

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPEAL NO. 54 OF 2013

(CORAM: OTHMAN, C.J., MASSATI, J. A. And, MUGASHA, J. A.)

SBC TANZANIA LIMITED.....APPELLANT

VERSUS

COMMISSIONER GENERAL OF
TANZANIA REVENUE AUTHORITY..... RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals
Tribunal at Dar es Salaam)

(Chairman, Shangwa, J.)

dated the 06th day of February, 2007
in
Revenue Tax Appeal No. 19 of 2006

RULING OF THE COURT

16th February, & 22nd August, 2016

OTHMAN, C.J.

In view of the record of appeal, in which is attached a copy of the decree signed *only* by the Chairman of the Tax Revenue Appeals Tribunal, the point of law raised by the Court, *suo motu*, was whether or not the decree was proper or defective, respectively, rendering the appeal, competent or incompetent.

Mr. Felix Haule, learned Advocate for the respondent squarely relying on **Midcom Tanzania Limited v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 13 of 2011 and **Mbeya Intertrade Company Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 68"A" of 2010 (All CAT, unreported) submitted that as required under Rule 21 of the Tax Revenue Appeals Tribunal Rules, 2011 (the Rules) the decree contained in the record of appeal should have been signed by all members of the Tribunal who heard the appeal. As it was *only* signed by the Chairman, it was defective, rendering the appeal incompetent. He invited us to strike it out with costs.

In reply, Mr. Wilbert Kapinga, learned Advocate for the appellant submitted that the appellant was appealing against both the decision and decree of the Tribunal. That Rule 21 did not require that the decree be signed by the members. It only required the decision to be signed by them. **Midcom Tanzania Ltd.** and **Mbeya Intertrade Company the Ltd.** **cases** were clearly distinguishable as they concerned non-compliance with Rule 21 governing decisions. That rule was silent on the signing and certification of a decree by the members.

Mr. Kapinga, however, conceded that it was implied under Rule 23(2) that a decree should be signed and certified by all the members who heard the appeal. The point of law was therefore sustainable under Rule 23(2) and not Rule 21. He yielded that the decree having been signed *only* by the Chairman, was defective and it rendered the appeal incompetent.

In view of the application, *mutatis mutandis*, of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 and the Court of Appeal Rules, 2009 to appeals emanating from the Tax Appeals Tribunal to the Court of Appeal, a valid decree of the Tribunal is in our considered view to be crowned with utmost importance as one of the essential documents in an appeal against a decision of the Tribunal. Both Rule 96 (1) (h) and 96 (2) (e) of the Court of Appeal Rules, 2009 lists a decree as one of the primary documents required in a record of appeal. Mr. Kapinga was therefore correct in saying that the appellant was appealing against both the decision and the decree of the Tribunal.

According to section 18(1) of the Tax Revenue Appeals Act, Cap. 408 R.E. 2010 (the Act) proceedings before the Tribunal are judicial proceedings. Rule 14(1) provides that three members of the Tribunal, of whom one shall be Chairman or the Vice Chairman shall constitute the

quorum for the proceedings. Rule 17(3) stipulates that the record of every proceeding of the Tribunal shall be *signed* by the Chairman or Vice Chairman and the members present. The members' joint responsibility for *signing and duly certifying*, is further reinforced in Rule 21 governing a decision of the Tribunal. It reads:

"Rule 21. After the conclusion of the hearing of the evidence and submissions of the parties the Tribunal shall, as soon as practicable, make a decision in the presence of the parties or their advocates or representatives and shall cause a copy duly signed and certified by the members of the Tribunal which heard the appeal to be served on each party to the proceeding" (Emphasis added).

Rule 23 on execution of a decision of the Tribunal states:

"23 (1) The decision of the Tribunal shall be enforced by making application to the Tribunal which shall issue a decree or order authorizing execution. (Emphasis added).

In **Midcom Tanzania Limited** and **Mbeya Intertrade Company Limited cases** the Court read into Rule 21 the requirement that as in the case of the decision, the order or decree of the Tribunal must equally be signed by the members who heard the appeal. When we asked Mr. Kapinga whether he was inviting us to depart from those decisions, he chose instead to bank on Rule 23(1) on the defectiveness of the decree, which he graciously admitted. Going by those decisions, which form precedent, we find that the decree signed *only* by the Chairman was invalid in terms of Rule 21.

Furthermore, considering the scheme of the Act, the entire reading of the relevant Rules and adopting a purposive approach to the interpretation of Rule 23(1), in our respective view, the framers of the Rules could only have intended that the persons vested with authority to sign the decree that is to be issued by the Tribunal thereunder was meant to be the members who heard the appeal.

Both section 3 of the Act and Rule 3 defines the Tribunal as "the Tax Appeals Tribunal established under section 8 (1)". That section provides: "There shall be established a Tribunal to be known as the Tax Appeals Tribunal". Rule 3 defines a member of the Tribunal as the Chairman, Vice

Chairman and the members of the Tribunal appointed in accordance with section 8(2) of the Act, (See also section 3 of the Act). It is the members prescribed under section 8(2) who compose the Tribunal and who have jurisdiction to hear and determine appeals. In our considered view, that they were the ones intended to sign a decree arising from their own decision and issued by the Tribunal under Rule 23(1) also as a matter of construction flows from an equal prior duty that they have to *sign* the records of every meeting of the Tribunal under Rule 17(3), to *sign* the decision in which they heard the appeal under Rule 21, as well as the decree or order thereof as held by the Court in **Midcom Tanzania Limited and Mbeya Intertrade Company Limited cases**.

Another reason fortifies our views. Borrowing from the Civil Procedure Code, Cap. 33 R.E. 2002, which according to section 24(3) of the Act read together with Rule 23(2) applies to the execution of a decree of the Tribunal, in our considered opinion, the signing of the decree by the members of the Tribunal who heard the appeal rests on sound reason as they are the best persons to ensure that the decree has been drawn up in accordance with the decision they rendered under Rule 21(See, **Ndwaty**

Philemon Ole Saubul v. Solomon Ole Saibul, Civil Appeal No. 68 of 1998 (CAT, unreported).

As pertinently stated by the learned authors, B.M. Prasad and M. Mohan, in **THE MLJ, MANUAL OF THE CIVIL PROCEDURE CODE**, Vol I, 15th Ed.p.30:

"Unless and until decree is formally drawn up in terms of the Judgment, there can neither be an appeal nor execution".

Before we conclude and given the issues raised, in our respectful view, the Rules, promulgated in 2001 urgently need to be updated and revised, in particular on the signing and certification of the proceedings, decision, decree or order of the Tribunal; the delegation of some of the judicial functions of the members to the Registrar; and the certification of the instruments and records of the Tribunal. Moreover, they also need to be closely harmonized with the Appellate Jurisdiction Act and the Court of Appeal Rules.

In the result and for the above reasons, we are constrained to find which we hereby do, that the decree in the record of appeal is defective,

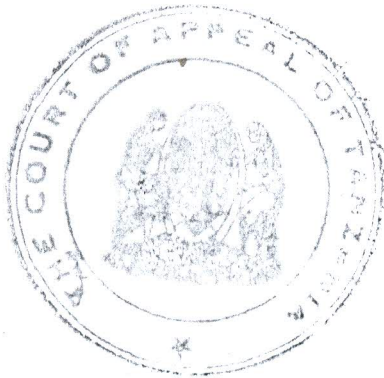
which renders the purported appeal incompetent. Accordingly, we uphold the point of law raised and proceed to strike out the appeal.

As the point of law was raised by the Court, *suo motu*, we make no order as to costs.

Ordered accordingly.

DATED at **DAR ES SALAAM** this 23rd day of February, 2016.

M. C. OTHMAN
CHIEF JUSTICE



S. A. MASSATI
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to be "J. R. Kahyoza", written over a horizontal line.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL