

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And MMILLA, J.A.)

CIVIL APPEAL NO. 118 OF 2011

**EZEKIEL KAPUGIAPPELLANT
VERSUS**

ABDALLAH MOMBASA RESPONDENT

**(Appeal from the decision of the High Court of
Tanzania (Land Division) at Dar es Salaam)**

(Mziray, J.)

Dated the 18th day of June, 2011

In

Miscellaneous Land Appeal No. 36 of 2007

RULING OF THE COURT

5th & 12th April, 2016

RUTAKANGWA, J.A.:

The appellant was dissatisfied with the judgment and decree of the High Court (Land Division) at Dar es Salaam in Misc. Land Appeal No. 36 of 2007 ("the judgment").

The judgment was delivered on 18th June, 2010. On 30th June 2010, the appellant duly lodged a notice of appeal.

Under Rule 90(1) of the Tanzania Court of Appeal Rules, 2009 ("the Rules") the appellant ought to have filed his appeal within sixty (60) "*days*

of the date when the notice of appeal was lodged”, that is, by 30th August, 2010 in this particular case. However, a proviso to sub-rule provides 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...., there shall, in computing the time within which the appeal is to be instituted, 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 of the appellant.”

For one to benefit from the provisions of the above proviso, it is a mandatory requirement of sub-rule (2) of Rule 90 that the application for the copy should be in writing and a copy thereof be served on the respondent(s). It is a conceded fact that this appeal was instituted by the lodging of a memorandum and record of appeal on 17th November, 2011.

When the appeal came before us for hearing, the appellant appeared in person, fending for himself. The respondent was represented by Mr. Gabinus Galikano, learned advocate.

Mr. Galikano challenged the competence of the appeal from two fronts. **Firstly**, Mr. Galikano contended that the appeal was time barred, and **secondly**, that the application for leave was improperly obtained.

In elaboration, Mr. Galikano argued that the appellant applied in writing to the Registrar of the High Court to be supplied with the requisite copy of the proceedings on 21st August 2011, that is, over thirteen (13) months after the delivery of the impugned decision. To support his contention he referred us to the relevant letter found on page 71 of the record of appeal, which the appellant never disputed. This inordinate delay, he submitted, disentitled the appellant from relying on the exception to sub-rule (1) of Rule 90. On account of this, he gallantly argued that the appeal was instituted out of time and is accordingly incompetent.

In support of the second limb of the preliminary objection, Mr. Galikano referred us to page 65 of the record of appeal whereat a chamber summons taken under section 47(2) of the Land Disputes Courts Acts, Cap 216 ("the Act") is found. By this chamber summons, lodged on 26th November, 2010, the appellant instituted his application for the grant of certificate on a point of law.

It is provided under s. 47(2) of the Act that where an appeal to this Court originates from the Ward Tribunal, the appellant shall seek for a certificate on a point of law from the High Court (Land Division).

Further, of significance for the propose of disposing of the two preliminary objections is s. 47(3) of the Act, which provides thus:

"The procedure for appeal to the Court of Appeal under this section shall be governed by the Court of Appeal Rules."

All in all, Mr. Galikano urged us to find this purported appeal incompetent and strike it out with no order on costs.

In response to Mr. Galikano's submission, the appellant who is a lay person, appealed to the indulgence of the Court, because he believed he had observed the law to the letter. He never disowned the letter dated 21st August, 2011 applying for a copy of the proceedings in the High Court.

On our part, having gone through the submission of Mr. Galikano and the mandatory requirements of the law, we are increasingly of the view that this purported appeal is incompetent on account of patently being time barred, as correctly urged by Mr. Galikano. Having failed to strictly comply with the provisions of Rule 90(1) of the Rules, the appellant ought to have instituted his appeal *"within sixty days of the date when the notice of appeal was lodged"*. Simple arithmetic leads to one conclusion. This is that the appeal ought to have been lodged by 30th July, 2010. He failed to do so.

Instead, he instituted this appeal on 17th November, 2011, after thirteen months had elapsed. It goes without saying, therefore, that this appeal was lodged out of the prescribed period. This holding alone suffices to dispose of this appeal. We find no pressing need to canvass the second point of preliminary objection.

In view of the above firm finding, we find this purported appeal to be incompetent and we accordingly strike it out, as pressed by Mr. Galikano. The appellant is at liberty to institute a proper appeal, subject to the law on limitation.

Each party to bear his own costs.

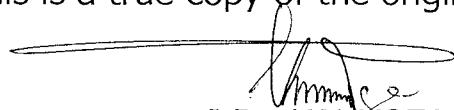
DATED at DAR ES SALAAM this 6th day of April, 2016.

E.M.K. RUGAKANGWA
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

B.M. MMILA
JUSTICE OF APPEAL

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



J.R. KAHYOZA
REGISTRAR
COURT OF APPEAL