

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUSSA, J.A., MZIRAY, J.A. And NDIKA, J.A.)

CIVIL APPLICATION NO. 47 OF 2016

BOULANGERERIE SAINT THOMAS.....APPLICANT

VERSUS

TANZANIA INTERNATIONAL CONTAINER

TERMINAL SERVICES LTDRESPONDENT

(Application to strike out Notice of Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Bongole, J.)

Dated 28th day of March, 2014

In

Civil Appeal No. 26 of 2013

RULING OF THE COURT

8th May, & 5th June, 2017

MZIRAY, J.A.:

This is an application for striking out a notice of appeal lodged by the respondent on 11th April, 2014 on the ground that since the application for leave to appeal was granted, to date, the respondent has failed to take essential steps in applying for the proceedings of the High Court and that there is no appeal that has been filed in the Court of Appeal. The application is made under Rule 89 (2) of the Tanzania Court of Appeal Rules, 2009 (the

Rules) supported by the affidavit of Fulgence Thomas Massawe, the applicant's Advocate.

When the application was called on for hearing, Mr. Massawe, learned Advocate appeared for the applicant and the respondent, despite being duly served with summons to appear, did not show up in Court. Upon application by the learned Advocate, the matter proceeded ex parte against the respondent under Rule 63(2) of the Rules.

Submitting in support of the application, Mr. Massawe argued that the ruling of the Court was delivered on 28/3/2015 and that leave to appeal to this Court was granted on 5/10/2015. He submitted further that the respondent applied for copy of proceedings of the High Court on 8/4/2015. He asserted that the respondent to date has not taken any step to initiate appeal after leave was granted. So, he prayed that the Notice be struck out with costs.

This Court time and again has emphasized the duty of the intending appellant to take essential steps towards lodging appeal. In the case of **Oliva Kisinja Mdetete vs. Hilda Mkinga**, Civil Application No. 4 of 2011 (unreported) this Court stated;

"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, 2009."

According to the applicable Rules, the essential steps are marked by specific timelines that begin with Rule 83(2) of the Rules. This sub-rule (2) requires any person who is aggrieved with the decision of the High Court on civil matters to take first essential steps in lodging a notice of appeal within thirty days of the date of the decision against which it is desired to appeal. The respondent complied with this step on 11th April, 2014 and served the applicant. It is clear from the notice of motion that apart from filing a notice of appeal, the respondent applied for leave to file an appeal to this Court and was granted the same on 2/10/2015. It is however on record, particularly paragraphs 8 and 10 of the affidavit in reply, that the respondent after filing a notice of appeal wrote a letter applying for copies of ruling, drawn order and proceedings and letter applying for the same was served to the applicants and that to date the High Court has not supplied to the

respondent the documents requested for. These averments have never been challenged by Mr. Massawe in any way whatsoever. There is no doubt therefore that the requirement of Rule 83 of the Rules was complied with and the respondent on his part had no obligation under the law to keep reminding the Registry to forward the proceedings he had applied.

This Court in the case of **Transcontinental Forwarders Ltd vs Tanganyika Motors Ltd** [1997]TLR 328 stated:-

"That the present respondent, who had applied to the Registry for a copy of the proceedings sought to be appealed against and not been furnished with any had complied with the Rules by copying his letter to the relevant parties, there was no legal provision requiring him to keep reminding the Registry to forward the proceedings and once Rule 83 was complied with the intending applicant was home and dry".

In the instant application it is not true as averred by Mr. Massawe in paragraph 8 of his deponed affidavit that since the application for leave to appeal was granted to date, the respondent has failed to take essential steps

to get the proceedings from the Registry. On the contrary there is proof that he applied for these documents but for unknown reasons the Registry failed to furnish him. Without these documents the respondent was incapacitated to lodge an appeal to this Court. The efforts of the respondent are vividly seen and he cannot be blamed of anything.

For that reason, we find that the application is filed without sufficient cause and we strike it out with the usual consequences as to costs.

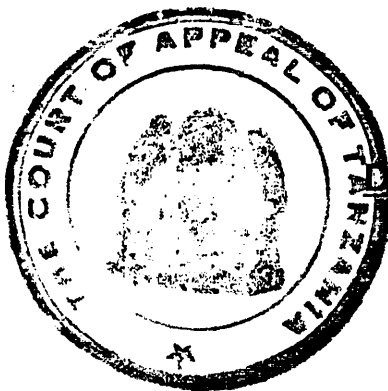
DATED at DAR ES SALAAM this 31st day of May, 2017.

K. M. MUSSA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

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



A handwritten signature in black ink, appearing to read "A.H. Msumi".

A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL