearing Mr. Mkoba, learned advocate for the respondent, canvassed a preliminary objection containing two points notice of which was lodged earlier on in line with the provisions of Rule 100 of the Court of Appeal Rules, 1979. The objection, as is relevant, reads as follows:-

(1) The Record of Appeal is defective by containing a decree which offends the mandatory provisions of Order XX Rule 7 of the Civil Procedure Code, Cap 33 R.E. 2002 and Rule 89 (1) of the Tanzania Court of Appeal Rules, 1979, GN No. 102 of 28th September 1979.

(2) The appellant did not comply with the mandatory provisions of Rule 90 (1) of The Tanzania Court of Appeal Rules, 1979, GN No. 102 of 28th September 1979.

Without wasting time Mr. Haule readily conceded that the decree is invalid for non-compliance with the above stated provision in that it was not signed by the judge who passed the decision. However, he went on to say that he is not to blame because being based in Mwanza it was not easy for him to have easy and ready access to the record of proceedings, read it, and rectify any defect before filing the record or before the hearing of the appeal. He accordingly prayed that he be given time to re-institute the appeal after obtaining a properly signed decree. Mr. Mkoba objected to the

request and urged that the appellant Authority has a legal services department based in Dar es Salaam which could have easily taken steps to rectify the record long before the appeal was called on for hearing. He accordingly invited us to strike out the appeal with costs. Having said so, Mr. Mkoba abandoned the second point of the above objection.

Order XX Rule 7 of the Civil Procedure Code, 1966, under which the first point of the objection is based, reads as follows:-

> 7. The decree shall bear date the day on which the judgment was pronounced, and, when the judge or magistrate has satisfied himself that the decree has been drawn in accordance with the judgment, sign the decree.

In the instant case, there is no doubt that the decree is invalid because it was not signed by the judge who passed the judgment. And needless to say, we may add here that rule 7 above is couched in mandatory terms. In a number of cases we have held that an appeal is rendered incompetent where a decree is not signed by the

judge who passed the decision. See for instance, **Tanganyika Cheap Store v. National Insurance Corporation (T) Limited,** Civil Appeal NO. 37/2001 (unreported) and **Dr. Masumbuko R. M. Lamwai v. (1) Venance Francis Ngula (2) The Attorney General,** Civil Appeal No. 56/1997 (unreported).

The rationale for the requirement that a decree be signed by the judge who passed the decision is best captured in the observations made by this Court in **Robert John Mugo** (Administrator of the Estates of the late John Mugo Maina) **v. Adam Mollel,** Civil Appeal No. 2/1990 (unreported) and **Ndwaty Philemon ole Saibul,** Civil Appeal No. 68/1998 (unreported). In **Mugo** this Court stated:-

> "We also agree that a decree in appeal which is not signed by a judge as required by Order 39 Rule 35 (4) invalidates the purported decree. This is because such signature by a judge is mandatorily required and it authenticates the decree.
> (Emphasis supplied).

And in **Saibul** the Court said as follows:-

> "The requirement that a decree must be signed by the judge who made the decision is rooted in sound reason, namely, that the judge who decided the case or appeal is in the best position to ensure that the decree has been drawn in accordance with the judgment".
> (Emphasis supplied).

Admittedly, **Mugo** and **Saibul** were referring to decrees under Order 39 Rule 35 (4). However, with respect, the same reasoning applies to decrees under Order XX Rule 7.

Mr. Haule has, as earlier stated, pleaded with us that he be given time to rectify the defect essentially because he is not to blame since he is based in Mwanza and there was nothing he could do before the appeal was called on for hearing. With respect, we do not accept this alleged excuse. The fact that he is based in Mwanza is inconsequential because, as correctly stated by Mr. Mkoba, someone else in the appellant's legal services department could have easily taken steps to rectify the record before the appeal was scheduled for hearing.

We are aware that in a number of previous cases we allowed defaulting parties to rectify records and re-institute appeals. However, as we stated in **Tanzania Sewing Machines Company Limited v. Njake Enterprises Limited,** Civil Appeal No. 28/2004 (unreported), each case has to be considered on its own merit. In the instant case, as shown above, the excuse given by Mr. Haule does not appeal to us. In other words, it does not really find purchase with us. We think this is a case where we should take a hard line approach in responding to the request put forward by Mr. Haule. We may add and say here that we find no justification in acceding to Mr. Haule's request after having given, in the past, a warning and an advice to defaulting parties. For example, in the case of **Managing Director Tanga Cement Company Limited v. (1) Jumanne D. Masangwa (2) Amos A. Mwalwandwa,** Civil Appeal No. 62/2003 (unreported) we sounded the following warning:-

> "**...** As we stated in **Tanganyika Cheap Store** Mugo's case (see *Civil Appeal No. 2/1990) (unreported))* was a wake up call. Yet, in a number of cases non-compliance

> with the above mandatory requirements has continued over the years. We hope the failure to comply with the requirements will not persist thereby forcing us to make a final wake up call. We are anxious that the court will not, in future, be put in a situation of having to re-consider its position regarding invitations to re-institute appeals caught up by the above failure."

And in the case of **NBC Holding Corporation v. (1) Mazige Mauya (2) Mwanahamisi M. Bilali,** Civil Appeal No. 36/2004 (unreported) we gave the following advice:-

> "With regard to pending appeals not yet scheduled for hearing, parties would be well advised to resort to rule 92 (3) of the Court of Appeal Rules, 1979, to rectify defects and regularize the same in conformity with the law."

We wish to pause and observe here that the decision in **Tanga Cement** was given on 3/6/2005, and the one in **NBC Holding Corporation** was also given on the same date. Yet, the warning and advice do not appear to have been heeded to, and acted upon,

by certain parties. Surely, we expected that a year later the warning and advice would have been taken seriously by defaulting parties.

In the event, for the above reason, the appeal is incompetent for want of a valid decree. It is accordingly struck out with costs.

DATED at DAR ES SALAAM this 9th day of June, 2006.

E. N. MUNUO
JUSTICE OF APPEAL

J. H. MSOFFE
JUSTICE OF APPEAL

S. N. KAJI
JUSTICE OF APPEAL

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

(S. M. RUMANYIKA)
DEPUTY REGISTRAR