

IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

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

CIVIL APPEAL NO.10 OF 2016

ELIAS RAMIN BACHU.....APPELLANT

VERSUS

JOSEPH PAUL ZENDA.....RESPONDENT

(Appeal from the judgment of the High Court of Tanzania

at Mtwara)

(Kibella, J.)

dated the 7th day of November 2013

in

Land Appeal No. 4 of 2013

RULING OF THE COURT

1st & 3rd August, 2016

KIMARO, J.A.:

Mr. Hussein Mtembwa, learned advocate represented the appellant when the appeal was called on for hearing today. The respondent was not present. His father who held a power of attorney in the proceedings which took place in the subordinate courts represented him. He informed the Court

that the respondent who is employed as a policeman could not turn up for the hearing of the appeal because he has been assigned an important work.

The learned advocate for the appellant conceded that the appeal before the Court is incompetent because in the record of appeal there was omission to include documents necessary for the determination of the appeal. He mentioned the documents to include exhibit P1. This is a Certificate of Occupancy No. 35138 tendered as evidence in the trial court. Another is a drawn order itemized in the index as number 20 at page 113 of the record of appeal. However, page 113 is missing in the record of appeal. Other missing documents are a letter by the appellant requesting for the supply of the proceedings and a certificate of delay showing that the appellant is exempted from filing the appeal within a period of sixty days from the delivery of the judgment in compliance to the proviso to 90(1) of the Court of Appeal Rules 2009.

The learned advocate said he was not the one who filed the record of appeal. It was filed by a person not conversant with the requirement of the Court of Appeal Rules, 2009. He prayed to have the appeal struck out for incompetence, but with no order for costs.

The father of the respondent did not have any objection to the application which was made by the learned advocate for the appellant that the appeal be struck out.

This is a second appeal. The matter originated from the District Land Tribunal at Mtwara.

The High Court in this matter was the first appellate court. Appeals coming to the Court from the appellate jurisdiction of the High Court are governed by Rule 96 (2) of the Court of Appeal Rules 2009. The Rule says:

"For purposes of any appeal from the High Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (1) and shall contain also the following documents relating to the first appellate court-

- (a) The order if any giving leave to appeal;*
- (b) The memorandum of appeal;*

(c) The record of proceedings;

(d) The judgment or ruling;

(e) The decree or order;

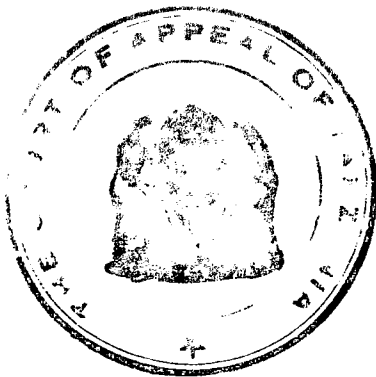
(f) The notice of appeal,

and in case of a third appeal, shall contain also the corresponding documents in relation to the second appeal and the certificate of the High Court that a point of law is involved."

We have thoroughly gone through the record of appeal filed by the appellant. It is true the inclusion of the documents mentioned by the learned advocate for the appellant was omitted when the record of appeal was filed. As conceded to by the learned advocate, that omission renders the appeal incompetent. The documents are important for purposes of enabling the Court to determine the limitation period of filing the appeal and the merits of the appeal.

Given the non-compliance of Rule 96(2) of the Court Rules, the appeal is incompetent. We strike it out with no order for costs.

DATED at **MTWARA** this 2nd day of August, 2016.

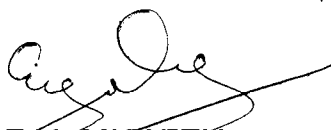


M.C. OTHMAN
CHIEF JUSTICE

N.P. KIMARO
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL