

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

AR CIVIL APPLICATION NO. 3 OF 1999

BETWEEN

ALLY SAID MTERI. APPLICANT

AND

DAMAS WDAVEKA. RESPONDENT

(Application to strike out the appeal
from the judgment and decree of the
High Court of Tanzania at Moshi)

(Munuo, J.)

dated the 15th day of January, 1998

in

Civil Appeal No. 38 of 1993

R U L I N G

KISANGA, J.A.:

This is an application to strike out the appeal filed by the respondent herein for failure to take essential steps in the appeal. The applicant alleges both in the notice of motion and in the affidavit in support of the notice of motion that the respondent failed to serve him and his advocate with the memorandum of appeal and the record of appeal as required by rule 90 (1) of the Court of Appeal Rules, herein-after referred to as the Rules. The applicant further alleges that the respondent failed to serve him and his advocate with a copy of his letter by which he applied to the Registrar for a copy of the proceedings, and that this contravened rule 83 (2) of the Rules. The affidavit making these averments was affirmed by Mr. B.B. Chadha, learned counsel for the applicant.

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The respondent filed two counter-affidavits, one sworn by himself and the other by one Albin Moshi, a process server attached to the High Court at Moshi. The respondent states that on 27.1.98 he gave the said process server a copy of the notice of appeal and a letter addressed to the District Registrar, High Court Moshi applying for copy of the proceedings and requested him to take the documents to the applicant. This is fully supported by the said process server who confirms that he served these documents on the applicant in person at his home on 29.1.98. This was not challenged or contradicted in any way. Mr. Chadha asserts that neither his client nor himself was served as claimed by the respondent's side. He further contends that in any case the respondent's idea of serving the documents on the applicant was wrong. According to him those documents should have been served on him as the applicant's advocate who had duly supplied his address for service. I find no merit in this argument. It seems plain to me that service on a party to the proceedings is as good as service on his advocate. After all an advocate is in a real sense a mere agent acting on the instructions of his client, the principal. I can hardly see the justification for saying that service should be effected on the agent rather than on the principal. But what is even more important is that sub-rule (2) of Rule 83 which Mr. Chadha relies on requires that the said copy of the letter to the Registrar should be sent to the respondent, which is what was done here. On the material before me I am satisfied that a copy of the letter to the Registrar applying for the proceedings was duly sent to the applicant. Accordingly I find that there was no contravention of rule 83 (2) as alleged.

On the second ground of the application, the process server states that on 30.11.98, upon request, he led the respondent to the applicant's home with the intention to serve the applicant with the record of appeal. On finding the applicant not at home, the respondent served the record on his daughter, one Halima Saidi. This story is confirmed by the respondent who adds that Halima Saidi, the said daughter of the applicant, is an adult.

Mr. Chadha does not seriously challenge the service of the appeal record on Halima. However, he repeated his complaint that the service was not effected on him as the applicant's advocate having duly supplied his address for service. I have already dealt with that aspect of the matter and I need say no more on it. Counsel also complained that the copy of the record served on Halima does not show the date of the alleged service. However I find from the evidence of the respondent and the process server, which was not challenged, that the record was served on Halima on 30.11.98. The service on Halima was sufficient because it was effected in accordance with the provisions of rule 20 (1) of the Rules read together with rule 15 of Order V of Civil Procedure Code as amended by Government Notice No. 508 of 22.1.91.


Mr. D'Souza, learned advocate who represented the respondent, submitted that the application was without merit. For the reasons set out above I am in full agreement with him. Accordingly the application fails and it is dismissed with costs.

DATED at ARUSHA this 19th day of October, 2000.

R.H. KISANGA
JUSTICE OF APPEAL

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




(A.G. MWARIJA)
DEPUTY REGISTRAR