

<p>In the Court of Appeal of Tanzania at Dar es Salaam Civil Appeal No 62 of 2004 Kaji, J.A</p>	<p>MAHALD ABDULLAHINUR VS. MOHAMED JAMA YUSUF (An appeal from the judgment of the High court of Tanzania at Dar es Salaam) by W.P.Kimaro)</p>	<ul style="list-style-type: none"> <li>- Consequences of a decree for the High Court of Tanzania signed by the Registrar/Deputy Registrar.</li> <li>- Order xx Rule 7 of the CPC</li> <li>- Case of Robert Mugo VS. Adam Mollel Civil Appeal No.2 of 1990 (Unreported)</li> <li>- Tanganyika cheap store VS. National Insurance Corporation (T) Civil Appeal No. 37 of 2001 (Unreported).</li> <li>- Ratification of defects in terms of Rule 92 (3) of the Court of Appeal Rules.</li> <li>- Case of Anjum Vicar Saleem Abdi Vs. Naseem Akhtar Zangie.</li> <li>- Case of NBC Holding Corporation Vs. 1. Mazige Mauya 2. Mwanahamis M. Bilal.</li> </ul>
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**IN THE CIVIL APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: MROSO, J. A. KAJI, J, A. AND KALEGEYA , J. A,)**

**CIVIL APPEAL NO 62 OF 2004**

**MAHAD ABDULLAHI NUR..... APPELLANT**

**VERSUS**

**MOHAMED JAMA YUSUF.....RESPONDENT**

**(Appeal from the judgment of the Court of  
Tanzania at Dar es Salaam)**

**(N. P. Kimaro, J.)**

**Dated 3<sup>rd</sup> day of March, 2004  
in  
Commercial Case No. 190 of 2001**

**RULING OF THE COURT**

6<sup>th</sup> August, 2007 & 12<sup>th</sup> September, 2007

**KAJI, J, A.**

On 3<sup>rd</sup> March, 2004 the High Court at Dar es Salaam, Commercial Division (Kimaro, J, as she then was) in commercial case No. 190 of 2001, made a decision in favour of the respondent, Mohamed Jama Yusuf which aggrieved the appellant, Mahad Abdullah Nuru.

On 30<sup>th</sup> April, 2004 the appellant, through his advocates Marando, Mnyele & Co. Advocates, lodged this appeal against the decision.

On 19<sup>th</sup> September, 2006, the appellant's advocates discovered that the decree filed in the record of appeal was signed by the

Deputy Registrar instead of the learned trial judge or his successor in office as required by Order xx Rule 7 of the Civil Procedure Code.

By a letter Ref No. MM/2006/ 62/1 dated 19<sup>th</sup> September, 2006 the appellant's advocates requested the Registrar of the Commercial Court to supply them with a properly signed decree to enable them file a supplementary record with a properly signed decree. They were not supplied with any. According to Mr. Marando, learned counsel, they made several physical follow ups but on each occasion they were promised to be supplied when available. He said they made their last attempt by way of a letter on 30/ 7/ 2007 which he showed the Court in a draft form. Up to 6<sup>th</sup> August, 2007 when the appeal was called on for hearing the appellant had not yet been supplied with the decree applied for. Mr. Marando applied for an adjournment to allow him time to obtain the required decree to enable him file a supplementary record. Mr. Magesa, learned counsel for the respondent, resisted the appellant's prayer for adjournment on the ground that, since the purported appeal was filed without a properly signed decree, it is incompetent and should be struck out with costs.

The learned counsel pointed out that there is no appeal to be adjourned.

In a brief rejoinder Mr. Marando contended that, the Commercial Court was also to blame for supplying them with a defective decree. The learned counsel observed that, even this Court, in the past had all the time treated such decrees as quite in order until in the **Mugo** case – **Robert Mugo V Adam Mollel – Civil Appeal** No. 2 of 1990 ( unreported), and more recently in the case of **Tanganyika Cheap Store V National Insurance Corporation( T)** – Civil Appeal No. 37 of 2001 (unreported). Mr. Marando pointed out that when they discovered the defect they took corrective measures immediately and that it was only too bad that the Commercial Court failed to meet their request.

On our part we think, it is now settled, although with some reservations, that a decree of the High Court exercising original jurisdiction, signed by a Registrar, offends Order xx Rule 7 of the Civil Procedure Code which requires a decree to be signed by the trial

judge or his successor in office. This observation was made by the Court in the Tanganyika Cheap Store case, cited above, on 27<sup>th</sup> January, 2005. Since then there have been many decisions by the Court on the matter whereby in some cases appeals with decrees signed by a Registrar were held to be incompetent and were struck out. But in some cases such appeals were not struck out but appellants were given time to amend the records of appeal. For instance in the case of **Anjum Vicar Saleem Abdi V Naseem Akhtar Zangie**, Civil Appeal No. 73 of 2003 (at Arusha) (unreported) where the respondent raised a preliminary objection that the extracted decree from the decision of the High Court at Moshi in Civil Case No. 20 of 2001 was invalid for being signed by the Deputy Registrar instead of the trial judge or her successor in office and prayed for the appeal to be struck out, the Court said:-

*".....We uphold the preliminary objection and hold that the decree is invalid. As in the previous instances we do not strike out the appeal but allow the appellant to amend the record of appeal. The appellant is*

*given thirty days to do so from the delivery of this ruling."*

This was on 17<sup>th</sup> November, 2005. But in the case of **NBC Holding Corporation V 1. Mazige Mauya 2. Mwanahamisi M. Bilali**, Civil Appeal No. 36 of 2004 in a similar situation of a decree signed by the Deputy Registrar the Court had this to say:-

*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.*

Admittedly this was a decree on appeal falling under the ambit of order xxxix Rule 35 (4) of the Civil Procedure Code; but we think, under the principle of parity, it covers also decrees of the High Court exercising its original jurisdiction as provided for in Order xx Rule 7 of the Civil Procedure Code. Currently that is the position adopted by the Court.

We would only emphasize that where an appellant wishes to rectify a defective decree and regularize the same in conformity with the law, he may only do so before the appeal is cause listed for hearing and before a preliminary objection to the same has been lodged.

In the instant case the appellant's advocate discovered the defect in the decree and immediately started taking corrective measures before the appeal was scheduled for hearing and before any preliminary objection on the same had been lodged. In fact even on 6/ 8/ 2007 when the appeal was called on for hearing there was no notice of preliminary objection which had been lodged by the respondent. In the circumstances, we think, it will be in the interest of justice if the adjournment prayed for is granted to allow the appellant time to rectify the defect in the decree and regularize the same in conformity with the law. Hearing is adjourned till when fixed. Costs of the adjournment in the cause.

DATED at DAR ES SALAAM this 12<sup>th</sup> day of September, 2007.

J. A. MROSO  
**JUSTICE OF APPEAL**

S. N. KAJI  
**JUSTICE OF APPEAL**

L. B. KALEGEYA  
**JUSTICE OF APPEAL**

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

I.P. KITUSI  
**DEPUTY REGISTRAR**