

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KILEO, J. A., KALEGEYA, J. A. And LUANDA, J. A.)

CIVIL APPLICATION NO.107 OF 2009

ALLIANCE MEDIA (T) LIMITED APPLICANT

VERSUS

AI OUTDOOR (TANZANIA) LIMITED AND ANOTHER.....RESPONDENTS

(An application to strike out Notice of Appeal from the judgment of the High Court of Tanzania at Dar es Salam)

(Massati, J.)

dated the 23rd February, 2011

in

Commercial Case No. 64 of 2005

RULING OF THE COURT

9th & 22nd February, 2011

KILEO, J. A.:

The applicant, Alliance Media (T) Limited through their learned counsel Mr. Michael Ngalo, has come before this Court with an application by way of Notice of Motion seeking an order to strike out the Respondent's Notice of Appeal lodged in Court on 9th March 2009. The Notice of Motion filed gives three grounds for seeking the striking out of the Notice of Appeal. The three grounds however, culminate in one ground which is that the respondents have failed to take essential steps pertaining to their appeal.

The Notice of Motion is supported by the affidavit of Michael Ngalo, the learned counsel of the applicant who asked us at the hearing to adopt the same. The respondents were represented by Mr. Deogratias Ringia at the hearing. Mr. Ringia had previously filed an affidavit in reply which he adopted as part of his submission in objection to the application by Mr. Ngalo.

The facts leading to this application which are not in dispute briefly show that pursuant to Civil Application No. 178 of 2008 the Court sitting as a single judge (Munuo, J. A.) granted the respondents an extension of time to file Notice of Appeal against the decision of the High Court given in Commercial case No. 64 of 2005. The time was extended up to 11th March 2009. The Notice was dully filed on 9th March 2009 which was within the time extended. On the same day the applicant's counsel filed a reference against the decision of the single judge granting extension of time to file Notice of Appeal. The Reference which is No. 3 of 2009 is yet to be determined. Following the filing of the Reference the respondents took no further steps with regard to their appeal. Mr. Ringia argued that they did not take any further steps in the pursuit of the appeal because the

outcome of the reference would have a direct bearing on the filed Notice of Appeal. He submitted further that if the Reference is upheld the whole appeal will be short circuited while on the other hand if it is refused there will still be doors for the respondent to take appropriate steps. According to the learned counsel the notice of Motion was filed prematurely.

Mr. Ngalo on the other hand contended that the Reference has nothing to do with the process of appeal and that the pendency of a Reference cannot prevent a party to do what he is supposed to do in accordance with the Rules.

The question before us is whether the Reference filed against the decision that gave the respondents extension of time to file Notice of Appeal had the effect of putting on hold the process of appeal that the respondents were supposed to carry on. We have tried to do some research but we must admit that we have not come across any decision that falls within the parameters of the present situation. We are mindful of the fact however, that this Court is guided by the Rules. Rule 83 of the Court of Appeal Rules, 1979 under which the Notice of Appeal was filed provides the time within which an appeal has to be instituted. It also makes provision for exception

to the general rule. The pendency of a reference does not fall under the exception to the general Rule. Rule 83-(1) provides:

"83-(1) Subject to the provisions of Rule 122, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged –

(a) a memorandum of appeal, in quintuplicate;

(b) the record of appeal, in quintuplicate;

(c) the prescribed fee; and

(d) security for the costs of the appeal,

Save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant."

It is quite clear that in terms of the above provision a civil appeal has to be instituted within sixty days of the date when the notice of appeal was lodged. The only exception is where an application for a

copy of proceedings has been made within 30 days of the date of the decision against which it is desired to appeal in which case the period required for preparation of the proceedings as certified by the Registrar is excluded from computation of the period of sixty days.

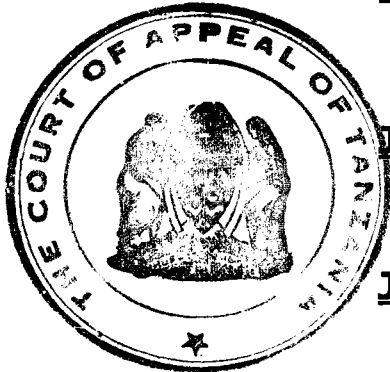
What Mr. Ringia wants us to do actually is to read "*Pendency of Reference against an order granting extension of time to file notice of appeal*" into the exception to the general rule set out in Rule 83-(1) of the 1979 Rules. We are afraid that we cannot give in to his argument much attractive as it may appear. The law is clear and we are bound to abide by it. What Mr. Ringia did in actual fact was like taking the law into his own hands. If he felt that with the pendency of the reference the appeal process should have been put on hold, the dictates of prudence is that he should have sought the Court's guidance on the situation. He did not do that, instead he opted to stick to what he thought was the position. This was to his own doom.

In view of the above considerations we agree with Mr. Ngalo that some essential steps in the proceedings have not been taken by the

respondents. In the event we strike out with costs, the notice of appeal filed by the respondents on 9th March 2009.

DATED at DAR ES SALAAM this 17th Day of February 2011.

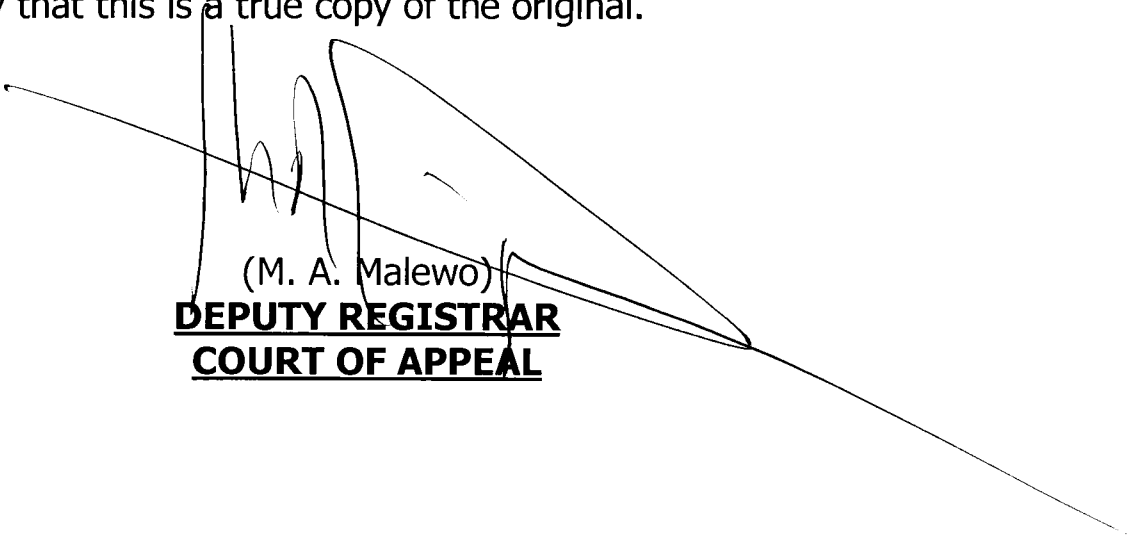
E. A. KILEO
JUSTICE OF APPEAL



L. B. KALEGEYA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

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


(M. A. Malewo)
DEPUTY REGISTRAR
COURT OF APPEAL