

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: MBAROUK, J.A., MASSATI, J.A. And JUMA, J.A.)

CIVIL APPEAL NO. 40 OF 2010

SIMON LANYA.....APPELLANT

VERSUS

- |   |   |                  |
|---|---|------------------|
| 1. THE PERMANENT SECRETARY<br>MINISTRY OF PUBLIC SAFETY<br>AND SECURITY | } | .....RESPONDENTS |
| 2. THE ATTORNEY GENERAL   |   |                  |
| 3. D. 3190 PC MRAMBA  |   |                  |
| 4. C. 8932. SGT MICHAEL   |   |                  |

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

(Nyerere, J.)

Dated 13<sup>th</sup> day of November, 2009

in

Civil Case No. 71 of 2007

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**RULING OF THE COURT**

27<sup>th</sup> & 30<sup>th</sup> June, 2016

**MBAROUK, J.A.:**

When the appeal was called on for hearing, it transpired that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their notice of preliminary objection under Rule 107 of the Court of Appeal

Rules, 2009 (the Rules) to the effect that the appeal is hopelessly time barred.

At the hearing, the appellant appeared in person unrepresented. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents were represented by Mr. Pounsiano Lukosi, learned Principal State Attorney, whereas the 3<sup>rd</sup> and 4<sup>th</sup> respondents appeared in person.

Arguing in support of the preliminary objection, the learned Principal State Attorney submitted that, the record at page 196 shows that the appellant lodged his notice of appeal on 16<sup>th</sup> November, 2009 and thereafter on 8<sup>th</sup> June, 2010 he lodged his memorandum of appeal and the record of appeal. He further submitted that, by simple arithmetic the appeal was instituted beyond the sixty days limit prescribed under Rule 90(1) of the Rules. He added that a certificate of delay issued on 9-4-2010 has no value as the requirement under Rule 90(2) of the Rules to copy and serve the respondent with a letter asking for copies of proceedings was not complied with although the appellant had written such letter. He therefore prayed for the preliminary objection to be upheld

and find the appeal to have been filed out of time. For being out of time he urged us to strike it out.

On their part, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents had nothing to submit, they just simply agreed to what have been submitted by the learned Principal State Attorney.

On his part, the appellant admitted that he failed to copy to the respondents his letter dated 13-11-2009 addressed to the Registrar of the High Court when he applied for copies of record of proceedings. However, he claimed not to be aware of that requirement until later.

According to the Court of Appeal Rules, 2009 the institution of appeals is governed by Rule 90 of the Rules which provides as follows:-

*"90 – (1) Subject to the provisions of Rule 128, an appeal shall be instituted by lodging in 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 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 of the appellant.*

*(2) An appellant shall not be entitled to rely on the exception to sub-rule (1) **unless his application for the copy was in writing and a copy of it was served on the Respondent.*** [Emphasis added].

In the instant case, the record clearly shows that and the appellant has admitted that, the letter wrote applying for copies of proceedings was not copied to the respondents.

Under the provisions of Rule 90(2) of the Rules, the appellant cannot shield himself under the exception of sub rule 1 of Rule 90 unless a copy of the letter addressed to the Registrar of the High Court asking for the record of proceedings was sent to the Respondent. This Court in the case of **D.P. Valambia v. Transport Equipment Ltd** [1992] T.L.R. 246 citing Rule 83 (2) of the Old Court Appeal Rules, 1979 which is "*in pari materia*" with the current Rule 90(2) of Rules held:

*"(ii) if the respondent does not serve upon the applicant a copy of their letter in which they apply for a copy of the proceedings as required by Rule 83(2) they are not covered by the exception in sub-rule (1). Thus if the Registrar issued them with a certificate under-sub rule (1) of Rule 83 such certificate was issued under a mistake of fact. Consequently the period available to the respondents in which to institute the appeal was sixty days." [Emphasis added].*

In the event that the appellant has failed to comply with the requirement under Rule 90(2) of the Rules, we have no other option but to find the appeal incompetent for being filed out of time and the appellant cannot rely on the exception of Rule 90(1) as no copy of the letter addressed to the Registrar of the High Court asking for the record of proceedings was copied to the Respondents. For being incompetent, the appeal is hereby struck out with costs.

**DATED** at **DAR ES SALAAM** this 28<sup>th</sup> day of June, 2016.

M. S. MBAROUK  
**JUSTICE OF APPEAL**

S.A. MASSATI  
**JUSTICE OF APPEAL**

I.H. JUMA  
**JUSITCE OF APPEAL**

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



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