

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

(CORAM: MUSSA, J.A, WAMBALI, J.A. And LEVIRA, J.A.)

CIVIL APPEAL NO. 82 OF 2019

ECOBANK TANZANIA LIMITED.....APPELLANT

VERSUS

FUTURE TRADING COMPANY LIMITED RESPONDENT

**(Appeal from the Decision of the High Court of Tanzania
(Commercial Division) at Dar es Salaam)**

(Sehel, J.)

**dated the 21st day of May, 2018
in**

Commercial Case No. 68 of 2014

RULING OF THE COURT

21st October & 18th November, 2019

MUSSA, J.A.:

This is an appeal from the judgment and decree of the High Court of Tanzania (Commercial Division) at Dar es Salaam in Commercial Case No. 68 of 2014. In that decision, which was pronounced on the 21st May, 2018 the High Court (Sehel, J. as she then was,) upheld the respondent's claim against the appellant with respect to wrongfully debiting a sum of Tshs. 66,240,000/= from her account.

The appellant was aggrieved and, on the 28th May, 2018 she wrote a letter to the Registrar of the High Court (Commercial Division) requesting for the judgment, proceedings and exhibits for appeal purposes. On the following day, that is, the 29th May, 2018 the appellant duly lodged a Notice of Appeal.

A good deal later, on the 11th February, 2019 the Deputy Registrar of the High Court (Commercial Division) issued a certificate of delay which was couched as follows:-

*"This is to certify that the period from May, 28, 2018 when the plaintiff requested copies of proceedings, judgment and decree in the above appeal **up to February 11, 2018** when those documents were supplied to her, a total number of 266 days should be excluded in computing the time for instituting the appeal to the Court of Appeal."*
[Emphasis supplied].

When the appeal was placed before us for hearing, the appellant was represented by Mr. Mpaya Kamara, learned Advocate, whereas the respondent had the services of Mr. Joseph Rutabingwa, also learned Advocate. Both counsel informed the Court that they were ready for

hearing but we prompted them to address us on an apparent inexactitude of the certificate of delay.

Mr. Kamara readily conceded that the certificate of delay is faulty for it was impossible for the appellant who requested the documents on the 28th May 2018 to receive them on the 11th February, 2018 which is a past date. He, however, contended that the date "*February 11, 2018*" which appears on the certificate is a typographical error and urged that we should adjourn the appeal with an order granting him leave to approach the Registrar of the Commercial Division of the High Court who should, in turn, rectify the defect.

On his part, Mr. Rutabingwa held a different view. He contended that upon the concession by his friend that the certificate of delay contained incorrect particulars, there was, as a result, no valid certificate of delay and the appellant cannot, therefore, benefit from the exclusion of time which is provided under Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). Thus, to him, the appeal cannot stand and should be struck out on account of being time barred.

In response, Mr. Kamara reiterated his prayer to be given an opportunity to approach the Registrar so as to rectify the defect. This,

prayer, he said, augurs well with the overriding objective in the resolution of matters which is provided under sections 3A, 3B and Rule 2 of, respectively, the Appellate Jurisdiction Act, Chapter 141 of the Laws (AJA) and the Rules.

Having heard both counsel, we are constrained to confirm our concern that the certificate of delay is, indeed, defective. More particularly, the certificate purports to retrospectively exclude 266 days requested for the preparation and delivery of the requested documents from 28th May, 2018 to 11th February, 2018. It is noteworthy that the impugned judgment and decree were pronounced on the 21st May, 2018 and it is, thus, ridiculous for the certificate to purport that copies of the same were supplied to the appellant on a past date before the delivery of the judgment. In the circumstances, it is impossible to ascertain from the certificate as to exactly when the requested documents were supplied to the appellant.

As has been held upon numerous decisions, such a conspicuous error goes to the root and vitiates the certificate of delay. In, for instance, the case of **Kantibhai Patel vs Dahyabhai Mistry** [2003] T.L.R. 437, the Court made the following observation:-

*"The very nature of anything termed a certificate requires that it be free from error and should an error crop into it, the certificate is vitiated. It cannot be used for any purpose because it is not better than a forged document. An error in a certificate is not a technicality which can be conveniently glossed over but it goes to the very root of the document. You cannot sever the erroneous part from it and expect the remaining part to be a perfect certificate; **you can only amend it or replace it altogether as by law provided.**"*[Emphasis supplied].

Much as the certificate of delay at hand is invalid, we do not, however, accede to Mr. Rutabingwa's contention that on account of the defect, the appellant is automatically barred to benefit from the exclusion of time provided under Rule 90 (1) of the Rules. To us, in the light of the provisions of AJA and the Rules referred by Mr. Kamara, there is room for the appellant to approach the Registrar so as to rectify the defect, this is, if the same was a mere slip of the pen as contended by Mr. Kamara.

Thus, in order to facilitate a just and proportionate solution to the apparent defect, we grant the appellant's prayer to seek the rectification of the certificate of delay from the Registrar of the High Court (Commercial

Division). A rectified version of the certificate, if secured, should be lodged within thirty (30) days from the date of this Ruling.

In the meantime, the hearing of the appeal is deferred to a date to be fixed by the Registrar. Order accordingly.

DATED at DAR ES SALAAM this 14th day of November, 2019.

K. M. MUSSA
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The ruling delivered this 18th day of November, 2019 in the presence of Mr. Hussein Sokoni holding brief for Mr. Mpaya Kamara for the appellant and Ms. Ida Lugakingira holding brief for Mr. Joseph Rutabingwa for the respondent is hereby certified as a true copy of the original.


H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL