IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MKUYE, J.A., KOROSSO, J.A. And MWANDAMBO, J.A.)

CIVIL APPEAL NO. 325 OF 2019

CONSOLATA MWAKISU.....APPELLANT

VERSUS

THE DIRECTOR GENERAL NSSF.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)
(Bongole, J.)

dated the 12th day of December 2014
in
Civil Appeal No. 118 of 2011

RULING OF THE COURT

16th March, & 1st April, 2021

MWANDAMBO, J.A.:

This ruling would not have been necessary had the learned advocate for the appellant readily conceded to notice of preliminary objection raised by the respondent's counsel that the appeal is time barred before the commencement of the hearing. As he did not do so at the earliest, it has become inevitable to compose this ruling.

Consolata Mwakisu, the appellant, was aggrieved by a decision of the High Court, sitting at Dar es Salaam in Civil Appeal No. 118 of 2011 delivered on 12th December, 2014. That decision dismissed the appellant's appeal in an Employment Cause from the Resident's Magistrate's Court of Dar es Salaam at Kisutu. The appellant lodged her notice of appeal against the decision of the High Court on 24th December, 2014.

In terms of rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the appellant ought to have instituted her appeal within 60 days reckoned from the date of the impugned decision. Otherwise, she could have instituted her appeal within 60 days from the date the Registrar of the High Court notified her of the availability of copies of the relevant documents necessary for the purpose of the appeal if and only if she had complied with rule 90 (1) of the Rules.

The proviso to rule 90(1) of the Rules empowers the Registrar of the High Court to exclude all days spent for the preparation of copies of documents necessary for the purposes of the appeal if the appellant had made a written request to him within 30 days from the date of the decision sought to be appealed against. Compliance with rule 90(1) of

the Rules is not the end; the appellant must have delivered a copy of his letter to the respondent in pursuance of rule 90(3) of the Rules. Once both requirements are complied with to the letter, the appellant will be entitled to the exclusion of all days spent by the Registrar for the preparation of and availability of copies of the documents requested in the computation of the time for instituting his appeal.

The instant appeal was instituted on 18th November, 2019; a period of close to five years from the date of the impugned decision prompting the respondent to lodge a notice of preliminary objection contending that the appeal is time barred.

Mr. Ndurumah Keya Majembe, learned advocate entered appearance during the hearing resisting the preliminary objection whilst Ms. Jesca Shengena, learned Principal State Attorney assisted by Ms. Jeniffer Kaaya, Senior State Attorney and Ms. Selina Kapange, State Attorney entered appearance for the respondent to pursue the preliminary objection.

Ms. Shengena premised her argument on the proviso to rule 90 (1) of the Rules and submitted that in the absence of proof of a written

application for the supply of copies of proceedings, judgment and decree addressed to the Registrar, the appeal ought to have been instituted within 60 days from 12th December, 2014 on which the High Court made the decision the subject of the appeal. The learned Principal State Attorney argued that the appeal cannot be saved by a letter appearing at page 276 of the record of appeal for two reasons. One, that letter was in respect of Misc. Civil Application No. 20 of 2015 and not Civil Appeal No. 118 of 2011 from which the appeal has emanated. Two, at any rate, that letter was delivered to the Registrar on 12th October, 2015, ten months after the delivery of the impugned decision. Under the circumstances, Ms. Shengena discounted the certificate of delay appearing at page 322 of the record of appeal as worthless because it was issued contrary to the dictates of rule 90 (1) of the Rules.

Winding up submissions on the point, Ms. Kaaya who chipped in, argued that the certificate of delay at page 322 is invalid and incapable of being relied upon to save the appeal from being time barred. Relying on our decision in **Elias Tibendeleana v. Inspector General of Police & Attorney General**, Civil Application No. 115 of 2008

(unreported), Ms. Kaaya invited the Court to strike out the appeal with costs.

As alluded to earlier, initially, Mr. Majembe was adamant that the appeal was instituted timeously placing reliance on the certificate of delay. However, having realized that there was no proof of any letter to the Registrar for the supply of copies of requisite copies for the purposes of the appeal in pursuance of rule 90 (1) of the Rules, the learned advocate felt constrained to concede to the preliminary objection albeit with some reluctancy. That notwithstanding, the learned advocate beseeched the Court to spare his client from payment of costs considering that the appeal emanates from a labour dispute in which costs are not normally awarded. That prayer was resisted by Ms. Kaaya who was insistent that the appellant should be condemned to costs.

From the counsels' submission, it is no longer in dispute that the appeal before us is incompetent it being instituted well beyond 60 days from the date the High Court rendered the impugned decision contrary to the dictates of rule 90 (1) of the Rules. Both Mr. Majembe and Ms. Shengena are agreeable that in the absence of a letter to the Registrar, High Court requesting for requisite copies for the purpose of the appeal

within 30 days from the date of the decision appealed against, the certificate of delay meant to check the running of time is invalid; it cannot be relied upon in saving an incompetent appeal.

Indeed, there is a plethora of authorities by this Court holding that a certificate of delay issued contrary to rule 90 (1) of the Rules is not and cannot be beyond question where there are grounds to hold so. It cannot be relied upon by the appellant to resurrect an otherwise incompetent appeal. See for instance: **D.T. Dobie & Company (Tanzania) Ltd v. N.B Mwaitebele** [1992] T.L.R 152, **Kantibhai M. Patel v. Dahyabhai F. Mistry** [2003] T.L.R 437 and **The Board of Trustees of the National Social Security Fund v. New Kilimanjaro Bazaar Limited,** Civil Appeal No. 16 of 2004 (unreported).

The certificate of delay in this appeal is no exception. It was issued erroneously without regard to the naked truth that it was in relation to Misc. Civil Application No. 115 of 2015. That aside, the letter from which the Registrar purported to issue the fateful certificate was delivered 10 months after the impugned decision contrary to rule 90 (1) of the Rules.

Consequently, the certificate of delay is useless to the appellant and thus the appeal instituted on 18th November, 2019 is incompetent for being time barred. It must be and is hereby struck out with no order as to costs considering that it emanates from a labour dispute.

It is so ordered.

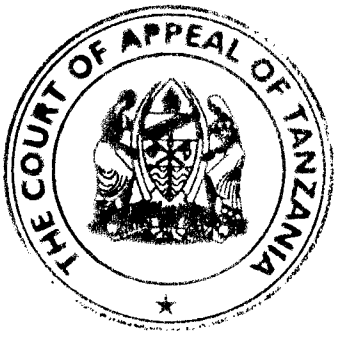
DATED at **DAR-ES-SALAAM** this 25th day of March, 2021.

R. K. MKUYE
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

The Ruling delivered this 1st day of April, 2021 in the presence of Mr. Martin Sangila learned counsel for the appellant and Mr. Elias Mwenda, learned State Attorney for the Respondent is hereby certified as a true copy of the original.



B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL