

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

(CORAM: MASSATI, J.A. ORIYO, J.A. And MUSSA, J.A.)

CIVIL APPEAL NO.81 OF 2014

HENRY WILLIAM.....APPELLANT

AND

ANYIGULILE MWASOMOLA.....RESPONDENT

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

(Mwambegele, J.)

dated the 30th day of January, 2013

in

Misc. Land Case Appeal No. 6 of 2007

RULING OF THE COURT

13th & 20th AUGUST, 2015

MUSSA, J.A.:

The appellant seeks to impugn the verdict of the High Court (Land Division) in Miscellaneous Land Case Appeal No.6 of 2007. The proceedings giving rise to the appeal were originally deliberated at Malindo Ward Tribunal where the appellant unsuccessfully sued the respondent over a parcel of land. Dissatisfied, the appellant preferred an appeal to the Mbeya District Land and Housing Tribunal which adjudged that the suit land should be divided and shared equally between the parties. Still

discontented, the appellant preferred a second appeal to the High Court (Land Division) which was, nonetheless, dismissed in its entirety (Mwambegele, J). Undaunted and, as already hinted, the appellant presently seeks to impugn the decision of the second appellate court in a verbose memorandum which is comprised of five grounds of grievance. The appeal is being resisted in a written reply to which respondent additionally raises a preliminary point of objection to the effect that the appeal is time barred.

At the hearing before us, both parties entered appearance in person, unrepresented. The respondent rose to take his preliminary point of objection and, in his brief address, he informed the court that the appeal is hopelessly time barred for being filed well beyond the sixty days prescribed by the law. In the premises the respondent urged us to strike out the belated appeal with costs. In response, the appellant dragged his feet considerably long as he tried to impress on us that the appeal was lodged within the prescribed time. Unfortunately, the factual setting disagreeably frowns at him and, this is why:-

The decision sought to be impugned was delivered on the 30th January 2013, whereupon on February the 5th the appellant duly lodged a Notice of Appeal to this court. On the 12th February, 2013 the appellant initiated an application, in the High Court, seeking certification of point(s) of law with respect to his intended appeal to the Court. At the height of the proceeding, the High Court (Karua, J), issued the required certificate on the 14th August, 2013. In the meantime, for some obscure cause, the appellant had not requested the District Registrar to avail him certified copies of the proceedings, Judgment and decree for appeal purpose till on the 19th August, 2013 when he put pen to paper and addressed the District Registrar thus:-

"RE. MISC. LAND APPEAL NO. 6/2007
HENRY WILLIAMAPPELLANT
VERSUS
ANYIGULILE MWASOMOLA.....RESPONDENT

Kindly refers to the above captioned matter.

I am dissatisfied with the judgment of the Hon. Mwambegele, J. which delivered on 30/1/2013, and I intend to appeal to the court of Appeal of Tanzania.

Please furnish me with certified copies of Judgment, Ruling, Decree, Drawn Order and Proceedings so as to process the intended appeal.

***Signed
Henry William
APPELLANT***

Copy TO BE SERVED UPON

*ANYIGULILE MWASOMOLA
THE RESPONDENT*

It is not known as to exactly when the appellant was availed with the requested copies but, more significantly, there is no certification from the Registrar in terms of Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). For purpose of clarity, we deem it opportune to reproduce the referred provision in full:-

"Subject to the provisions of Rule 128, and 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) a memorandum of appeal in quintuplicate;*
- (b) the record of appeal in quintuplicate;*
- (c) security for the costs of the appeal,*

*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 to 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."*

The bolded expression tells it all: As hinted upon, the request for the copy of the proceeding was made well beyond the required thirty days from the date when the decision was made and, no wonder, there is no certification from the Registrar as required by the proviso to the above extracted provision. It may be that the appellant delayed the request so as to first obtain certification of points of law from the High Court but; if such was the case, the appellant hoisted himself with his own petard. As it were, the appellant who was not accorded the benefit of certification of the delay from the Registrar eventually filed the purported appeal of on the 23rd December, 2013. That was more than ten months from the date of the Notice of appeal. The precaution required of a party in the

appellant's shoes was expressed with succinctness in the case of **Mrs. Kamiz Abdullah M.D. Kermal Vs The Registrar of Buildings and Hawa Bayona** [1988] TLR 199:

- (i) An appeal to the Court of Appeal must be instituted within 60 days of the date when the notice of appeal was lodged;*
- (ii) the time required for the preparation and delivery of the copy of proceedings in the High Court shall be excluded in computing the time within which an appeal to the Court of Appeal is to be instituted if the application for that copy has been made within 30 days of the decision to appeal; such time as certified by the registrar of the High Court as having been required for the preparation of the delivery of the copy of proceedings and the application for that copy was in writing and a copy thereof was sent to the other party;*
- (iii) where the delay in instituting the appeal is caused by good reasons, other than the time taken in preparing the record of appeal, a prudent party to the proceedings may safeguard its position by applying for extension*

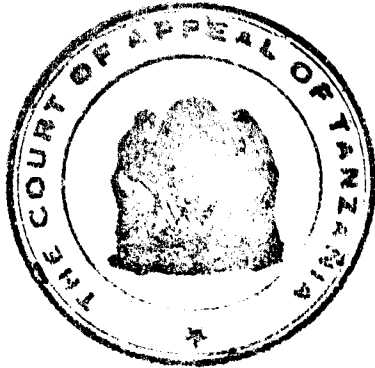
of the period prescribed for the doing of any act under Rule 8(now Rule 10) of the Tanzania Court of Appeal Rules. It was thus open for the appellant in this case, particularly at the time when she was applying for leave and certificate of the High Court, to also apply to this court to extend or enlarge the period prescribed for instituting the appeal.

(iv) Failure to institute a appeal within the prescribed 60 days renders the appeal incompetent and furthermore, the appellant is deemed to have withdrawn his appeal under Rule 84 (now 91). [emphasis supplied].

It was, thus, similarly open for the appellant in the matter at hand to apply to this court to enlarge the period prescribed for instituting the appeal so as to salvage his appeal. That he did not do and, as it presently stands, the appeal is incompetent for being filed beyond the prescribed time. In the result, we are left with no other option than to strike out the incompetent appeal with costs. It is accordingly ordered.

DATED at **MBEYA** this 19th day of August, 2015.

S.A.MASSATI
JUSTICE OF APPEAL



K.K.ORIYO
JUSTICE OF APPEAL

K.M.MUSSA
JUSTICE OF APPEAL

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


P.W. BAMPIKYA

SENIOR DEPUTY REGISTRAR
COURT OF APPEAL