

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

(CORAM: MUGASHA, J.A. MWANGESI, J.A. And WAMBALI, J.A.)

CIVIL APPEAL NO. 142 OF 2017

**M/S. FLYCATCHER SAFARIS LTD APPELLANT
VERSUS**

**1. HON. MINISTER FOR LANDS AND
HUMAN SETTLEMENTS DEVELOPMENT } RESPONDENTS
2. THE HON. ATTORNEY GENERAL**

**[Appeal from the Ruling and Orders of the High Court of Tanzania at
Arusha]**

(Sambo, J.)

**Dated the 23rd day of November, 2012
in**

Misc. Civil Cause No. 7 of 2000

RULING OF THE COURT

18th & 26th March, 2020

WAMBALI, J.A.:

This appeal emanates from the decision of the High Court of Tanzania at Arusha in Miscellaneous Civil Cause No. 7 of 2000. At the hearing, Mr. Elvaison Maro, learned counsel, appeared for the appellant, whereas Mr. Ayoub Rashid, learned Senior State Attorney entered appearance for the respondents.

Before we commenced the hearing of the appeal, we requested counsel for the parties to comment on the propriety of the certificate of

delay which was issued by the Registrar of the High Court to the appellant.

Initially, when Mr. Maro responded to the direction of the Court he simply conceded that the certificate of delay is defective without giving further explanation. However, upon dialogue with the Court he admitted that the certificate of delay is defective and that the defects are in two folds; **First**, that the Deputy Registrar of the High Court simply indicated in the certificate of delay that the aggregate number of 1491 days were required to prepare and deliver the copy of proceedings and other documents to the appellant without excluding the said days for purpose of computation of time. **Second**, that the date, that is, 23rd November, 2012 indicated in the certificate of delay as the one in which the appellant applied to be supplied with the requisite documents is wrong since the appellant's letter was written on 26th November, 2014 and it was received by the High Court Registry on 29th November, 2014.

In the circumstances, Mr. Maro, in terms of Rule 4(2) (a) and (b) of the Tanzania Court of Appeal Rules, 2009 read together with section 3A and 3B of the Appellate Jurisdiction Act, Cap 141 R.E. 2002, prayed that the applicant be allowed to approach the Registrar of the High

Court to rectify the certificate of delay. To this end, Mr. Maro contended spiritedly that the defect has to a great extent been caused by the Deputy Registrar of the High Court who did not adhere to the requirement of Rule 90 (1) of the Rules in excluding the 1491 days and for not indicating the proper date on which the appellant applied to be supplied with the copies of proceedings, ruling and order of the High Court.

On the adversary, Mr. Rashid did not object to the prayer of the learned counsel for the appellant and did not pray for costs.

Having heard counsel for the parties, we are settled that the certificate of delay is defective. We thus have no hesitation to state that the said defects vitiate the certificate of delay. In the circumstances, the crucial point for our determination is the consequences which should follow.

For the purpose of this ruling we deem it proper to reproduce hereunder part of the respective certificate of delay thus:-

"This is to certify that an aggregate of 1491 days were required for the preparation and delivery of copies of proceedings and other documents applied for the Applicant's Advocate in his letter

dated 23rd day of November, 2012. The said documents were supplied to the Applicant on 23rd day of December, 2016.

As stated in a number of decisions of this Court, an obvious error in the certificate of delay goes to its very root and vitiates it. For instance, in **Eco Bank Tanzania Limited v. Future Trading Company Limited**, Civil Appeal No. 82 of 2019 (unreported), We made reference to the decision of this Court in **Kantibhai Patel v. Duhyabhai F Mistry** [2003] T.L.R 437 in which it was plainly stated that:-

"The very nature of anything called 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 other 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; 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 provides."

In the present appeal, there is no dispute that the Deputy Registrar of the High Court did not comply with the proviso to the provisions of Rule 90 (1) of the Rules, in that, he did not indicate that the aggregate number of 1491 days should be excluded from computation of time for purpose of lodging an appeal. We must emphasize that the requirement for the Registrar of the High Court to indicate the total number of days to be excluded for purpose of computing the time for instituting an appeal to the Court is an essential requirement which has not only been provided for under the provisions of Rule 90 (1), but is also found in the current Form L in the schedule to the Rules.

On the other hand, there is no doubt that although on 29th November, 2012 the Registrar of the High Court received the appellant's letter dated 26th November, 2012 requesting to be supplied with copies of proceedings and other relevant documents for the purpose of appeal, he still indicated a different date (23rd November, 2012) in the certificate of delay. It is noteworthy that on 23rd November, 2012 the appellant had not even lodged a notice of appeal as the same was lodged on 29th November, 2012. Much as we think that the error in the certificate of delay might have been an inadvertent error and no mischief was

involved, but as correctly stated in **Kantibhai Patel V.s Duhyabhai F Mistry** (supra) the error rendered the certificate invalid.

Indeed, while we acknowledge the fact that it is the duty of the Registrar of the High Court to issue a proper certificate as required by law, we equally observe that it is also the responsibility of the party who collects the certificate of delay to ensure that it is correct and if it has any defect to request for rectification. A party who receives a defective certificate of delay and acts on it without seeking rectification is equally to blame and cannot apportion full responsibility on the respective authority.

All in all, in the present appeal, considering the circumstances that led to the conspicuous defects, we have no hesitation to state that the errors in the certificate of delay are largely attributed to the Registrar of the High Court.

In the result, in terms of Rule 4(2) (a) and (b) of the Rules, we accede to the prayer of the appellant to seek a rectification of the certificate of delay to make it to be in conformity with the requirement of the law and in accordance with the relevant materials which were placed before the Registrar of the High Court. Consequently, we order

that a rectified version of the certificate of delay, if secured, be lodged in a form of a supplementary record of appeal within thirty (30) days from the date of delivery of this Ruling.

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

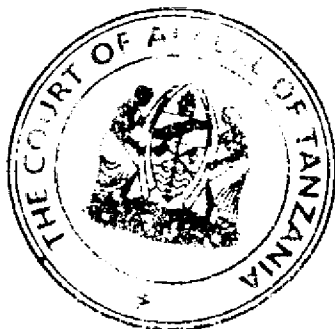
DATED at ARUSHA this 25th day of March, 2020.

S.E.A. MUGASHA
JUSTICE OF APPEAL

S.S. MWANGESI
JUSTICE OF APPEAL

F.L.K. WAMBALI
JUSTICE OF APPEAL

This Ruling delivered on 26th day of March, 2020 in the presence Mr. Valentine Nyalu, learned counsel for the appellant and Mr. Hangi Chang'a, learned Senior State Attorney for the Respondent, is hereby certified as a true copy of the original.




B.A. Mpepo
DEPUTY REGISTRAR
COURT OF APPEAL