

**IN THE COURT OF APPEAL OF TANZANIA
AT TABORA**

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

CIVIL APPEAL NO. 93 OF 2016

**TOBACCO TRADERS COMPANY LTD..... APPELLANT
VERSUS
UFULUMA AMCS LIMITED.....1ST RESPONDENT
USESULA AMCS LIMITED.....2ND RESPONDENT
TANZANIA LEAF TOBACCO CO. LIMITED.....3RD RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania
at Tabora)**

(Songoro, J.)

**Dated the 3rd day of June, 2015
in
Civil Case No. 14 of 2000**

RULING OF THE COURT

22nd & 24th August, 2017.

LUANDA, JA.:

In the High Court of Tanzania (Tabora Registry), the appellant sued the respondents in connection with a breach of contract of sale of tobacco. The appellant's claim was dismissed with costs. The appellant is aggrieved by that decision, she intends to appeal to this Court. She showed her intention to appeal by filing a notice of appeal, wrote a letter to the Registrar of the High Court (Tabora Registry) requesting for the supply of

copies of proceedings, judgment and decree. Eventually, she filed this appeal on 7/6/2016. The appeal was fixed for hearing on 22/8/2017.

Some few days before the appeal came for hearing, the third respondent through IMMMA Advocates filed a notice of a preliminary objection consisting of two points namely, one, the appellant's letter to the High Court of Tanzania requesting for copies proceedings, judgment and decree was not served on the 3rd respondent. In terms of Rule 90 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the appeal is incompetent for being lodged after the expiry of 60 days from the date the notice of appeal was lodged. Two, the appeal is incompetent as the notice of appeal was not served on the 3rd respondent as per the requirement of Rule 84 (1) of the Rules.

Mr. Faustine Malongo, learned advocate from IMMMA Advocates submitted to the following effect. Normally after the lodging of a notice of appeal, the intended appellant is required to serve the same to the intended respondent within 14 days from the date of lodging of the said notice of appeal as per requirement of Rule 84 (1) of the Rules. In this case, he said the notice of appeal was lodged on 8/6/2015. To date the 3rd

respondent is yet to be served with the notice of appeal. Turning to the second point, Mr. Malongo said this appeal was lodged beyond the prescribed time of sixty days. He said though the appellant wrote a letter for the supply of proceedings, judgment and decree on 9/6/2015 and the appeal was lodged on 7/6/2016, but that letter was not copied to the respondents as per the requirement of Rule 90 (2) of the Rules as such he cannot seek refuge under the proviso to Rule 90 (1) of the Rules. He said the appeal is incompetent and so is liable to be struck out with costs.

The appellant was represented by her Managing Director one Mr. Peter Masanja. At first, Mr. Masanja resisted the points of law raised. However, after the Court had explained to him the nature of the points of law raised and their legal implication, he conceded to the points raised but he prayed to be spared from paying costs.

The record of appeal shows very clearly on pages 143 – 144 that both the notice of appeal as well as the letter applying for copies of judgment, proceedings and decree were not served on the 3rd respondent. In terms of Rule 84 (1) of the Rules, the notice of appeal is required to be

served within 14 days after it has been lodged. In this case, the same is yet to have been served to date. The Rule reads as follows:-

"84.-(1) An intended appellant shall, before, or within fourteen days after lodging a notice of appeal, serve copies of it on all persons who seem to him to be directly affected by the appeal; but the Court may, on an ex parte application, direct that service need not be effected on any person who took no part in the proceedings in the High Court."

Since the Notice of Appeal was not served on the 3rd respondent, the appeal is incompetent for non-compliance with the provisions of Rule 84 (1) of the Rules. (See **Wilfred Muganyizi Rwakatare vs. Hamisi Sued Kagasheki & Hon. The Attorney General**, Civil Appeal No. 107 of 2008 (unreported)).

That is not the end of the story. The appellant did not also copy and serve on the 3rd respondent a letter applying for copies of proceedings, judgment and decree. If the letter is not copied to the intended respondent, the intended appellant must file his appeal within sixty days of

the date when the notice of appeal was lodged. The proviso to Rule 90 (1) of the Rules is not applicable. (See **Ezekiel Kapugi vs. Abdallah Mombasa**, Civil Appeal No. 118 of 2011 (unreported)). Since in this case the letter was not copied to the respondents and she filed the appeal almost a year after lodging the notice of appeal, the appeal is time barred.

That said, the appeal before us is incompetent. The same is struck out with costs.

It is so ordered.


DATED at **TABORA** this 23rd day of August, 2017.

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL