

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

(CORAM: MSOFFE, J.A., BWANA, J.A., And MANDIA, J.A.)

CIVIL APPEAL NO. 76 OF 2008

**YUSUFU ZZIWA APPELLANT
VERSUS
TANZANIA INTERNATIONAL CONTAINER**

TERMINAL SERVICES LIMITED1ST RESPONDENT

COMMISSIONER GENERAL TANZANIA REVENUE AUTHORITY2ND RESPONDENT

BASIC INTER REGIONAL LTD3RD RESPONDENT

**(Appeal from the judgment and decree of the
Tax Revenue Appeals Tribunal
at Dar es salaam)**

(Shangwa, J.)

Dated 28th day of March, 2008

In

Tax Appeal Case No. 10 of 2007

RULING OF THE COURT

17th Sept & 16th October, 2014

MANDIA, J.A.:

On 28th March, 2008, the Tax Revenue Appeals Tribunal sitting at Dar es Salaam delivered a judgment in Appeal No. 10 of 2007 in which it allowed the appeal and quashed the decision of the Tax Revenue Appeals Board in Customs and Tax Appeal No. 1 of 2007. The tribunal panel, comprising of the Chairman (A. Shangwa, J.) and members Mr. D. Kinabo and Mrs. N. Mbise signed the judgment but did not certify it. The certification was

done by the Registrar of the Tribunal who impressed, on the last page of the judgment, the official stamp showing that the judgment was the certified and true copy of the judgment delivered.

On 3rd April, 2008, the appellant lodged a Notice of Appeal against the judgment of the Tax Revenue Appeals Tribunal. Thereafter the appellant lodged a memorandum of appeal which is dated 17th July, 2008.

On 3rd April, 2014, Mr. August Mrema, learned advocate representing the first respondent, lodged a Notice of Preliminary Objection containing two grounds of objection. When the appeal was called upon for hearing Mr. August Mrema abandoned the second ground of objection and argued the first ground only, the substance of which is that the appeal is incompetent for failure to comply with Rule 21 of the Tax Revenue Appeals Tribunal Rules, 2001 (GN No. 56 of 2001). The essence of the argument by Mr. August Mrema, is that under Rule 21 of the Rules, the judgment of the Tribunal is required to be signed and certified by the members of the

tribunal which heard the appeal, and that failure to sign and certify the judgment renders it defective, which also renders the appeal defective for non-compliance with Rule 96(1) (g) of the Court of Appeal Rules, 2009. He relied on the authority of this Court in **SBC Tanzania Limited versus The Commissioner General of the Tanzania Revenue Authority**, Civil Appeal No. 32 of 2007 (unreported). Mr. Juma Salim Beleko, learned advocate representing the second respondent, supported the preliminary objection, as did Mr. Melkizedeck Lutema, learned advocate representing the third respondent.

In reply to the preliminary objection, Mr. Martin Matunda, learned advocate representing the appellant, admitted the fact that the judgment being appealed from has been signed by the members but has not been certified by them. He however argued that the Court should follow the reasoning of this Court in the case of **SAMSON NGW'ALIDA versus THE COMMISSIONER GENERAL, TANZANIA REVENUE AUTHORITY**, Civil

Appeal No. 86 of 2008 (unreported), where this Court invoked Article 107A (2) (e) of the Constitution of the United Republic of Tanzania as well as Rule 2 of the Court of Appeal Rules, 2009, and held thus:-

"Reading Rule 21 of GN 56 of 2001 in the light of Rule 2 of the Court of Appeal Rules 2009 in conjunction with Article 107A (2) (e) of our Constitution leads us to the settled mind that the fact that it was the Registrar who certified that the copy of the decision was a true copy of the original did not occasion a miscarriage of justice and for this reason we would not find the appeal before us to be incompetent. It would have been different if there was a complaint that the copy of judgment in the record did not reflect a true copy of the original.

The Preliminary objection is in the circumstances overruled. The appellant is directed to obtain and file in the record a properly certified copy of judgment. This is to be done within two weeks of the delivery of this decision. The appeal is to be fixed for hearing on a date to be fixed by the Registrar. Each party shall bear its own costs”.

For ease of reference, we reproduce Rule 21 of the Tax Revenue Appeals Tribunal Rules, 2001 (GN 56 of 2001) which reads as follows:-

*"21. After conclusion of the hearing of the evidence and submission 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 proceedings”(emphasis ours).

The underscored words show that the signing and the certifying of the decision of the Tribunal are two statutory functions which go together and cannot be separated. In other words, the signing must be construed *ejusdem generis* the certifying, and both mandatory functions are placed in the hands of the members of the Tribunal. In its plain and ordinary meaning, Rule 21 does not allow for the separation of the two statutory functions, and does not also allow for delegation of any of the two functions to anybody or person outside the members of the Tribunal. Viewed thus, we would therefore find that the **SAMSON NG’WALIDA** decision is per incuriam the explicit provisions of Rule 21 and therefore distinguishable. We would also hold that Rule 2 and Article 107A (2) (e) of the Constitution cannot come in aid in circumstances where there is an obvious breach of a statutory duty. We therefore adopt our reasoning in **SBC TANZANIA**

**LIMITED versus THE COMMISSIONER GENERAL OF TANZANIA
REVENUE AUTHORITY,** Civil Appeal No. 32 of 2007 (unreported) and
DTP TERRASSMENT versus COMMISSIONER GENERAL (TRA) Civil
Appeal No. 111 of 2008 (unreported), and uphold the preliminary objection.
We accordingly strike out the appeal with costs.

DATED at **DAR ES SALAAM** this 2nd day of October, 2014.

J.H. MSOFFE
JUSTICE OF APPEAL

S.J. BWANA
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

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

E. Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL