

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

CIVIL APPLICATION NO. 11 OF 1996  
In the Matter of an Intended Appeal

BETWEEN

SAIDI IBRAHIM ..... APPLICANT

AND

STEPHEN RAPHAEL ..... RESPONDENT

(Application for striking out Notice of  
Appeal from the Ruling of the High  
Court of Tanzania at Dar es Salaam)

(Maina, J.)

dated the 16th October, 1995

in

Civil Revision No. 29 of 1995

R U L I N G

KISANGA, J.A.:

This is an application to strike out a notice of appeal for failure by the respondent to institute the appeal within the prescribed time. The notice of motion is duly supported by the applicant's affidavit to which the respondent has filed a counter-affidavit. At the hearing of the application both parties were unrepresented and each argued his case in person.

It is common ground that the respondent gave notice of his intention to appeal on 25.10.95 and that no appeal has been instituted to date. The applicant therefore urged that the <sup>said</sup> notice be struck out for the respondent's failure to institute the appeal within 60 days of that notice as required under rule 83 (1) of the Court of Appeal Rules.

In his counter-affidavit the respondent stated that he could not institute the appeal because he has not received a copy of the proceedings which he applied for vide his letter to the Registrar, High Court, dated 27.10.95. In his oral submission he added that he has since sent a reminder or reminders but to no avail. He concedes, however, that he did not send to the applicant a copy of the said letter to the Registrar but contends that as a layman he could be excused for that.

It is clear from his own admission that the respondent was in breach of rule 83 (1) which required him to send to the applicant a copy of his letter to the Registrar requesting for a copy of the proceedings. By reason of such breach, and in terms of rule 83 (2) he is not entitled to raise the defence that he could not institute the appeal within 60 days because he was waiting for the proceedings from the Registrar. In other words having committed that breach, the only way to ensure that his notice of appeal was not thereby adversely affected was to institute the appeal within 60 days of that notice, which he did not.

Since the institution of the appeal within the prescribed period is, in terms of rule 83 (1) a mandatory requirement, the breach of it was fatal. It entitled the applicant relying, as he did, on rule 82 of the Court of Appeal Rules to have the notice of appeal struck out. The respondent's claim that as a layman he should be excused for the breach has no room for consideration under the said mandatory requirement. In any event the well recognized principle in this

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( M.S. SHANGALI )  
DEPUTY REGISTRAR


country is that ignorance of the law is no defence. Equally without substance is the respondent's insistence that he wrote to the Registrar, with a reminder or reminders, asking for a copy of the proceedings, but to no avail. For, the point at issue here is that he failed to send a copy of the said letter to the respondent. So that even if he had managed to receive the proceedings from the Registrar, that would have made no difference so long as he did not institute the appeal within 60 days of his notice of appeal.

The application, therefore, succeeds, and the notice of appeal is accordingly struck out for failure by the respondent to institute his appeal within the prescribed time. The respondent shall bear the costs of this application.

DATED at DAR ES SALAAM this 17th day of May, 1996.

R. H. KISANGA  
JUSTICE OF APPEAL

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

  
( M.S. SHANGALI )  
DEPUTY REGISTRAR