**Mbogoro v Oc-Cid Songea District and another**

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

**Date of judgment:** 2 June 2004

**Case Number:** 44/04

**Before:** Ramadhani, Nsekela and Msoffe JJA

**Sourced by:** Lawafrica

*[1] Civil procedure – Court of Appeal Rules – Meaning of deputy registrar with whom to lodge notice of*

*appeal – Effect of not signing notice of appeal.*

**JUDGMENT**

**Msoffe JA:** In the High Court of Tanzania at Songea, the appellant instituted a suit in which he claimed, *inter alia*, general damages of TShs 100 million for wrongful confinement. Apparently on the night of 22 November 2001 he, together with three other people, were drinking alcohol at a bar known as Deluxe Two within Songea Township. The drinking went on past midnight. On the same day, the first respondent was leading a team of six policemen in an operation aimed at netting and arresting criminals. At around 0:30 hours on 23 November 2001 the policemen entered Deluxe Two Bar in the course of the operation. A number of people, including the appellant, were arrested in the process and taken to the police station. They were locked up until the following morning at around 8:00 am when they were taken to an investigation room. Later a trade officer from the Town Council arrived at the police station at the request of the first respondent. The appellant and the others were each fined a sum of TShs 5 000 for what was termed as being found drinking alcohol in a bar after 11:00 pm. The appellant felt that his freedom had been infringed hence, the above mentioned suit. In a judgment delivered and dated 15 April 2003, he was awarded a sum of TShs 20 000 as general damages. In the said judgment, the details of which we do not have to go into for purposes of this ruling, the learned Judge opined and held that only contemptuous damages were payable in the circumstances of the case and, hence, decreed the above sum of money. The appellant is dissatisfied, hence, this appeal. He appeared in person, while Mr *Boniface*, learned State Attorney (assisted by Mr *Manyanda*, learned State Attorney) appeared on behalf of the respondents. At the hearing of the appeal we had to deal first with a preliminary objection notice of which had been given earlier on. The notice of preliminary objection was taken pursuant to rule 100, and its gist thereof was that the notice of appeal is fatally defective. In arguing the objection, Mr *Boniface* basically urged that the notice of appeal, filed on 17 April 2003, is fatally defective in the following aspects: That, it is shown thereof that it was to be sent to the deputy registrar of the Court of Appeal instead of being sent to the registrar of the High Court, and thus offending the provisions of rule 76(1); and That, instead of lodging it with the registrar of the High Court as required by rule 76(1) the same was lodged in the sub-registry of the High Court of Tanzania. Mr *Boniface* went on to cite this Court’s decision in *William Loitiame v Asheri Naftali* Civil appeal number 21 of 1995 (UR) in support of the above arguments. In conclusion, he was of the view that unlike *Loitiame*’s *(ibid*) case where the appellant was a layman, the appellant in the instant matter, who is a lawyer for that matter, ought to have filed a proper notice of appeal. On the other hand, the appellant maintained that while it is true that under rule 76(1) an appellant has to send the notice to the registrar of the High Court, under rule 2 of the Court of Appeal Rules, the said registrar includes the deputy registrar. Hence, according to him, since every registry of the High Court is a sub-registry of the Court of Appeal, the signatory thereof ie Mrs SC Moshi, was a deputy registrar for purposes of the notice. He went on to conclude that since rule 76(6) requires a notice to be substantially in the Form D in the First Schedule, the notice of appeal filed on 17 April 2003, is a substantially valid one. We have given careful thought to the arguments for and against the preliminary objection. In the end, we are satisfied that the objection has merit. It is true that a close look at the said notice of appeal will show that it is fatally defective. It is correct, as argued by Mr Boniface, that instead of being sent and lodged with the registrar of the High Court as required by rule 76(1), it was actually sent and lodged with the deputy registrar, Court of Appeal. While it is true that under rule 12 “registrar of the High Court” means the registrar of the High Court and includes a district and deputy registrar of that court, the deputy registrar of the Court of Appeal cannot be a “registrar of the High Court”. It was, therefore, wrong to send and lodge the notice with the deputy registrar of the Court of Appeal at Songea. There is one other shortcoming in the said notice of appeal which also complicates matters for the appellant; it is on the fact that the said notice was not signed, at all, by the appellant or his advocate as prescribed under Form D. Surely, in the absence of the appellant’s signature or that of his advocate, we are entitled to say that there was actually no notice of appeal filed with this Court. In the end, we are of the view that the above shortcomings are not minor as Mr *Mbogoro* would have wished us to say. They are actually serious and go to the very root of the appeal. Accordingly, we sustain the respondents on the preliminary objection and strike out the appeal. Since the respondents did not apply for costs we will not make an order for costs. For the appellant: *In person*

For the respondent:

*Mr Boniface and Mr Manyanda*