**Haji and others v Abdalla and others**

**Division:** Court of Appeal of Tanzania at Zanzibar

**Date of Judgment:** 6 November 2003

**Case Number:** 71/01

**Before:** Lubuva, Munuo and Nsekela JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Appeal – Record of appeal – Decree – Incorporation of a wrongly dated decree in record of appeal*

*– Whether appeal incompetent and to be struck out.*

*[2] Civil procedure – Appeal – Appeal record incomplete – Whether appeal should be struck out.*

**Editor’s Summary**

The appellants had filed a suit in the District Court at Vuga, Zanzibar against the respondents claiming ownership of a house which they claimed to have purchased from one Mgeni Ali. According to the appellants, the respondents had only been allowed to stay in the house as tenants. For the respondents, it was claimed that they had inherited the suit house from their grandmother. The trial District Court decided in favour of the appellants holding that they were the rightful owners of the house. The respondents were dissatisfied and appealed to the Regional Court at Vuga. The Regional Magistrate allowed the appeal and set aside the decision of the District Court. The appellants thereafter appealed to the High Court Zanzibar which disallowed the appeal. They further appealed to the Court of Appeal of Tanzania. The High Court Judge had signed the judgment on 12 November 1998 but delivered the same on 23 November 1998. The decree attached to the record of appeal bore the date 12 November 1998.

**Held** – The non-incorporation in the record of appeal of the extracted decree rendered the appeal incompetent. As a wrongly extracted decree of 12 November 1998 was incorporated in the record, the appeal was incompetent and would be struck out. *National Bank of Commerce v Magongo* [1996] TLR 394; *Salim v Mahmoud* civil appeal number 4 of 1992 and *Euroconsul (Africa) BV v French and*

*Hastings* civil appeal number 20 of 1996 (UR) followed.

**Cases referred to in judgment:**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Euroconsul (Africa) BV v Frech and Hastings* CAT civil appeal number 20 of 1996 (UR) – **F**

*National Bank of Commercial v Methusela Magongo* [1996] TLR 394 – **F**

*Salim v Mahmoud*, CAT civil appeal number 4 of 1992 (UR) – **F**

**Judgment**