

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 172 OF 2004

In the Matter of an Intended Appeal

**DIRECTOR, MUKHESHI GLOBAL ESTATE LTD.
APPLICANT**

VERSUS

**HAMIS NJAMA.....
RESPONDENT**

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

(Mushi, J.)

**dated the 6th day of April, 2004
in
Civil Revision No. 80 of 2002**

R U L I N G

NSEKELA, J.A.:

This is an application to strike out notice of appeal for failure, to take an essential step in instituting the intended appeal, namely that the respondent has not instituted the appeal within the prescribed time.

The application is supported by an affidavit sworn by Thomas Eustace Rwebangira, learned advocate for the applicant. From the affidavit evidence, the matter arises from the decision of the High Court exercising its revisional jurisdiction dated 6.4.2004. The respondent was aggrieved by the said decision and gave notice of intention to appeal which was lodged on the 20.4.2004. Paragraphs 3, 4 and 5

of the affidavit in support provide as follows -

- “ 3. That on 20th April 2004 the respondent being aggrieved by the ruling and order in revision proceedings lodged to this Court Notice of Appeal and the same was served to us on 21st April, 2004 ----
4. That despite the fact that the respondent lodged Notice of Appeal to this Court, but he never applied for copy of ruling, order and proceeding for purpose of preparation of record of appeal. If at all the respondent applied for the said copies, but a copy of letter applying for the said copies was not served to the applicant or to our firm.
5. That from the date the Notice of Appeal was lodged to this Court on 20th April 2004 up to now, the time within which is supposed to file the

appeal has expired.”

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Mr. Rwebangira, learned advocate for the applicant briefly submitted to the effect that within sixty (60) days of the date when the notice of appeal was filed in court, a memorandum and record of appeal should be filed unless the exception to Rule 83 (1) of the Court Rules, comes into play. He added that in the instant application, the respondent could not take advantage of this exception because the respondent did not apply for a copy of the proceedings in the High Court within thirty (30) days of the date of the decision against which it is desired to appeal and a copy of it was not sent to the applicant herein. The learned advocate cited two decisions of this Court, **Stephen Wassira v. Joseph Warioba** (1997) TLR 205; and **Mrs. Kermal v. The Registrar of Buildings and Miss Hawa Bayona** (1998) TLR 199.

The respondent, one Hamis Njama filed his counter-affidavit. Paragraph 4 reads as follows -

‘4. The contents of paragraph 4 are vehemently disputed to the effect that the respondent upon determination of the matter asked for a copy of the ruling from the court clerk and it was duly

given to him without any conditionality. So the question of writing a letter was uncalled for since the respondent was given the copy, and in any case if the requirement of writing the letter was mandatory then the respondent was never informed of the same. Further the respondent avers that this is a delaying tactic being employed by the applicant at the expense of justice.”

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The respondent had nothing to add in elaboration of his affidavit in opposition to the application.

The essence of this application is that the respondent has not instituted an appeal before this Court as required by the Court Rules. Under Rule 83 of the Court Rules, an appeal must be instituted within sixty (60) days reckoned from the date of filing of the notice of appeal. It is not in dispute that the respondent filed notice of appeal on the 20.4.2004. The intended appeal should therefore have been instituted on or before the 19.6.2004. Since the appeal was not instituted within sixty (60) days of the filing of the notice of appeal, it was necessary for the respondent to rely on the exception to sub-rule (1) of Rule 83 which is to the effect that in computing the sixty (60) days, the time taken to

obtain a copy of the proceedings from the Registrar shall be excluded. In addition, the respondent had to show that he had sent to the applicant herein a copy of his letter to the Registrar asking for a copy of the proceedings.

It is evident from the affidavit evidence before me that the exception to Rule 83 is not available to the respondent. There is no evidence that he wrote a letter to the Registrar asking for a copy of the proceedings. Since this essential step was not taken, the appeal should have been instituted within the prescribed sixty (60) days. The notice of appeal was filed on the 20.4.2004 and nothing essential has been done to-date to prosecute the appeal.

I therefore allow this application and order that the notice of appeal dated 20.4.2004 be and is hereby struck out with costs.

DATED at DAR ES SALAAM this 9th day of September, 2005.

H.R. NSEKELA
JUSTICE OF APPEAL

certify that this is a true copy of the original.

(S.A.N. WAMBURA)
SENIOR DEPUTY REGISTRAR