

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: KAIJAGE, J.A., MUSSA, J.A. And MWARIJA, J.A.)

CIVIL APPLICATION NO. 148 OF 2014

AIRTEL TANZANIA LTD.....APPLICANT

VERSUS

TANZANIA REVENUE AUTHORITY.....RESPONDENT

(Application for striking out notice of appeal from the decision of the  
Tax Revenue Appeals Tribunal at Dar es Salaam)

(Twaib, J.)

Dated the 22<sup>nd</sup> day of November, 2013

In

Tribunal Tax Appeal No. 14 of 2012

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RULING OF THE COURT

27<sup>th</sup> May & 24<sup>th</sup> June, 2016

MUSSA, J.A.:

The respondent was dissatisfied by the decision of the Tax Revenue Appeals Tribunal which was pronounced on the 22<sup>nd</sup> November, 2013. In response, she duly filed a Notice of appeal on the 5<sup>th</sup> December, 2013 which was received and acknowledged by counsel for the applicant on the 6<sup>th</sup> December, 2013. Thereafter, according to

the applicant, the respondent took no further action, hence the application at hand.

In effect, the application seeks to move the Court to strike out the respondent's Notice of Appeal on the ground that some essential step in the proceedings has not been taken within the prescribed time. The application is by Notice of Motion which is predicated under Rules 60(2) and 89(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit sworn by Mr. Onesmo Kyauke who held himself as an Advocate of the applicant. In addition, the applicant has lodged written submissions in support of the application.

When the application was called on for hearing before us, the applicant was represented by Mr. Makarios Tairo, learned Advocate. The respondent was absent despite being duly served and, accordingly, we ordered the application to proceed in her absence.

Mr. Tairo fully adopted the Notice of Motion, the accompanying affidavit as well as the written submissions in support of the application. Elaborating the applicant's written submissions, Mr. Tairo contended

that after lodging the Notice of Appeal, the respondent was notified of the decision of the Tax Revenue Appeals Tribunal in a letter written by the Registrar of the Tribunal and dated the 12<sup>th</sup> December, 2013. The notification letter, he said, also enclosed the copy of the proceedings, judgment and the decree of the Tribunal. The learned counsel for the applicant informed us that the notification letter is appended to the Notice of Motion which was served upon the respondent on the 16<sup>th</sup> September, 2014. To this date, Mr. Tairo further submitted, the respondent has not instituted the appeal within the prescribed time as required by Rule 90(1) of the Rules and, accordingly, the learned counsel for the applicant urged us to strike out the Notice of Appeal with costs.

Having heard the learned counsel for the applicant, it seems clear to us that the respondent was duly served with the Notice of Motion on the 16<sup>th</sup> September, 2014. Then, a little later, on the 6<sup>th</sup> November, 2014 the respondent was just as well served with the applicant's written submissions in support of the application. And, yet, for some obscure cause, the respondent adopted a passive stance and made no effort whatsoever to counter the applicant's quest either by way of an affidavit

in reply or written submission. Thus, to this end, the factual averments as contained in the applicant's affidavit stand uncontested.

It is common ground that this application revolves around the question whether or not the respondent is in breach of Rule 90(1) of the Rules which stipulates: -

*"90.-(1) 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*

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- (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 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."*

Unfortunately, on account of the respondent's passiveness, it cannot be ascertained whether or not the respondent wrote the Tribunal Registrar to request for a copy of the proceedings and, if so, whether or not she copied the requesting letter to the applicant to entitle herself to rely on the proviso to Rule (90)(1) of the Rules. That being so and, there being no certificate of delay, it was incumbent upon the respondent to institute the appeal within sixty (60) days from the date when the Notice of Appeal was lodged. As we have already indicated, the Notice of Appeal was lodged on the 5<sup>th</sup> December, 2013 but, having done so, the respondent did not take any further step and, more specifically, she did not, at all, institute the appeal. As to what results from such inaction, we need do no more than reiterate our observation in the unreported Civil Application No. 4 of 2011 – **Olivia Kisinja Mdete Vs Hilda Mkinga**: -

*"The law is now settled, upon lodging a Notice of Appeal, the intending appellant must not sit back but is required to move the process forward by taking essential steps that have*

*been clearly outlined by the Court of Appeal Rules. The applicant was entitled to move the Court under Rule 89(2) to strike out a notice of appeal where no essential steps have been taken beyond that notice.”*

All said, we find merits in the application which we, accordingly, allow. The Notice of Appeal filed by the respondent is, hereby, struck out with costs. It is so ordered.

**DATED at DAR ES SALAAM this 16<sup>th</sup> day of June, 2016.**


S.S. KAIJAGE  
**JUSTICE OF APPEAL**

K.M. MUSSA  
**JUSTICE OF APPEAL**

A.G. MWARIJA  
**JUSTICE OF APPEAL**

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



  
E.F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**