

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

CIVIL APPEAL NO. 15 OF 2014

(CORAM: MSOFFE, J.A., KAIJAGE, J.A., And MMILLA, J.A.)

SAO HILL INDUSTRIES LTD APPELLANT

VERSUS

EDIGARY TELESOPHORY MWAIFYEYA RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Iringa)

(Uzia, J.)

dated the 24th day of September, 2009

in

(DC) Civil Appeal No. 24 of 2008

RULING OF THE COURT

MSOFFE, J.A.:

When the appeal was called on for hearing the Respondent, a layman, raised an objection to the effect that he is yet to be served with a copy of the notice of appeal. Ideally, he ought to have canvassed a preliminary objection in terms of Rule 107 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). In the interests of justice however, we invoked the discretion under sub-rule (2) thereto and accorded him the opportunity to address us on the point in consequence of which he contended that he is yet to be served with the said notice of appeal to

date. On the other hand Mr. Zuberi Ngoda, learned advocate for the Appellant Company, readily conceded that to date the Respondent is yet to be served with a copy of the notice of appeal.

In the scheme of the Rules the appeal process is triggered by a notice of appeal. That is the spirit behind the provisions of Rule 83 of the Rules. Once a notice of appeal is lodged the intended appellant is mandated under Rule 84 (1) thereto to serve copies of it "*on all persons who seem to him to be directly affected by the appeal*" within fourteen days after lodging the notice of appeal. In this case, it is common ground that the Respondent was not served with a copy of the notice of appeal in clear contravention of the above stated Rule. Faced with this situation, both Mr. Ngoda and the Respondent are agreed that the only remedy open to us is to strike out the appeal on account of the fact that an essential step in the appeal process was not taken.

Mr. Ngoda urged that our order to the above effect should be without costs. We have considered this prayer. In the end however, we are of the view that the Respondent is entitled to costs because, as he orally submitted before us and he was not contradicted, he incurred costs for

purposes of, or towards, preparation for today's date of hearing for which he should be compensated.

In the event, for reasons stated, the appeal is struck out with costs.

DATED at IRINGA this 19th day of June, 2014.

J. H. MSOFFE
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

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


Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL