

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: KILEO, J.A, MASSATI, J.A AND ORIYO, J.A)**

**CIVIL APPEAL NO. 28 OF 2005**

**AMI PORT OPERATIONS (T) LIMITED ..... APPELLANT**

**VERSUS**

**THE COMMISSIONER FOR INCOME TAX ..... RESPONDENT**

**(Appeal from the judgment and decree of**

**the Tax Appeals Tribunal at Dar es Salaam)**

**(H.K. Senkoro, VC, A.T. Makenya, and D. Kinabo)**

**Dated the 9<sup>th</sup> day of November, 2004**

**in**

**Tax Appeal No. 1 of 2000**  
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**ORDER OF THE COURT**

**MASSATI, J.A.:**

When the appeal came up for necessary orders this morning, Mr. Lugano Mwandambo prayed for adjournment on the ground that he had been served with a preliminary objection that morning, and needed time to look at the law. When the Court pointed out that the judgment of the tribunal was not signed by all the members as required by Rule 21 of the Tax Revenue Appeals Tribunal Rules (GN 56 of 2001) the learned counsel said that he had not yet looked at the Rules. Mr. Felix Haule learned counsel for the Respondent conceded that he had served the Appellant's counsel with his Notice of preliminary objection that Morning; and so, Mr. Mwandambo was entitled to some time within which to

prepare himself. On the premises he had no objection to the prayer for adjournment.

Rule 100 of the Court of Appeal Rules, 1979 requires a notice of preliminary objection to be given within a reasonable time. We thought that the service of the notice of the preliminary objection to the Appellant, was not made within a reasonable time. So we granted time to Mr. Mwandambo up to 12.30pm.

When the Court resumed as ordered, Mr. Mwandambo readily conceded that the judgment was not signed by one of the members. To that extent, it was defective. That rendered the record of appeal defective. He prayed that the appeal be struck out with no order as to costs. Mr. Haule, on the other hand, also conceded that the judgment was defective, but prayed that as he had done some research and raised a preliminary objection, he was entitled to costs, unless the Court, in its discretion orders otherwise.

The present appeal emanates from the Tax Appeals Act (Cap 408 RE 2002). Under the Act, appeals from the Tax Appeals Board to the Tax Appeals Tribunal are governed by the Tax Revenue Appeals Tribunal Rules (GN 56/2001) Under Rule 24 (3) such appeals are governed by the Court of Appeal Rules 1979, mutatis mutandis. Under Rule 89 (2) of the Court of Appeal Rules (which governs the present appeal) one of the essential documents that has to be contained in the record of appeal is

(iv) judgment or Order.

In this case the record of appeal contains a copy of the judgment of the Tribunal. Rule 21 of the Appeals Tribunal Rules, however, provides:

*21. "After conclusion of the hearing of the evidence and submissions of the parties the Tribunal shall, as soon as practicable make a decision in the advocates, or representatives ad 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 proceeding."*

The law therefore dictates that members of the Tribunal that heard the appeal, not only to sign but also certify the copy of the decision.

In the present case, the Tribunal was comprised of three members. However its judgment dated 9<sup>th</sup> November, 2004 was signed only by two of them. Furthermore, it was not certified by them, but by the Registrar contrary to the provisions of that rule. We think that this was a defect that affected the validity of the copy of the judgment in the record of appeal. On the premises, the record of appeal is defective. To that extent, the appeal is also incompetent. So we have no option but to strike it out as we hereby do.

Since the matter was disposed on a point raised by the Court we make no order as to costs.

**DATED** at **DAR ES SALAAM** this 15<sup>th</sup> day of January, 2010.

E.A. KILEO  
**JUSTICE OF APPEAL**

S.A. MASSATI  
**JUSTICE OF APPEAL**

K.K. ORIYO  
**JUSTICE OF APPEAL**

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

(N.N. CHUSI)  
**DEPUTY REGISTRAR**