**NBC Holding Corporation v Mauya and another**

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

**Date of judgment:** 3 June 2005

**Case Number:** 36/04

**Before:** Munuo, Msoffe and Kaji JJA

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*[1] Civil procedure – Decree in appeal – Failure to include a decree that is signed by one of the judges*

*–Effect of such failure.*

**JUDGMENT**

**Munuo JA:** The appellant, NBC Holding Corporation, through the services of Mr Akaro, learned advocate, brought the present appeal to challenge the decision of the High Court of Tanzania in Civil appeal number 16 of 1999, before Longway J in which the learned Judge ordered the appellant to pay retrenchment benefits to the respondent. Mr Mwita *Waisaka*, learned advocate, represented the co-respondents, Mazige Mauya and Mwanahamisi M Bilali. At the commencement of the hearing, the court*, suo motu*, raised the issue of the purported decree in appeal at 91 of the record of appeal. Mr *Akaro*, learned advocate for the appellant, conceded that the decree is invalid for non-compliance with the provisions of Order XXXIX, rule 35(4) of the Civil Procedure Code of 1966. He, further, pleaded that in the event of the appeal being struck out for non-compliance with the provisions of Order XXXIX, rule 35(4) of the Civil Procedure Code, 1966, the period of limitation be extended to enable the appellant to reinstate the appeal after obtaining a valid decree from the High Court. The court, Mr *Akaro* submitted, had in a similar case, *Tanganyika Cheap Store v National Insurance Corporation Ltd* Civil appeal number 37 of 2001 (UR) granted such extension of time. Mr Mwita had no objection to extension of time. We think it is pertinent to reiterate the provisions of Order XXXIX, rule 35 (4) which states, *inter alia*: Rule 35(4) The decree shall be signed and dated by the judge or judges who passed it. Provided that where there are more judges than one and there is a difference of opinion among them then, it shall not be necessary for any judge dissenting from the judgment of the court to sign the decree. The court has in numerous cases struck out appeals for non-compliance with the above provision of the law. In *Robert John Mugo* (*Administrator of the Estate of the late John Mugo Maina*) *v Adam Mollel* Civil appeal number 2 of 1990 (UR) the court observed: “. . . a decree in appeal which is not signed by a judge as required by order 39 rule 35(4) invalidates the purported decree. This is because such signature by a judge is mandatorily required and it authenticates the decree.” Again, in *Ndwaty Philomen Ole Saibul v Solomon Ole Saibul* Civil appeal number 68 of 1998 (UR), the court stated: “The requirement that a decree must be signed by the judge who made the decision is rooted in sound reason, namely, that the judge who decided the case of appeal is in the best position to ensure that the decree has been drawn in accordance with the judgment.” The present appeal, as was the case in *Tanganyika Cheap Store* cited (*supra*), lacks a valid decree and, hence, suffers from non-compliance with the provisions of Order XXXIX, rule 35 (4) of the Civil Procedure Code of 1966 so the invalid decree renders the appeal incompetent. For the reasons stated above, we strike out the incompetent appeal. We order that the appellant, if he so deems fit, re-institutes the appeal within 14 days after obtaining a valid decree from the High Court. With regard to pending appeals not yet scheduled for hearing, parties would be well advised to resort to rule 92(3) of the Court of Appeal Rules of 1979, to rectify defects and regularise the same in conformity with the law. We make no order for costs because we raised the matter *suo motu.*

For the appellant:

*Mr Ankaro*

For the respondent:

*Mr Mwita Waisaka*