

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: MMILLA, J.A., MWANGESI, J.A. And NDIKA, J.A.)**

**CIVIL APPLICATION NO. 134 OF 2014**

**BARCLAYS BANK TANZANIA LIMITED ..... APPLICANT**

**VERSUS**

**HOOD TRANSPORT LIMITED & ANOTHER ..... RESPONDENT**

**(Application for striking out the notice of appeal from the judgment and  
decree of the High Court of Tanzania**

**at Dar es Salaam)**

**(Bukuku, J.)**

**in**

**Civil Case No. 84 of 2012**

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**RULING OF THE COURT**

3<sup>rd</sup> & 13<sup>th</sup> September, 2018

**MMILLA, J.A.:**

The applicant, Barclays Bank Tanzania Limited, has through the services of FB Attorneys of Dar es Salaam, instituted this application in which they are asking the Court to strike out the notice of appeal which was lodged in this Court by the respondents, Hood Transport Limited and Scania Tanzania Limited, on account of the latters' failure to take essential steps in the proceedings. The application is by way of Notice of Motion and

is founded on the provisions of Rule 89 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit sworn by Gaudiosus Ishengoma who is one of the advocates from the said law firm of FB Attorneys.

The brief background facts leading to the present application are that about six years ago, the first respondent filed Civil Case No. 84 of 2012 at the High Court of Tanzania (Commercial Division) at Dar es Salaam, against Barclays Bank Tanzania Limited and Scania Tanzania Limited, for payment of a certain amount of money. Upon service of the plaint on the then defendants, the latter raised a preliminary objection against the suit on the ground, among others, that the suit was time barred. After hearing the parties on the point, the trial court handed down its ruling on 12.3.2013 in which it upheld the preliminary objection and dismissed the suit with costs. The first respondent was aggrieved with that decision, consequent to which she on 10.4.2013 lodged a notice of appeal in the Court. She simultaneously applied to the High Court to be supplied with certified copies of the ruling, drawn order and proceedings for purposes of appeal.

The office of the Registrar of the High Court promptly acted on the first respondent's request. That office prepared the required documents and on 23.9.2013 the first respondent was informed vide a letter referenced No. Comm. Cause No. 84/2013 of that same date that the documents were ready for collection upon payment of the requisite fees. On 21.10.2013, the first respondent's advocate wrote a letter to the Registrar through which he acknowledged to have received his letter. However, the respondents had, up to the time of filing the present application on 28.8.2014, not taken any positive steps in the proceedings, hence the prayer by the applicant that the Court strikes out the notice of appeal the respondents earlier on filed.

The respondents were served with the Notice of Motion and the affidavit in support, but they did not file their respective affidavits in reply. Also, they were served to appear in Court on 3.9.2018, the day on which this application was slated for hearing, but again they did not enter appearance. It is on that basis that learned counsel Ishengoma who represented the applicant company on that day successfully requested the Court to proceed with the hearing of the application *ex parte* in terms of Rule 63 (2) of the Rules.

We find it convenient to start with Rule 89 (2) of the Rules under which this application is anchored. That Rule provides that:-

*"R.89 (2): Subject to the provisions of sub rule (1), a respondent or other person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, **apply to the Court to strike out the notice of appeal** as the case may be, **on the ground that no appeal lies or that some essential step in the proceedings has not been taken within the prescribed time.**"*[Emphasis is ours.]

As afore-pointed out, the basic complaint in the present case is that the respondents have not taken some essential step in the proceedings, that is, they did not collect the necessary documents they had applied for, which is why they have not filed the appeal to date.

We have earnestly considered the uncontested facts before us. Mr. Ishengoma annexed the Registrar's letter referenced Comm. Cause No. 84/2013 of 23.9.2013 vide which, indeed, the first respondent was informed through her advocates, Law Associates, ~~that~~ she applied for certified copies of ruling, drawn order and proceedings in respect of Civil

Case No. 84 of 2012 were ready for collection. We have also considered and believed the contents of paragraph 6 of the affidavit in support of the application, as well as the submission by Mr. Ishengoma, that the first respondent's advocate wrote a letter to the Registrar on 21.10.2013 vide which he acknowledged receipt of the Registrar's letter informing them that the necessary documents they had applied for were ready for collection. As it were however, neither the first respondent nor her advocates collected the said documents, which is partly why they have not filed the appeal to date.

We need to point out that in essence; essential steps entail steps which advance the hearing of the appeals, including timely collection of the necessary documents which are supposed to be relied upon by the potential appellant in preparing his/her appeal, obtaining leave to appeal in those circumstances where the appeal is not of right etc. - See the case of **Asmin Rashid v. Boko Omari** [1997] T.L.R. 146.

In the present matter, we find and hold that the respondents' failure to collect the necessary documents they applied for amounted to failure to take essential steps in the proceedings as claimed by the applicant company's advocate. In the circumstances, we are constrained to, and we

hereby strike out the Notice of Appeal which the first respondent filed on 10.4.2013. The applicant is awarded costs.

We accordingly order.


**DATED at DAR ES SALAAM** this 10<sup>th</sup> day of September, 2018.

B. M. MMILLA  
**JUSTICE OF APPEAL**

S. S. MWANGESI  
**JUSTICE OF APPEAL**

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

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

  
S.J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

