

**IN THE COURT OF APEPAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MUSSA, J.A., LILA, J.A. And MKUYE, J.A.)**

**CIVIL APPLICATION NO. 104/01 OF 2018**

**BOULANGERERIE SAINT THOMAS..... APPLICANT**

**VERSUS**

**/ 1**

**TANZANIA INTERNATIONAL CONTAINER**

**TERMINAL SERVICES LTD..... RESPONDENT**

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

**(Bongole, J.)**

**dated the 23<sup>rd</sup> day of March, 2018**

**in**

**Civil Case No. 26 of 2013**

**RULING OF THE COURT**

3<sup>rd</sup> & 26<sup>th</sup> July, 2018

**MUSSA, J.A.:**

The applicant is moving the Court for an order that the Notice of Appeal filed by the respondent as against the decision of the High Court in Civil Appeal No. 26 of 2013 be struck out for failure to take essential steps. The application is by way of a Notice of Motion which has been taken out under the provisions of Rule 89(2) of the Tanzania Court of Appeal Rules, 2009

(the Rules). The same is supported by an affidavit duly sworn by a certain Ms. Candide Cimpaye who held herself up as the Principal Officer of the respondent. The factual setting is easily discernible from the affidavit in support of the Notice of Motion and may be recapitulated thus:-

In the Resident Magistrate's Court of Dar es Salaam, the applicant instituted a suit against the respondent over loss of imported goods. At the height of the trial, judgment was entered in the applicants' favour and the respondent was ordered to restitute the applicant with an amount to the tune of Euros 27685.00.

Dissatisfied, the respondent preferred the already referred Civil Appeal No. 26 of 2013 to the High Court but, as it were, the quest was greeted with preliminary point of objection to the effect that the appeal was, *inter alia*, hopelessly time barred. In its final deliberations, the High Court (Bongole, J.) upheld the preliminary point and, accordingly, on the 28<sup>th</sup> March, 2014 the appeal was dismissed for being time barred.

Still aggrieved, on the 11<sup>th</sup> April, 2014 the respondent contemporaneously lodged a Notice of Appeal and applied to be supplied

with the proceedings, Ruling and Drawn Order of March 28<sup>th</sup> decision of the High Court. Both documents were requisitely copied to the applicant.

A good deal later, on the 27<sup>th</sup> September, 2017 the Deputy Registrar of the High Court (Dar es Salaam registry) wrote the respondent to inform her that the requested copies of the Proceedings, Ruling and Drawn Order were ready for collection upon payment of court fees. Thereafter, the respondent dawdled along and, as it turned out, she took no further action. More particularly, if she collected the requisite documents from the Deputy Registrar, the respondent did not, at all, seek a certificate of delay under Rule 90(1) of the Rules and neither has she filed the appeal to date. Thus, on account of the respondent's inaction, the applicant instituted the quest at hand. With these details, so much for the applicant's version of the factual setting. Unfortunately, the respondent did not make any presentation either in the form of an affidavit in reply or written submissions.

When the matter was placed before us for hearing, the applicant had the services of Mr. Fulgence Massawe who was being assisted by Mr. Harold Sungusia, both learned Advocates. The respondent was represented by Mr. Shehzada Walli, also learned Advocate.

Mr. Massawe commenced his submissions by fully adopting the Notice of Motion, the affidavit in support, as well as the written submissions which seek to canvass the application. Counsel for the applicant then deplored the respondent for not responding in reply to the applicant's affidavit and the written submissions. He, accordingly, urged us to allow the application with costs on the strength of the un-assailed factual presentation by the applicant.

In reply, Mr. Walli did not have anything of material substance to counter the contentions of the learned counsel for the applicant. To begin with, he did not quite refute the detail about the respondent being informed by the Deputy Registrar that the documents required for the intended appeal were ready for collection. He conceded further that, in the aftermath, the respondent has not taken any step whatsoever in the direction of instituting the intended appeal.

The foregoing being the status of events, we are constrained, without hesitation, to take the position that the respondent has, indeed, failed to take essential steps incidental to lodging an appeal in obedience to the already filed Notice of Appeal. The application is, so to speak, meritorious

and we are, accordingly, minded to grant it with costs. In the end result, the Notice of Appeal filed by the respondent on the 11<sup>th</sup> April, 2014 is, hereby, struck out.


**DATED at DAR ES SALAAM this 6<sup>th</sup> day of July, 2018.**

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

S. A. LILA  
**JUSTICE OF APPEAL**

R. K. MKUYE  
**JUSTICE OF APPEAL**

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

  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**