

IN THE COURT OF APPEAL OF TANZANIA
AT OAR ES SALAAM

(CORAM: MSOFFE, J.A., LUANDA, J.A., And MASSATI, J.A.)

CIVIL APPEAL NO. 32 OF 2007

SBC TANZANIA LIMITEDAPPELLANT

VERSUS

THE COMMISSIONER GENERAL OF
TANZANIA REVENUE AUTHORITY RESPONDENT

(Appeal from the judgment and Decree of the Tax Revenue
Appeals Tribunal of Tanzania at Oar es Salaam)

(Shangwa, J.)

dated the 6th day of February, 2007

in

Revenue Tax Appeal No. 19 of 2006

RULING OF THE COURT

3 & 9 July 2012

MASSATI, J. A:

The appellant was aggrieved by the decision of the Tax Revenue Appeals Tribunal of Tanzania sitting at Dar es Salaam, dated 6th February, 2007, and filed an appeal in this Court on the 5th April, 2007. The respondent resists the appeal. On 22/3/2010

he filed a notice of preliminary objection, as to the competency of the appeal.

The Preliminary Objection had two limbs; namely:

- a) Non compliance with Rule 21 of the Tax Revenue Appeals Tribunal Rules, 2001 GN 56 of 2001.
- b) Non compliance with Rule 83(2) of the Tanzania Court of Appeal Rules, 1979.

However, in the course of hearing of the said preliminary objection, the respondent abandoned the second limb of the objection.

At the hearing of the appeal Dr. Wilbert Kapinga, learned counsel appeared for the appellant, and Mr. Felix Haule learned counsel represented the respondent.

Mr. Haule's submission on the first and remaining preliminary objection was that the judgment of the Tax Appeals Tribunal was

not certified by all the members of the Tribunal, but by only the Chairman. His view was that, this was contrary to Rule 21 of the Tax Revenue Appeals Tribunal Rules, 2001, (GN 56 of 2001). As the rule was couched in mandatory terms, its contravention was fatal, he argued. Mr. Haule cited to us the decision of this Court in **AMI PORT OPERATIONS (T) LIMITED v THE COMMISSIONER FOR INCOME TAX**, Civil Appeal No. 28 of 2005 (unreported) on the point.

Dr. Kapinga, initially resisted the preliminary objection, but on reflection, he later conceded to it, and prayed that the appeal be struck out.

There is no dispute that the judgment of the Tax Revenue Appeals Tribunal of 6/2/2007 that is on record, is signed by the Chairman and two other members of the Tribunal, but certified only by the Chairman. Rule 21 of the Tribunal Rules, provides:

*"After conclusion of the hearing of the evidence and the 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 embers of the Tribunal** which heard the appeal to be served on each party to the proceeding"*
(emphasis supplied)

As this Court observed in **AMI PORT OPERATIONS (T) LIMITED** case (supra) the law therefore requires all members of the Tribunal, not only to sign, but also to certify the copy of the decision, and that the omission affected the validity of the copy of the judgment which appeared in the record of appeal.

Mr. Haule is therefore on firm grounds; that the copy of the judgment contained in the record of appeal was faulty. As we held in the **AMI PORT** case, the defective copy of the judgment has the effect of infecting the record of appeal, because Rule

89(2) (iv) of the then Court of Appeal Rules, 1979 required that the record of appeal contain a:

"judgment or order"

from which an appeal is sought. It is implicit that such a copy of judgment or order should be a valid one. As the copy of the judgment in the present appeal is not valid, it follows that the record of appeal is also incurably defective. The appeal is therefore incompetent.

In the result, we uphold the preliminary objection, and proceed to strike out the appeal with costs.

DATED at **DAR ES SALAAM** this 4th day of July, 2012.

J.H. MSOFFE
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

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

(M.A. MALEWO)
DEPUTY REGISTRAR
COURT OF APPEAL