

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

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And JUMA, J.A.)

CIVIL APPEAL NO. 89 OF 2012

SAID O. MAMBA APPELLANT

VERSUS

THE ATTORNEY GENERAL & OTHERS RESPONDENTS

**(Appeal from the Judgment of the
High Court of Tanzania Labour Division at Mbeya)**

(Mwipopo, J.)

**Dated the 19th day of February, 2010
in
Labour Dispute No. 52 of 2008**

ORDER OF THE COURT

25th & 27th June, 2013

RUTAKANGWA, J.A.:

The appellant was aggrieved by the judgment and decree of the High Court (Labour Division) sitting at Mbeya dated 19th February, 2010. In accordance with the mandatory requirements of Rule 83(1) and (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), he duly lodged a notice of appeal to this Court, on 2nd March, 2010. Under Rule 90(1) of the Rules, he was supposed to institute the contemplated appeal “within sixty days of the date when the notice of appeal was lodged”. By simple arithmetics, all things being equal, this appeal ought to have been instituted by 19th April, 2010. This was not the case. It was instituted on 23rd August, 2010 i.e. nearly 120 days later.

When the appeal was called on for hearing, Mr. Michael Luena, learned Principal State Attorney, appearing on behalf of all the respondents, rose to argue two points of Preliminary Objection, notice of which he had lodged on 12th June, 2013. The two points of law were:-

"1. The appellant has contravened the provisions of Rule 106(1) of the Court of Appeal Rules, 2009.

2. The record of Appeal is defective as it contains an invalid decree."

We must admit that Mr. Luena made a strong submission in support of the first point of Preliminary Objection. He focussed us on the procrastinations employed by the appellant in prosecuting the appeal to the extent of smacking of abuse of court process. He accordingly urged us to dismiss the appeal under Rule 106(9) of the Rules, on account of the appellant's failure to lodge his written submission at all, although the appeal was lodged almost three years ago. As Mr. Simon Mwakolo, learned advocate for the appellant, had no strong reason to dislodge Mr. Luena's forceful argument, in spite of appealing to Rule 106(19), we would have been inclined to accede to Mr. Luena's prayer. However, we found ourselves constrained not to pursue that route as there is no appeal before us to dismiss. We shall elaborate albeit briefly.

As already shown above, this appeal was lodged on 23/8/2010 instead of 19/04/2010. It was ostensibly lodged out of time unless the delay was accounted for in terms of the saving provisions of Rule 90(1). The relevant provision reads:-

*"90-(1) Subject to the provisions of Rule 128, an appeal **shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged** with*

(a) ...

(b) ...

(c) ...

***Save that where an application for a copy of the proceeding in the High Court has been made within thirty days of the date of the decision** against which it is designed to appeal, **there shall in computing** the time within 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."*

[Emphasis is ours].

From our perusal of the record of appeal, we have discovered that the appellant applied to be supplied with copies of the proceedings on 27th March, 2010. That was far beyond the prescribed maximum period of 30 days. When this fact was brought to the attention of Mr. Mwakolo, he readily admitted that the appeal was lodged out of time and it is, therefore, incompetent. Mr. Luena agreed and pressed us to strike it out with costs.

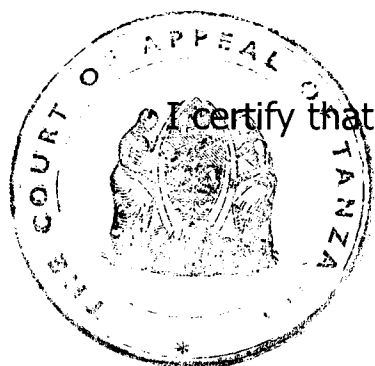
As rightly conceded by both counsel, this purported appeal is unarguably incompetent, having been instituted out of time. We are enjoined by law to strike it out, as aptly urged by Mr. Luena. We accordingly strike out this incompetent appeal with costs to the respondents.

DATED at **MBEYA** this 26th day of June, 2013.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL



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


P.W. Bampikya
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL