

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: KILEO, J.A., BWANA, J.A. And ORIYO, J.A.)

CIVIL APPEAL NO. 115 OF 2008

ELIAS TIBENDELANA..... APPELLANT

VERSUS

1. THE INSPECTOR GENERAL OF POLICE }  
2. THE HON. ATTORNEY GENERAL } ..... RESPONDENTS

(Appeal from the decision of the High Court of Tanzania  
at Dar es Salaam)

(Mandia, J.)

dated the 15<sup>th</sup> day of July, 2008

in

Civil Case No. 15 of 2006

.....

RULING OF THE COURT

12<sup>th</sup> February & 17<sup>th</sup> April, 2013

**BWANA, J.A:**

When this appeal came up for hearing, the Respondents raised  
a point in *limine litis*, couched in the following words:-

“Take Notice that on the first hearing date of  
the appeal, the respondents shall raise a  
preliminary objection based on the point of  
law to the effect that ***the appeal is***

***hopelessly time barred...."*** (Emphasis provided).

The respondents filed written submissions in support of the said point of law, in essence averring that the appeal before the court was time barred as it contravened the provisions of Rule 83 of the Court of Appeal Rules 1979. That Rule provided thus;-

“(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 .....***”

(2) An appellant shall not be entitled to rely on the exception to sub rule (1) ***unless his application for the copy was in writing and a copy of it was sent to the respondent.....***”

While the applicant who was unrepresented, emphatically insisted before us that he had filed his documents within the prescribed period, he was not certain whether he served copies of those documents to the respondents so as to comply with the requirements of Rule 83 (2) of the said 1979 Rules. In the end, he requested the Court to invoke substantive justice and leave apart reliance on technicalities. To which averment, Mr. Silvester Mwakitalu, learned State Attorney for the respondents, vehemently remained opposed. Mr. Mwakitalu cited several case law authorities insisting that failure to serve an adverse party with relevant documents was a fatal omission.

We start by restating the often analysed issue as to when substantive justice should apply and ignore technicalities. Substantive justice, is in our view, invoked when such a decision does not go against the law of the land or where there is no specific enactment governing the issue. Where, however, the law (or Rules) clearly stipulate certain measures to be taken then the provisions and requirements of such law or rule have to be adhered to. Thus it has been said:-

“...rules of procedure are the handmaidens and not the mistresses of justice. They should not be elevated to a fetish ..... ***Theirs is to facilitate the administration of justice in a fair, orderly and predictable manner, not to fetter or choke it ....***”

(Emphasis provided).

(See Microsoft Corporation vs Mitsumi Computer Garage Ltd, (2001) 2 EAR 467).

We unreservedly subscribe to the above articulations.

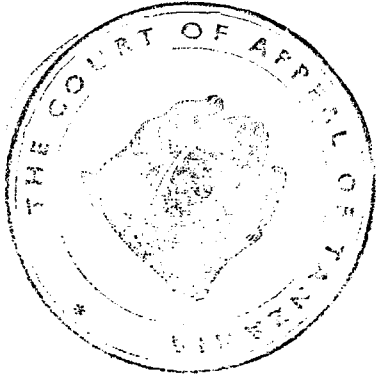
We are aware that there are some technicalities which can be ignored without causing injustice to the parties. There are, however, some technicalities which go to the roots of the issue before the Court. Such technicalities can be ignored at the expense of justice. Courts of law are courts of justice, not of injustice. We are aware of the provisions of the Constitution of the United Republic of Tanzania (the Constitution) as well as Rule 2 of the Court of Appeal Rules.

Both the Constitution and the Rules emphasize on the point being raised by the appellant namely that in administering justice, the courts of law should have due regard to the need to achieve substantive justice. However, as stated above, substantive justice should go hand in hand with the rules which are “the handmaidens” of justice.

In the instant appeal, there is no evidence to controvert the respondents’ averments that the appellant never complied with the requirements of Rule 83(2), supra. In the absence of such evidence, it is clear that the appellant filed his appeal well beyond the 60 days as prescribed by law. He had lodged his Notice of Appeal on 18 July 2008 but then filed the record of appeal on 22 October 2008. Rule 83 (1) and (2) is couched in mandatory terms, meaning, therefore, that noncompliance with those procedural requirements is fatal.

Accordingly, we uphold the preliminary objection and dismiss the appeal for having been lodged well beyond the sixty days period prescribed by the Rules.

DATED at DAR ES SALAAM this 12<sup>th</sup> day of April, 2013.




E. A. KILEO  
**JUSTICE OF APPEAL**

S. J. BWANA  
**JUSTICE OF APPEAL**

K. K. ORIYO  
**JUSTICE OF APPEAL**

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

  
E. Y. Mkwizu  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**