

**IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR**

(CORAM: RUTAKANGWA, J.A., MBAROUK, J.A., And BWANA, J.A.)

CIVIL APPEAL NO. 51 OF 2012

MAKAME VUAI USSI.....APPELLANT

VERSUS

1. JOHN MOSES PAUL 2. PALM LEAVES TOURISM LTD 3. REGISTRAR OF COMPANIES (Z)	}RESPONDENTS
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(Appeal from the decision of the High Court of Zanzibar
at Vuga)

(Mwampashi, J.)

dated 5th day of May, 2009
in

Misc. Civil Cause No. 13 of 2008

RULING OF THE COURT

11th & 13th December, 2012

BWANA, J.A.:

When the appeal came up for hearing, Mr. Abdallah Juma Mohamed, learned counsel for the respondents, raised a preliminary objection on a point of law couched in the following words:-

- a.) That, the certificate of delay at page 179 of the records of appeal is incompetent and improper.

b.) That, the appellant's appeal is time barred.

Mr. Mohamed, learned counsel's averment was based on the following facts, as discerned from the case record. The High Court of Zanzibar delivered its judgment in Misc. Civil Cause No. 13 of 2008, on 5th May, 2009. Dissatisfied with those findings of the High Court, the appellant lodged a Notice of Appeal with this Court on 8th May, 2009, that is three days after the delivery of judgment. Mr. Salim Mnkonje, learned counsel for the appellant, then invoked the provisions of Rule 83 (1) proviso of the 1979 Rules and applied for copy of proceedings. The period taken in the preparation of the said proceedings was to be excluded, in computing the sixty days within which to lodge copies of memorandum and record of appeal. That procedure seems to have been complied with but with a difference.

According to the record at page 179, a certificate of delay was issued on 16th November, 2012. That certificate was, however, for Civil Misc. Cause No. 26 of 1996 (not Civil Misc. Cause No. 13 of 2008). Again, Mr. Mohamed, learned counsel, did note and correctly so, that while the said certificate is dated 16th November, 2012, the present

record before this Court was filed on 13th April, 2012, thus another anomaly.

All in all, it was Mr. Mohamed's submission that, **firstly**, the said certificate referring to Civil Misc. Cause No. 26 of 1996 and dated 16th November, 2012 was not intended for the instant appeal. **Secondly**, it was not meant for the instant appeal as it was issued after the appeal had been lodged in Court. The two observations considered, the purported certificate is bad in law and as such it should be expunged from the record. The expunge leaves the record without a certificate of delay thus making the appeal time barred. Consequently the appeal should be struck out with costs, he asserted.

In his submission in reply, Mr. Salim Mnkonje, learned advocate for the appellant, did claim that initially the errors on the face of the said certificate of delay at page 179, were mainly clerical which were not fatal. Later, however, he did concede that given the said glaring errors on the certificate of delay, the appeal was incompetent as submitted by Mr. Mohamed, counsel, thus should be struck out but

prayed to the Court not to award costs. He however, gave no plausible reason as to why costs should not be awarded.

It is not in dispute that the notice of appeal was filed on the 8th May 2008 and the impugned certificate of delay issued some months after the record of appeal had been lodged in this Court on 13 April, 2012. It is therefore, proper in law to have the said certificate of delay expunged from the record. In the absence of such certificate the appeal became hopelessly time barred. It has been said and emphasized on the importance of a certificate of delay in computing the sixty days period within which an appeal has to be filed. In the case of **The Board of Trustees of the National Social Security Fund vs. New Kilimanjaro Bazaar Ltd**, Civil Appeal No. 16 of 2004 (unreported) this Court did state:-

"...A certificate under Rule 83(1) of the Court Rules (1979) is a vital document in the process of instituting an appeal. It comes, into play after the normal period

*of sixty days for filing an appeal has expired. **We are of the view that there must be strict compliance with the Rule.** The Registrar had not supplied the appellant with the documents requested for, thus rendering the certificate incorrect.. **The certificate was false and this fountain of justice cannot over look such an error...**" [Emphasis provided].*

We subscribe to the foregoing consideration by the Court.

Both learned counsel, as well as the Court, do agree that the appeal in its present form and without a valid certificate of delay is hopelessly time barred. It cannot therefore, withstand the requirements of the law. However, the learned counsel differ on the question of costs. While Mr. Mohamed claims for the same to be awarded in his favour, Mr. Mnkonje requested the Court not to award the same but attributed no reason in support of his prayer.

In the result and all the above considered, we uphold the preliminary objection and strike out the appeal with costs.

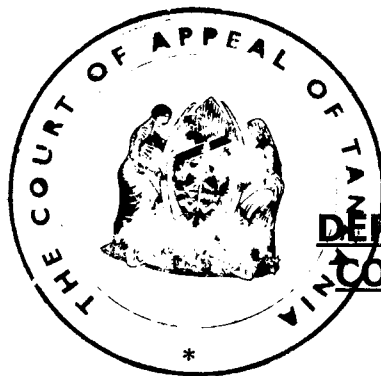
DATED at **ZANZIBAR** this 12th day of December, 2012.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

S.J. BWANA
JUSTICE OF APPEAL

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




Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL