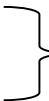


**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MSOFFE, J. A, KILEO, J. A. And KIMARO, J. A.)

CIVIL APPEAL NO 30 OF 2006

| | | |
|---|---|-------------------------|
| 1. UNIAFRICO LIMITED 2. KARIM KANJI 3. MINAZ KANJI |  | APPELLANTS |
|---|---|-------------------------|

VERSUS

EXIM BANK (T) LIMITED.....RESPONDENT

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

(Dr. Bwana, J.)

Dated 7th day of October, 2005

in

Commercial Case No. 60/2004

RULING OF THE COURT

2 & 26 November, 2007

MSOFFE, J. A.:

When the appeal was called on for hearing, Mr. Lugano Mwandambo, learned counsel for the respondent Bank, submitted on the preliminary objection, notice of which had been given in terms of Rule 100 of the Court of Appeal Rules, 1979.

The thrust of the preliminary objection is that the appeal is incompetent in that it is accompanied by a defective copy of the decree. Mr. Mwandambo urged before us that while the judgment was delivered on 7/10/2005 the decree was signed on 27/10/2005. This contravenes the provisions of **Order XX Rule 7 of The Civil Procedure Code, 1966** prescribing that the decree shall bear the date of the day on which the judgment was pronounced. In consequence Mr. Mwandambo invited us to strike out the appeal, citing this court's decisions in **Ami (Tanzania) Limited v Ottu on behalf of P. L. Assenga and 106 Others**, Civil Application No. 76 of 2002 (unreported), **M/S Majembe Auction Mart v Charles Kaberuka**, Civil Appeal No. 110 of 2005 (unreported), and **Mkama Pastory v Tanzania Revenue Authority**, Civil Appeal No. 95 of 2006 (unreported).

For the appellants, Mr. Mabere Marando, learned counsel, appeared. He submitted in support of Mr. Mwandambo that the dates of pronouncement of the judgment and signature in the decree

differ. He invited us however, to give the provisions of **Order XX Rule 7 of The Civil Procedure Code, 1966** a “further interpretation” and hold that a decree is not vitiated merely because the date of pronouncement of a judgment differs from the date of signature. In his view, an appeal should not be struck out simply because of the difference in the dates of pronouncement of a judgment and the signature in a decree. In elaboration, he carried us through a number of definitions of the words “bear”, “date” and “date of issue” as defined in **Black’s Law Dictionary** Sixth Edition and **Mulla on the Code of Civil Procedure** Fourteenth Edition, respectively.

We wish to begin by stating a number of principles relating to a decree. **Section 28 of The Civil Procedure Code** (Cap 33 R. E. 2002) (hereafter the code) provides:-

28. The court, after the case has been heard,
shall pronounce judgment, and **on such
judgment a decree shall follow.**

(Emphasis supplied)

Under the above section it is imperative that a decree must follow the judgment. Since under **Section 3** of the Code, a decree is “the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit,” it follows that a decree must be drawn and signed **after** the judgment has been pronounced.

In terms of **Order XX Rule 6** of the Code, the decree shall agree with the judgment. It must correctly state what is really decided and intended by the Court. Since the decree must agree with the judgment, the date of the decree must be that of the judgment.

With the above principles in mind, we now wish to address **Order XX Rule 7** of the Code. It reads:-

7. The decree shall bear the date of the day on which the judgment was pronounced and, when the Judge or magistrate has satisfied

himself that the decree has been drawn up in accordance with the judgment he shall sign the decree.

Under the Rule, it is clear that a decree must unambiguously set out the date on which the judgment was given. So, the decree must bear the same date as the judgment. The date of the decree is the date on which judgment was delivered - See **Sarkar on Civil Court Practice Procedural Manual**, Tenth Edition, at page 205. The date is important for purposes of limitation because the period of limitation for an appeal from a judgment runs from the date on which it was pronounced. It is no wonder **Section 6 (j)** of the **Law of Limitation Act** (Cap 89 R. E. 2002) provides:-

“in the case of an appeal the right of action shall be deemed to have accrued on the **date** on which the **judgment**, decision, award, **decree** or order appealed against was delivered, passed or made.”

(Emphasis supplied)

So, since a decree must agree with the judgment it will follow that the date of decree under **item (j)** of the above section must be the date of judgment.

Mulla, The Code of Civil Procedure Code, Seventeenth Edition, **Volume 2** by B. M. Prasad, at page 884 commenting on **Order XX Rule 7 of The Code of Civil Procedure Act V of 1908** (which is in *pari materia* with our Order XX Rule 7) underscored the importance of the date of a decree. He said:-

“Under this rule, the decree comes into existence on the date of the judgment, though it is signed later. A decree comes into existence as soon as the judgment is pronounced and not on the day when it is signed and sealed later. The expression “date of the decree” does not mean the date when it is reduced in writing and signed, but the date on which the judgment is actually delivered. For the purpose of appeal, time

runs from the date of pronouncement of the judgment. However, the time requisite for obtaining copy is excluded”.

We think that the above statement is the correct position in law. Put in a different way, the decree should be drawn in such manner that it must be taken to have been prepared on the date of judgment.

At this juncture we think it is important to observe that **Order XX Rule 7** of the Code provides for the **date of the decree**. It does not provide for the **date of signing the decree**. In effect this means that a decree must be drawn in such manner that it bears the date of the decree and once this is done it is signed later. That is to say, it is signed later on the same date of the decree if possible or on another date which does not have to feature in a decree.

In this case, as already observed, the judgment against which the appeal is brought was pronounced by the High Court on 7/10/2005 but the decree was signed by the judge who gave the

judgment on 27/ 10/2005. The dating and signing of the decree appears under the following words:-

“Given under my hand and the seal of the
Court this 27th day of October 2005.”

Obviously, the date differs from the date the judgment was pronounced thereby offending the requirements of **Order XX Rule 7** to the effect that a decree must bear the same date as the judgment.

There is yet one other point we have to mention here in connection with the date of a decree. Under **Section 101 (3)** of the Code, forms heretofore in use in connection with proceedings under the **Indian Code of Civil Procedure, 1908**, as in force in Tanzania, shall be deemed to be forms approved by the Chief Justice for use in connection with proceedings under our Code until replaced by forms prescribed or approved by the Chief Justice. To the best of our knowledge, forms under the Indian Code of Civil Procedure have not been replaced by forms prescribed or approved by the Chief Justice. Thus, a decree form under **Order XX Rules 6 and 7 of the Indian Code of Civil Procedure** reads:-

*DECREE IN ORIGINAL SUIT
(ORDER 20, RULES 6, 7)*

(Title)

Claim for.....
This suit coming on this day for final disposal
before in the presence of
.....for the plaintiff and of
.....for the defendant, it is ordered
and decreed thatand that the sum
of Rs be paid by the
..... to theon account of
the costs of this suit, with interest thereon at
the rate of per cent per
annum from this date to the date of
realization.

Given under my hand and the seal of
the Court, thisday of 19..../20....."

Judge.

For our purposes therefore, a typical decree must be drawn, as far as possible, in conformity with the above form. We may add that the above form has certain features which are important for purposes of a decree in this matter. The first one is the fact that there is only one place in which a date is to be inserted, that is **after** the words "Given under my hand and the seal of the court this." We think this is significant because this means that ideally in a decree the "date of the decree" is the one appearing after the words "Given under my hand and the seal of the court this." In similar vein, it occurs to us that the words "this day" in the decree refer to the date appearing **after** the above words.

In making the above point we are aware that in our jurisdiction there is, quite often, a tendency of inserting dates in **two** different places, that is **after** the words "coming for final disposal before X on" and **after** the words "Given under my hand and the seal of the court this" We are not saying that there is anything seriously wrong in inserting the dates in the two places, although ideally there should be only one date in a decree. We think however

that, where there are two dates inserted in a decree, the dates should be of the same day in both places in order that the "date of decree" retains its true and intended meaning in law.

We wish to add here that since, as already stated, the date of a decree is important for purposes of reckoning time, time cannot therefore, be reckoned if there are two **different** dates in a decree, as is the case in this matter. A proper and valid decree ought to have one date. A decree with two **different** dates will be invalid since it will not be possible to know from which of the two dates time begins to run.

The other feature in the form is the fact that there is no place for inserting the date of issuing the decree. We think this feature is also significant because the date of issuing a copy of the decree does not have to be reflected in the decree. The issuance of a decree is more of an administrative function than a legal one. In fact, the date of issuing a decree is not a requirement under **Order XX Rule 7** of the **Code**. It is important to make this point because there is always

a tendency of confusing between the date of signing the decree and the date of issuing the decree.

In this case therefore, 27/10/2005 cannot be the date of the decree because the judgment was not pronounced on that day. The judgment was pronounced on 7/10/2005. This is the date which ought to have been reflected in the decree.

As stated above, the date of a decree is important not only in reckoning time for an appeal but also for purposes of period of limitation in an application for setting aside an *ex parte* decree. Furthermore, the right to execute a decree accrues from the date it is pronounced, not on the day it is signed. Therefore, a decree which does not bear the date when the judgment was pronounced is invalid. It follows that an appeal to this Court which does not contain a correctly dated decree will not have complied with the requirements of **Rule 89 (1) (a)** of the **Court of Appeal Rules, 1979**. The Rule requires that for proposes of an appeal from the

High Court in its original jurisdiction, the record of appeal shall contain, among other documents, a copy of the decree or order.

The appeal before us does not therefore, contain a copy of a valid decree. Where the record of appeal lacks a valid decree the consequence is drastic but inevitable. We sustain the respondent on the preliminary objection and strike out the appeal with costs.

DATED at DAR ES SALAAM this 18th day of November, 2007.

J. H. MSOFFE
JUSTICE OF APPEAL

E. A. KILEO
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

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

F. L. K. WAMBALI
SENIOR DEPUTY REGISTRAR