

**IN THE HIGH COURT OF TANZANIA**  
**AT MOSHI**  
**(DC) CIVIL APPEAL NO. 20 OF 2005**  
**[ORG. DC SAME CIVIL CASE NO.2/2005]**  
**RASULI RAMADHANI ----- APPELLANT**  
**VERSUS**  
**THE REGISTERED TRUSTEES OF THE**  
**APOSTOLIC LIFE COMMUNITY OF PRETS**  
**IN THE OPUS SPIRITUS SANCTI ---- RESPONDENT**

**R U L I N G:**

**HON. JUNDU, J.**

The Appellant, being aggrieved by the Judgment and Decree of the District Court of Same in Civil Case No. 2/2005 appealed to this court. He filed his Memorandum of Appeal on 14<sup>th</sup> November, 2005 accompanied by a copy of Judgment and a copy of the Decree. The Judgment shows that the same was pronounced and delivered on 11/10/2005 while the Decree shows that it was given on 8<sup>th</sup> November, 2005.

On 12/4/2007, this court (Hon. Mwaikugile, J.) ordered the parties to address this court on the competency of the appeal in terms of Order XXXIX rule 1 (1) and Order XX rule 7 of the Civil Procedure Code, Act No. 49 of 1966. Mr. Jonathan, learned counsel for the Respondent in terms of Order XXXIX Rule 1 (1) of the Civil Procedure Code, 1966 argued that the said provision of law mandatorily provides that a Memorandum of Appeal has to be accompanied by a copy of the Decree and that it must be a correct one and that in terms of Order XX rule 7 of the Civil Procedure Code, 1966 it provides that the decree must bear a date the

Judgment was pronounced. He observed that while the date of the Judgment is 11/10/2005 the date of the Decree is 8/11/2005 and that the Decree was not sealed.

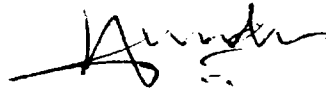
The Appellant being a layman was not in a position to reply to the submission of Mr. Jonathan hence the court ordered the submission of Mr. Jonathan to be typed and copy be given to the Appellant to enable him to seek legal assistance for his intended reply. In his written submission, the Appellant replied that in terms of Order XX rule 7 of the Civil Procedure Code, 1966, copy of the decree to be correct should bear the date on which the Judgment was pronounced and the signature of the Judge or Magistrate and that in the present case the Judgment of the lower court was pronounced on 11<sup>th</sup> October, 2005 and that 8<sup>th</sup> November, 2005 reflected the date the Decree was signed by the trial magistrate. He argued that if the said position does not satisfy this court, then he prayed to this court to apply Order XXXIX rule 1 (1) of the Civil Procedure Code, 1966 to dispense with the need of the decree so that the appeal can be heard on merits.

In his rejoinder submission, Mr. Jonathan, learned counsel for the Respondent maintained that in terms of Rule 7 of Order XX of the Civil Procedure Code, 1966, it mandatorily requires a decree to show the date of pronouncing the Judgment. He contends that the copy of the Judgment in the present appeal shows that the Judgment was pronounced on 11/10/2005 while the copy of the decree wrongly shows that the said Judgment was read on 8/11/2005. He contends that the controlling words in the Decree are the words "Given under my hand and the seal of the court this 8<sup>th</sup> November, 2005". He further contends that as the Judgment shows that it was pronounced on 11/10/2005, therefore the Decree to show that it was "Given" on 8/11/2005, it offends Order XX rule 7 of the Civil Procedure Code, 1966. He further contends that the Appellant did not respond to the objection on Order XXXIX rule 1 (1) of the Civil Procedure Code, 1966 which requires a Memorandum of Appeal to be accompanied by a copy of the decree.

Such a decree according to him must be duly certified to be a true copy of the original. In the present appeal he contends that though the decree at the bottom states that it has the seal of the court, the seal was not annexed or applied at all.

I have carefully considered the submission of the parties on the import of Order XXXIX rule 1 (1) and Order XX rule 7 of the Civil Procedure Code, 1966 in terms of the competency of this appeal. First, it is mandatory in terms of Order XXXIX rule 1 (1) of the Civil Procedure Code, 1966 that a Memorandum of Appeal has to be accompanied by a copy of the Judgment and Decree as submitted by Mr. Jonathan. Indeed, such a decree must be a proper in accordance with the law. Secondly, it is mandatory under Order XX rule 7 of the Civil Procedure Code, 1966 that the decree must bear the date the Judgment was pronounced. Now, in the present appeal, the Memorandum of Appeal was accompanied by copies of the Judgment and Decree. However, the copy of Judgment clearly shows that the same was pronounced on 11/10/2005 while the copy of the Decree shows that the same was given on 8/11/2005. In my considered view the said position of the Decree contravenes the provision of Order XX rule 7 of the Civil Procedure Code, 1966 which mandatorily requires decree to bear the date when the judgment was pronounced. With such a defective decree, it cannot be valid for the purposes of a decree accompanying the Memorandum of Appeal under Order XXXIX rule 1 (1) of the Civil Procedure Code, 1966. I so hold. Much more worse, though the annexed Decree purports to state that it was issued under the seal of the trial court, no such seal was annexed to the said Decree.

In the upshot I hold that the above defects makes the appeal before this court incompetent. The same is hereby struck out with costs. It is so ordered.



**F.A.R. JUNDU**

**JUDGE**

**31/10/2007**

Right of Appeal Explained.



**F.A.R. JUNDU**

**JUDGE**

**31/10/2007**

31.10.2007

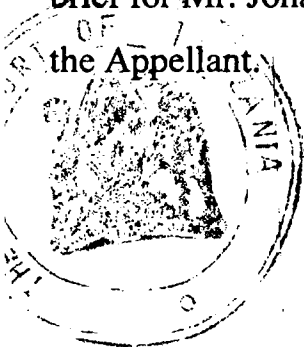
Coram: F.A.R. Jundu, J.

For the Appellant: Absent

For the Respondent: Mrs. Minde, Mr. Jonathan, Advocate.

C/C: Muyungi

**Court:** Ruling delivered in the presence of Mrs. Minde, learned counsel holding brief for Mr. Jonathan, learned counsel for the Respondent and in the absence of the Appellant.



**AT MOSHI**



**F.A.R. JUNDU**

**JUDGE**

**31/10/2007**