IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MSOFFE, J. A, KAJI, J. A, AND RUTAKANGWA, J. A.)

CIVIL APPEAL NO 22 OF 2003

AFRICAN TROPHY HUNTING TANZANIA LIMITED } **……..APPELLANT**

VERSUS

THE HONOURABLE THE ATTORNEY GENERAL } **……RESPONDENT**

(Appeal from the Ruling and Order of the High Court of Tanzania at Dar es Salaam)

(Bubeshi, J.)

Dated the 11th day of November, 1999
in
Civil Case No. 99 of 1998

RULING OF THE COURT

MSOFFE, J.A.:

On 11/11/1999 the High Court (Bubeshi, J.) declined to grant the respondent an extension of time to file a defence to a counter claim and accordingly made an order for the appellant Company to prove its case *exparte*. Aggrieved, the respondent filed an application

for review of the order in question. In a ruling dated 14/9/2000 Bubeshi, J. allowed the application and set aside the order for *exparte* proof. It was against this background that this appeal was filed ostensibly with a view to faulting the review proceedings.

When the appeal was called on for hearing the Court invited, *suo motu*, learned counsel to address the issue of the competence or otherwise of the appeal mainly in the light of the fact that there are differences in the contents of the notice of appeal and the memorandum of appeal. In the notice of appeal it is shown that the decision sought to be contested on appeal is that of 24/9/2000 whereas in the memorandum of appeal, and in all other documents in the record of appeal for that matter, it is indicated that this is an appeal against the order of 11/11/1999.

Mr. George Kilindu, learned advocate for the appellant, was quick to admit the shortcomings in the above documents. He was, however, of the view that they were minor and inconsequential for three reasons. **One**, they did not prejudice the respondent. **Two**, the

respondent is quite aware that the appeal is based on the review proceedings. **Three**, there is a serious legal issue to be determined on appeal relating to time limitation in that, according to him, the application for review was filed out of time.

On his part Mr. Kamba, learned Principal State Attorney, was of the general view that the shortcomings in the documents were grave and the appeal, being incompetent, should be struck out. Besides this general assertion he did not elaborate on the point.

In **Black's Law Dictionary, Seventh Edition**, an appeal is defined as follows:-

> "a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority."

It occurs to us that in an appeal there have to be two sets of documents: proceedings on appeal and the decision sought to be reconsidered. Therefore, there has to be a nexus between the proceedings on appeal and the decision the subject of the appeal.

For that matter, in an appeal it must be clear to the court, and to the parties, on the nature of the decision sought to be reconsidered. There should be no room for doubt or speculation on the nature of the decision sought to be contested on appeal.

The question we pose and answer in this appeal is this:- Whether or not on the basis of the record before us it is certain that this is an appeal against the decision of 14/9/2000 and not that of 11/11/1999. An answer to this question will determine yet another point, that is, whether or not the court has been properly moved.

Rule 76 of the Court of Appeal Rules, 1979 sets out the procedures attendant to the lodging of a notice of appeal in a civil matter. By its nature, a notice of appeal is an expression of interest by an intended appellant to appeal against a particular decision. In this sense a notice of appeal moves, or rather puts the court and the opposite party on notice that there is an intention to appeal. Put in a different way, whereas under rule 89 a notice of appeal is a vital document in a record of appeal it does not institute an appeal

because it is a mere intention to appeal. Under rule 83 (1) an appeal is instituted by lodging a memorandum of appeal, a record of appeal, the prescribed fee and security for costs.

At this juncture, we think it is pertinent to say something about a memorandum of appeal and its relationship with a notice of appeal. Rule 86 (1) reads as follows:-

> "A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to **the decision appealed against**, specifying the points which are alleged to have been wrongly decided, and the nature of the order it is proposed to ask the Court to make."
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> (Our emphasis)

As stated above, whereas a notice of appeal does not institute an appeal it is nevertheless a vital document in an appeal. In this sense, a notice of appeal must show the decision the subject of the intended

appeal. By parity of reasoning, therefore, the words “the decision appealed against” under rule 86 (1) above, refer to the decision mentioned in a notice of appeal. Hence, there is a nexus, or an important link for that matter, between a notice of appeal and a memorandum of appeal. One cannot stand independent of the other in an appeal. So, in the context of this appeal the two documents ought to have referred to one and the same decision for the appeal to be competent.

Having said so, we are not in agreement with Mr. Kilindu that the shortcomings are minor and inconsequential. As it is, it is not clear and certain from the record before us if the appellant intended to appeal against the order of 11/11/1999 or the decision of 14/9/2000.

We appreciate, as contended by Mr. Kilindu, that there could be a serious legal issue to be determined on appeal. If so, then the more reason for the appellant to have ensured that the court was properly moved. If the appellant company had come out clearly in its

documents on the nature of the decision sought to form the basis of the appeal then, no doubt, the alleged legal issue could have been determined. The appellant company is itself to blame for the current state of affairs.

In **Tanga Cement Company Limited v Christopherson Company Limited**, Civil Appeal No. 77 of 2002, this court dealt with a point which was more or less similar to the one at hand. In the end, it held, *inter alia*, that a notice of appeal, a memorandum of appeal and a decree should relate to a judgment which conforms with the requirements of Order XX Rule 4 of the Civil Procedure Code, 1966. In the absence of such relationship the court struck out the appeal. Applying the principle discerned from **Tanga Cement Company Limited** we are increasingly of the view that in the absence of a relationship between the notice of appeal and the memorandum of appeal there is nothing to save this appeal.

We appreciate that Mr. Kilindu did not have the conduct of the matter at the time of filing the notice of appeal and the

memorandum of appeal. However, besides the appreciation there is nothing else we can say in his favour.

In conclusion, we are satisfied that the court has not been properly moved on the order or decision desired to be appealed from. The appeal, being incompetent, is accordingly struck out. Since the point the subject of our decision was taken at the instance of the Court we make no order for costs. It is so ordered.

DATED at DAR ES SALAAM this 14th day of June, 2007.

J. H. MSOFFE
JUSTICE OF APPEAL

S. N. KAJI
JUSTICE OF APPEAL

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

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

A.P. KITUSI
DEPUTY REGISTRAR