

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

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

CIVIL APPEAL NO. 93 OF 2015

**K.C.B. BANK TANZANIA LIMITED..... APPELLANT
VERSUS
THE COMMISSIONER GENERAL TANZANIA
REVENUE AUTHORITY.....RESPONDENT**

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

**(Hon. H. Mataka, Vice Chairman. Prof. J. Doriye,
Member and Mr. W. Ndyetabula Member)**

**Dated 16th day of April, 2015
in
Respect of Tax Appeal No. 12 of 2014**

ORDER OF THE COURT

16th & 23rd February, 2016

MASSATI, J.A.:

When the appeal came up for hearing we had first to contend with a preliminary objection raised by the respondent, notice of which had been filed earlier on 11/2/2016.

The preliminary objection was to the effect that:

" The appeal is bad in law for failure to comply with the requirements under Rule 21 of the Tax Revenue Appeals Tribunals Rules, 2001 (GN 56 of 2001) which required signing and certification of the decision of the Tribunal to the made by all members who heard the appeal".

At the hearing, Mr. Juma Beleko, learned counsel for the respondent, appeared to argue the objection. Mr. Audax Vedasto learned counsel holding brief for Mr. Gaudias Ishengoma, learned counsel appeared for the appellant.

Fortunately, Mr. Mr. Vedasto did not contest the preliminary objection. He readily conceded to it and prayed that the appeal being incompetent be struck out, with no order as to costs. On his part put Mr. Beleko, agreed that the incompetent appeal be struck out with no order as to costs.

Rule 21 of the Tax Revenue Appeals Tribunal, Rules, 2001 (the Rules) is worded as follows:

" After conclusion of the hearing of the evidence and submission of the parties the Tribunal shall, as soon as is 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"

In this case, the decision of the tribunal titled "Judgment", appears on pages 157 to 161 of the record. This is no doubt a copy of the decision. At page 161 beside each member's name the signal "**Sgd**" is indicated. We do not think that the signal "**Sgd**" beside each member's name is sufficient evidence that the said members did sign at the end of the decision. We believe that the purpose of requiring the members in the tribunal to sign the decision is not only to authenticate, but also for the said members to own the said decision. This lofty legislative intention could hardly be achieved if the signal "**Sgd**" could be accepted to stand for the members' full signature. This is because such entries are vulnerable to abuse. That said, we agree with the learned counsel that the copy of the decision that appears in the record of appeal is not signed.

In **AMI PORT OPERATIONS (T) LIMITED vs THE COMMISSIONER FOR INCOME TAX Civil** Appeal No. 28 of 2009 (Dsm) (unreported) we held, that failure by the members to sign the copy of the decision renders it defective and this infects the record of appeal in terms of rule 24(3) of the Rules and rule

96 (2) (e) of the Court of Appeal Rules, 2009. A defective record of appeal cannot sustain an appeal in this Court.

For the above reasons we agree that the appeal is incompetent. It is therefore struck out. We make no order as to costs.

Order 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. MUGASHA
JUSTICE OF APPEAL

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

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL