

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

IN CIVIL APPEAL NO. 25 OF 2015

(CORAM: OTHMAN, C.J., KIMARO, J.A. And MUSSA, J.A.)

**AMIR HAMIDU ABRAHAMANAPPELLANT
VERSUS**

**SOGEA SATOM REHABILITATION
AND EXTENSION OF ZANZIBAR
AIRPORT RUNWAY CO.RESPONDENT**

**(Appeal from the judgment and decree of the
High Court of Zanzibar)**

(Mkusa I. Sepetu, J.)

dated the 13th day of June, 2012

in

Civil Cause No. 6 of 2010

RULING OF THE COURT

3rd & 7th December, 2015

MUSSA, J. A.:

At the hearing of the appeal, the appellant was fending for himself, unrepresented, whereas the respondent had the services of Mr. Omar Mwarab, learned Advocate. Counsel for the respondent had earlier lodged a Notice of Preliminary Objection which was comprised of a single ground to the effect that the appeal is time barred. Thus, as is the normal practice, we invited the parties to argue either in support or to counter the preliminary point raised ahead of the hearing of the appeal.

The learned counsel for the respondent commenced his submission by making reference to the certificate of delay issued by the Registrar of the High Court of Zanzibar and dated the 28th day of January, 2015. The certificate was to the effect that the period between the 28th October, 2014 and the 10th November, 2014, that is, covering the day when the appellant, respectively, applied for the court records and the day when he was supplied with the same, is to be excluded from the days required for the preparation and filing of the memorandum of appeal before the Court of Appeal.

Mr. Mwarab then urged that going by the certificate of delay, the appeal was filed out of time and, for that matter, the same is incompetent. To buttress his contention, the learned counsel for the respondent referred us to a Kenyan decision in the case of **Republic Vs Minister for Transport and Communication and another Ex parte Kenya consumers Organization and Another** [1995 – 1998]1 EA 290. Nonetheless, we venture to observe, Mr. Mwarab did not quite synchronize his submission with the dates of the material happenings in the course of the institution of the appeal, so as to substantiate the contention that the appeal was lodged belatedly.

For his part, the appellant, quite understandably, prefaced his brief address with a reminder that he is a lay person and, on that account, he is not well versed with the procedural details which are tied to the institution of appeals. He was, nevertheless, positive that he took all the essential steps within time and that, therefore, from where he stands, the appeal is properly before us.

For a better appreciation of the rival positions taken by the parties, we deem it instructive to briefly explore the background giving rise to the matter under our consideration and, in the process, we propose to as well assign dates to each and every essential step taken by the appellant in the course of the institution of the appeal.

To begin with, from the proceedings below, it is common ground that the appellant was the unsuccessful party in Civil Case No. 6 of 2010 which was instituted and determined by the Industrial Division of the High Court of Zanzibar (Sepetu, J.). Aggrieved, he originally filed Civil Appeal No. 74 of 2013 to this Court but, when the same came for hearing on the 4th December, 2013 it was struck out for being lodged out of time (Mbarouk J.A, Luanda J.A and Juma J.A).

In the aftermath, more particularly, on the 30th January, 2014 the appellant mounted an application for extension of time within which to file a fresh Notice of Appeal which application was granted by the High Court (Rabia H. Mohamed, J.) on the 28th October 2014. The extracted order required the appellant to file the Notice of Appeal within two weeks but the latter actually filed it with the sub registry of the Court on that very date, following which the same was acknowledged by the Registrar on the 29th October, 2014.

Soon after lodging the Notice of Appeal, the appellant also contemporaneously wrote a letter to the High Court Registrar requesting to be supplied with the proceedings, judgment and the drawn order which he desired to impugn. The letter which was acknowledged by the High Court on the 28th October 2014 was eventually served on the chambers of respondent's Advocates on the following day, i.e. on the 29th October, 2014.

From the available material on record, one cannot ascertain as to exactly when the appellant was supplied with the court records,

but it is beyond question that the memorandum of appeal was filed at the sub-registry on the 5th November, 2014 and acknowledged by the Registrar on the following day- ie, the 6th November, 2014. There being no suggestion to the contrary, we take it that the memorandum of appeal had, in its company, the record of appeal as required by Rule 90(1) of the Court of Appeal Rules, 2009 (the Rules). When the days are reckoned from the 28th October, when the Notice of Appeal was filed in the sub-registry, to the 6th November, when the memorandum and the record of appeal were acknowledged, it is clearly discernible that the appeal was filed well within time. To the extent that the certificate of delay was issued three months subsequent to the lodging of the appeal, the same is a superfluous document, just as it is as good as useless.

To this end, we respectfully decline the invitation of the learned counsel for the respondent and, accordingly, we overrule the preliminary point of objection and, going by the cherished usage underlying labour disputes, we give no order as to costs. In the final

result, we order that the hearing of the appeal on the merits should proceed of the 8th day of December,2015. Order accordingly.

DATED at **ZANZIBAR** this 4th day of December, 2015.

M. C. OTHMAN
CHIEF JUSTICE

N. P. KIMARO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', with a long horizontal stroke extending to the left.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL