

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 9 OF 1997

In the Matter of an Intended Appeal

BETWEEN

AFRICAN MARBLE CO. LTD. APPLICANT

AND

TANZANIA SARUJI CORPORATION RESPONDENT

(An Application to strike out a Notice
of Appeal filed against the judgement
of the High Court of Tanzania at
Dar es Salaam)

(Kaji, J.)

dated the 11th day of October, 1996

in

Civil Case No. 89 of 1987

R U L I N G

RAMADHANI, J.A.:

The applicant company, African Marble Co. Ltd., was the plaintiff before the late MKUDE, J. and a successful appellant before this Court when we gave an order to the High Court to assess general damages due to the applicant company. That was done by KAJI, J. The respondent corporation, Tanzania Saruji Corporation, was aggrieved by that assessment and has filed a notice of appeal against it. The applicant company has now filed this application seeking to strike out that notice of appeal on the grounds that the respondent corporation has failed to institute the appeal within the prescribed time, that is sixty days from the day of being informed that a copy of the record of proceedings was ready for collection from the Registrar.

The Managing Director of the applicant company, one Mumba Mabu, appeared and said that the application should be heard though the counsel of the applicant company, Mr. Mabere

Marando, learned advocate, was absent. Under Rule 28 (3) Mumba Mabu could represent the applicant company if he had been appointed by a resolution under the seal of the company. That was not the case here. However, Mumba Mabu was the one who swore and filed the affidavit in support of the application and also the affidavit in reply to the counter-affidavit. Those three documents constituted the 'pleadings' before me on which all submissions were based. Considering that and having in mind the fact that Capt. Kameja, learned advocate for the respondent corporation, did not object to Mumba Mabu representing the applicant company, and for "better meeting the ends of justice", since the alternative would have been to adjourn the hearing and hence delay the determination of the application against the express wishes of the managing director. I decided, on my own motion, to depart from the provisions of Rule 28 (3) by using Rule 3 (2) (c) and allow Mumba Mabu to represent the applicant company.

There is no dispute that on 14th November, 1996 the respondent corporation received a letter from the Registrar of the High Court (RHC) informing it that a copy of the record of the proceedings was ready for collection. It is equally not in dispute that on 15th December, 1996 RHC issued a certificate testifying that the preparation and the delivery of the copy of the record of the proceedings was done from 16th October to 15th December. However, while the applicant company contended that that certificate was inadvertently issued, the respondent submitted that the certificate was validly given. The applicant company argued that the sixty-day limit for instituting an appeal started to run from 14th November when the applicant company received the letter of

the RHC and so, the time expired on 17th January, 1997. The respondent corporation, on the other hand, submitted that the copy of the record of the proceedings supplied was not complete and that that was realised on 9th December, 1996 and that the next day a letter was sent to the RHC asking for a supplementary issue. Capt. Kameja said that a copy of that letter was sent to the applicant company. The learned advocate went further to say that the missing pages were delivered later and hence the certificate of the Registrar which made the deadline to be 15th February, 1997. Capt. Kameja said that he instituted the appeal on 4th February which date was in time. Mumba Mabu denied receiving a copy of that letter of Capt. Kameja requesting for a supplementary copy of the record of proceedings.

A copy of that letter to the Registrar requesting for a supplementary record was attached to the counter-affidavit sworn by Capt. Kameja and it shows that it was copied to Mr. Marando. There is no affidavit of Mr. Marando denying receipt of the same and that makes the denials of Mumba Mabu to have no probative value. But in any case there is the certificate of the District Registrar issued under Rule 83 (1) which I cannot doubt without concrete proof, and not just allegations, that the certificate is a "mere fabrication". There is no such evidence.

I could have agreed with Mumba Mabu that there was incompetence on the part of Capt. Kameja if that letter to the RHC requesting for a supplementary record was written after 17th January, 1997, that is, after the sixtieth day from 14th November, 1996 when the respondent corporation was notified that the copy of record was ready for collection. But Capt. Kameja wrote that letter on 10th December, 1996 when it was


over a month before the expiry of the initial sixty days. So, that dispels any allegation of incompetence or even any suggestion that it was a trick used to extend time instituting the appeal.

For all the reasons given above, I dismiss the application. Costs to follow event. It is so ordered. The applicant company is at liberty to seek reference to the full Court.

DATED at DAR ES SALAAM this 23rd Day of May, 1997.

A.S.L. RAMADHANI
JUSTICE OF APPEAL

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


(M.S. SHANGALI)
DEPUTY REGISTRAR