

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

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

CIVIL APPEAL NO. 108 OF 2012

RENATUS MASANJA SALU APPELLANT

VERSUS

<p>1. THE ATTORNEY GENERAL</p> <p>2. OPULUKWA MESHACK JEREMIA</p> <p>3. THE RETURNING OFFICER</p> <p>MEATU CONSTITUENCY</p>	<p style="font-size: 3em;">}</p>	<p>..... RESPONDENTS</p>
---	----------------------------------	---------------------------------

**(Appeal from the Judgment and Decree of the High Court of
Tanzania at Maswa)**

(Wambali, J.)

dated the 4th day of May, 2012

in

Misc. Civil Cause No. 1 of 2010

RULING OF THE COURT

15th February, 2013 &

MBAROUK, J.A.:

When the appeal was called on for hearing, Mr. Godwin Muganyizi, learned advocate for the 2nd respondent, raised a

preliminary objection notice of which was filed earlier pursuant to Rule 107(1) of the Court of Appeal Rules, 2009 (the Rules). Two grounds of objection were preferred, but at the hearing, Mr. Muganyizi opted to withdraw one of the two grounds of objection and remained with the following point of objection, namely:-

- (i) *That as per Rule 90(1) of the Court of Appeal Rules, 2009, this appeal is time barred.*

In support of his preliminary objection, Mr. Muganyizi submitted that, **One**, the purported certificate of delay found in the record of appeal failed to state the number of days to be excluded in compliance with the requirements under the proviso to Rule 90 (1) of the Rules which states as follows:-

"... 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 it is desired 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].

Mr. Muganyizi strongly urged us to strike out the appeal on account of such a defect found in the certificate of delay.

Two, Mr. Muganyizi submitted that even if the certificate of delay is to be found valid, but the same shows that the appeal was time barred. He said, the last day when the appellant was supplied with the copies of documentary evidence in connection with the intended appeal was 14-6-2012 vide ERV. No. 39777377. However, he said, the record shows that the appellant filed his appeal on 6th September, 2012. He added that, the appellant was supposed to

lodge his appeal within sixty days which expired on 14th August, 2012. For that reason, he urged us to strike out the appeal with costs for being time barred.

On his part, Mr. Jackson Bulashi, learned Principal State Attorney representing the first and third respondents, simply concurred with the submissions made by Mr. Muganyizi in this preliminary objection. However, he did not pray for costs.

On the other hand, Mr. Malima Beatus, learned advocate for the appellant, vehemently argued against the preliminary objection. He submitted that Rule 90(1) and (2) of the Rules concern a certificate of delay and not any other certificate. He contended that the certificate of delay on record, was made under Rule 90(1), hence he urged us to find that there is no problem to that effect. He added that, even if there is such irregularity of not stating the number of days to be excluded, this Court should consider the fact that it was the Court and not the appellant who wrote the said certificate of delay. Hence, he urged us to invoke Rule 2 of the

Rules which requires the Court to achieve substantive justice in administering these Rules.

Furthermore, Mr. Beatus submitted that the sixty days stated in Rule 90(1) should start to be counted on the day when the certificate of delay was signed by the Registrar which is 9th July, 2012 and not when the appellant was provided with the copies of documentary evidence.

For those reasons, Mr. Beatus urged us to overrule the preliminary objection and prayed for his client not to be condemned to costs.

In his rejoinder submission, Mr. Muganyizi contended that, even if the counting is to start on the day when the certificate of delay was signed by the respondent and not when the appellant was provided with the copies of documentary evidence, but still the calculation shows that the appellant filed his appeal late by two

days. Hence, he said, either way, the appellant cannot escape the hurdle of filing his appeal out of the prescribed time.

It seems Mr. Muganyizi's preliminary objection relies on two issues **One**, that the certificate of delay on record is incurably defective as it failed to state the number of days to be excluded in compliance with the requirements under the proviso to Rule 90 (1) of the Rules. **Two**, the appeal was lodged out of time.

As to the first limb of Mr. Muganyizi's preliminary objection, we have noted that the First Schedule to the Rules do not contain a format of a certificate of delay. However, reading Rule 90(1) closely, which states as follows:-

"... 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"

This means that the Registrar is required to certify by indicating in the certificate of delay the number of days from the day the appellant applied for copies of proceedings, judgment and decree to the day of the delivery of those copies. This is for the purpose of making the appellant to benefit from such time and the same be excluded in the filing of his/her appeal under Rule 90(1).

In the instant appeal, the certificate of delay has not stated the number of days to be excluded. We are of the considered opinion that even if the First schedule to the Rules does not contain a format of such a certificate, but we think the wording of the proviso to Rule 90(1) requires the number of days to be excluded to be specifically mentioned in the certificate of delay. Mentioning the number of days will make the process of knowing whether the appeal is within time easier. We are increasingly of the view that the requirement for the Registrar to certify the time and more so to mention the number of days to be excluded for the preparation and delivery of a copy of the proceedings, judgment and decree applied by the intended appellant under Rule 90(1) of the Rules is

mandatory. See the decisions of this Court in the cases of **Kantibhai M. Patel v. Dahyabhai Mistry** [2003] TLR 437 and **The Board of Trustees of the National Social Security Fund v. New Kilimanjaro Bazaar Limited**, Civil Appeal No. 16 of 2004 (Unreported).

In the case of **The Board of Trustees of the National Social Security Fund (Supra)**, cited Rule 83(1) of the Court of Appeal Rules, 1979 (the old Rules) which is now Rule 90(1) of the Rules where it was held as follows:-

".... A Certificate under Rule 83 (1) of the Court Rules 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...."


We therefore, we agree with Mr. Muganyizi that such a failure to mention the number of days to be exclude in the certificate of delay is an incurable irregularity and renders it invalid. Since, there is no valid certificate of delay on record, this appeal ought to have been instituted by 8th July, 2012 as the notice of appeal was lodged on 9th May, 2012.

Even if we assume that the certificate of delay is valid, but all the same the appellant was supposed to lodge his appeal by 14th August, 2012, but it was lodged on 6th September, 2012. Hence it was lodged out of the prescribed sixty days time.

For the above stated reasons, we find the preliminary objection with merit, hence the same is hereby sustained. In the event the appeal is struck out with costs.

DATED at **DAR ES SALAAM** this 20th day of February, 2013.


JUSTICE OF APPEAL


JUSTICE OF APPEAL


JUSTICE OF APPEAL