

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: MAKAME, J.A., RAMADHANI, J.A., And LUBUVA, J.A.)

CIVIL APPEAL NO. 48 OF 1995

BETWEEN

SAIDE SALMIN AMBAR APPELLANT

AND

THE EXECUTIVE SECRETARY WAKF AND
TRUST COMMISSION, ZANZIBAR RESPONDENT

(Appeal from the decision of the High
Court of Zanzibar at Zanzibar)

(Kannonyele, J.)

DATED the 28th day of April, 1995

in

Civil Appeal No. 6 of 1993

JUDGEMENT OF THE COURT

RAMADHANI, J.A.:

The appellant, Saide Salmin Ambar, had sued the respondent, The Executive Secretary of the Wakf and Trust Commission, Zanzibar, before the Rent Board for vacant possession of certain premises. However, as the appellant was repeatedly absent from the Board's sittings,

ex parte judgment was given. Her efforts to set aside that judgment were barren of fruit and her appeal to the High Court of Zanzibar also foundered. She has come to us on a third attempt. She was represented by Dr. Lamwai, learned counsel, while the respondent was advocated for by Mr. Nyangarika, learned counsel.

As we geared ourselves to hear what Dr. Lamwai had to submit to us on the appeal, he surprised us with a novel application that we stood over the appeal because he had regrettably realised that he had not obtained leave to appeal. He implored us not to strike out the notice of

appeal and he laboured to persuade us to do so by invoking our powers under Rule 3. As expected, Mr. Nyangarika, though had not spotted out that omission, otherwise he would have raised a preliminary objection, resisted the prayer vehemently. He said that the appellant should first withdraw the appeal and go back to start afresh. He said further that Rule 3 could only be used where there is a proper appeal before the Court.

In Civil appeals a party who seeks to appeal to this Court lodges a notice of appeal under Rule 76. However, that does not institute the appeal. To do so one has to file a record of appeal under Rule 83. The contents of a record of appeal, as provided under Rule 89, include an order granting leave to appeal. Since there is no leave in the instant case, there is no such order to be filed and so, the appeal has not been instituted. There is, therefore, nothing before us to adjourn or stand over. The practice has all along been to strike out the notice of appeal. Dr. Lamwai is well aware of this and that is why he is asking us to use Rule 3.

That rule provides as follows:

3. - (1) The practice and procedure of the Court in connection with appeals and intended appeals from the High Court, and practice and procedure of the High Court in connection with appeals to the Court shall be as prescribed in these Rules, but the Court may at any time, direct a departure from these Rules in any case in which this is required in the interest of Justice.

Admittedly, this Court has been given a very wide discretion of directing a departure from the Rules but only when that is required to be done in the interest of Justice. Now, interest of justice is to both parties; the intended appellant and the intended respondent. So, the Court will not use the discretion under Rule 3, broad as it is, to favour the intended appellant but it will use it if it is in the interest of justice which includes the interest of the intended respondent, too. These Rules have been devised to provide certainty in the conduct of Court matters. An intended respondent should not be held in abeyance indefinitely at the mercy of an intended appellant. This is particularly so here where the intended appellant, if we are to sustain her prayer, has to go back to the High Court to apply for extension of time within which to apply for leave to appeal and also to apply for leave to appeal. Leave may only be granted if time is enlarged. We were supposed to determine this matter once and for all had the intended appellant been careful in pursuing her rights. So, adjourning or standing it over does not, in our considered opinion, operate justice to the intended respondent.

Apart from what we have said above, Dr. Lamwai has not given us any reason why we should depart from the long uninterrupted chain of practice of this Court of striking out the notice of appeal in cases like this. We do not want to set a precedent which will open a flood-gate and encourage casual handling of matters to this Court.

We, therefore, order that the intended appellant
be deemed to have withdrawn her notice of appeal, with
costs, under Rule 84(a).

DATED at ZANZIBAR this 1ST day of AUGUST, 1997.

L. M. MAKAME
JUSTICE OF APPEAL

A.S.L. RAMADHANI
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

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

(M.S. SHANGALI)
DEPUTY REGISTRAR