

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

**(CORAM: MNASIRI, J.A., JUMA, J.A., And MUGASHA, J.A.)**

**CIVIL APPEAL NO. 95 OF 2015**

**NATIONAL MICROFINANCE BANK PLC.....APPELLANT  
VERSUS**

**ODDO ODILO MBUNDA.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Songea)**

**(Fikirini, J.)**

**Dated the 3<sup>rd</sup> day of April, 2014**

**in**

**Misc. Civil Application No. 9 of 2013**

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**JUDGMENT OF THE COURT**

29<sup>th</sup> July & 2<sup>nd</sup> August, 2016

**MUGASHA, J.A.:**

In the Resident Magistrates Court of Ruvuma, the respondent (**ODDO ODILO MBUNDA**) lodged a civil case claiming a sum of Tshs. 33, 863,000 as special damages against the appellant and **YONO AUCTION MART** and **ELSWIDA MBUNDA** who were 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively at the trial. The underlying facts are as follows: The respondent secured a loan of Tshs. 2,000,000/= from the appellant at its Mbinga Branch. The loan was to be repaid in twelve (12) months. Before the expiry of the loan repayment period, **YONO AUCTION MART** acting

under the instructions of the appellant, sold the respondent's house together with other properties to **ELSWIDA MBUNDA**. The trial court entered judgment in favour of the respondent. Dissatisfied, the appellant and two others unsuccessfully lodged an appeal to the High Court whereby, initially the appeal was rejected. Subsequently, the application to file the appeal out of time was dismissed. Still dissatisfied, the appellant has preferred this appeal faulting the decision of the High Court.

When the appeal was called on for hearing, the appellant was represented by Mr. Simon Mwakolo, learned counsel and the respondent was represented by Mr. Frank Ngafumika, learned counsel.

The Court *suo motu* required parties to address it on the propriety of the appeal filed after more than a year since the notice of appeal was lodged in Court. Mr. Mwakolo readily conceded that the appeal is not properly before the Court. He pointed out that, since the notice was filed on 11/4/2014 and the appeal was filed on 16/7/2015, the appeal is time barred. He urged the Court to strike out the appeal. On the other hand, Mr. Ngafumike did not resist the appellant's prayer but he pressed for costs.

In the present matter the issue for determination is whether the appeal is properly before the Court.

According to rule 83(1) of the Court of Appeal Rules, whoever desires to appeal to the Court must initially lodge a notice of appeal within thirty (30) days from the date of decision sought to be appealed against. Subsequently rule 90(1) gives following directions:

*"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) a memorandum of appeal in quintuplicate.*
- (b) the record of appeal in quintuplicate;*
- (c) security for 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 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 supplied].*

In terms of the cited rule, the period within which the appeal must be lodged is sixty days from the date of filing the notice of appeal. However, where the intending appellant applies to the Registrar to be supplied with a copy of requisite proceedings, Judgment/Ruling and Decree/Drawn Order within thirty days from the date of the impugned decision, the period of waiting to be supplied shall be excluded in the computation of time to file the appeal as maybe certified by the Registrar. The certificate of delay must form part of the record of appeal to enable the Court to determine if the appeal is filed within the prescribed time. Without a certificate of delay, the appellant is not entitled to benefit from exclusion of the period of waiting to be supplied with the proceedings of the High Court which renders the appeal time barred.

The Court has on several occasions said that, where there is no valid certificate of delay, the appellant is not entitled to benefit from the exclusion of the period of waiting to be supplied with proceedings from the High Court which makes the appeal to be time barred and not properly before the Court. (See **ALI CHAMANI VS KARAGWE DISTRICT COUNCIL & ANOTHER**, Civil Appeal No. 75 OF 2012; **RAMADHANI BAKARI & 106 OTHERS VS AGAKHAN HOSPITAL** Civil Appeal No. 100 of 2013, **SHAFEE**

**TAHERALI VS MOHAMED ENTERPRISES (T) LTD** Civil Appeal No. 86 of 2015. (All unreported).

In the matter under scrutiny, notice of appeal was filed on 11/04/2014 and the appeal was filed more than one year later on 16/07/2015. Since there is no valid certificate of delay, the appeal was lodged beyond the sixty (60) days and hence contrary to rule 90 (1) of the Court of Appeal Rules.

On account of the foregoing, the appeal is not properly before the Court and it is hereby struck out. We make no order as to costs since the issue of incompetence was raised *suo motu* by the Court.

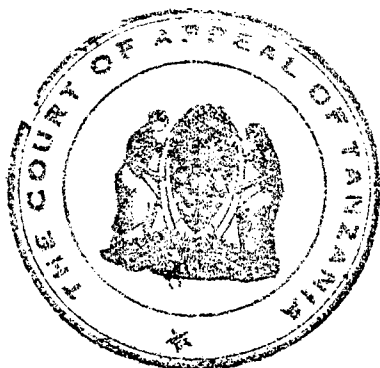
**DATED** at **IRINGA** this 30<sup>th</sup> day of July, 2016.

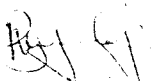
S. MJASIRI  
**JUSTICE OF APPEAL**

I. H. JUMA  
**JUSTICE OF APPEAL**

S. MUGASHA  
**JUSTICE OF APPEAL**

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



  
B. R. NYAKI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**