

**IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA
(CORAM: JUMA, C.J, NDIKA, J.A And SEHEL, J. A.)**

CIVIL APPEAL NO. 154 OF 2019

**AUGUSTINO MKALIMOTO (As Administrator of the
Estate of the Late MLAMSITEMBO MKALIMOTO) APPELLANT**

VERSUS

**1. VILLAGE SCHOOLS OF TANZANIA
2. MUFINDI DISTRICT COUNCIL
3. LUGODALUTALI VILLAGE GOVERNMENT** } **RESPONDENTS**

**(Appeal from the Ruling and Order of the High Court of Tanzania
at Iringa)**

(Banzl, J.)

Dated 9th day of November, 2018

in

Land Case No. 15 of 2017

ORDER OF THE COURT

28th & 30th April, 2021.

SEHEL, J.A.:

When the appeal was called on for hearing on 28th April, 2021, the Court invited the parties to address it on whether the appellant complied with Rule 90 (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) for him to be entitled to rely on the exception provided under sub-rule (1) of that Rule in computing time to lodge an appeal to the Court. For ease of reference, we reproduce hereunder Rule 90 (1) and (3) of the Rules: -

"90 (1) subject to the provisions of Rule 128, an appeal shall be instituted by lodging in the appropriate registry, **within sixty days of the date when the notice of appeal was lodged** with-

- a) a memorandum of appeal in quintuplicate;
- b) the record of appeal in quintuplicate;
- c) security for costs of the appeal,

save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant.

2. Not relevant

3. An appellant shall not be entitled to rely on the exception to sub-rule (1) **unless his application**

***for the copy was in writing and a copy of it
was served on the Respondent”***

[Emphasis in added]

Mr. Zuberi Ngoda, learned advocate for the appellant admitted that a copy of the letter appearing at page 60 of the record of appeal was not served upon the respondents. He argued that since the letter was not served upon the respondents the appellant cannot rely on the certificate of delay issued by the Deputy Registrar, High Court, Iringa.

Ms. Mercy Kyamba, learned Principal State Attorney who appeared for the 2nd and 3rd respondents and was assisted by Ms. Ansila Makyao, learned State Attorney, submitted that, indeed, as the record of appeal shows, the 2nd and 3rd respondents were not served with the letter written by the appellant requesting to be supplied with the copies of proceedings, ruling and drawn order. Non-compliance with Rule 90 (3) of the Rules, she argued, renders the appeal incompetent on account that it was filed out of the prescribed period of sixty (60) days. She therefore prayed for the appeal to be struck out.

Dr. Ashery Fred Utamwa, learned advocate for the 1st respondent joined hands with the learned Principal State Attorney that the appeal is out of time. He therefore prayed for it to be struck out with costs.

Mr. Ngoda briefly re-joined on costs that for the interest of justice the appellant be spared to pay costs because the case had been in court for some years, since 2013.

On our part, we have gone through the record of appeal and noted that the letter dated 23rd November, 2018 addressed to the Deputy Registrar, High Court of Tanzania at Iringa requesting to be supplied with the copies of proceedings, ruling and drawn order was not served upon the respondents. Therefore, in terms of Rule 90 (3) of the Rules, the appellant cannot avail himself with the exception provided under Rule 90 (1) of the Rules in computing time to file an appeal to the Court.

In the circumstances, the computation of sixty (60) days has to commence from the date when the notice of appeal was lodged. It is on record that the notice of appeal was lodged in time as it was filed within a period of fourteen (14) days from the date when the ruling of the High Court was delivered. The notice of appeal was filed on 23rd November, 2018 while the appeal was lodged on 8th February, 2019, that is after the

lapse of about 76 days. Certainly, this period is way beyond the prescribed period of sixty days. We therefore entirely agree with the counsel for the respondents that the appeal is out of time. Consequently, we hereby strike it out with no order to as costs bearing in mind that the issue was raised by the Court.

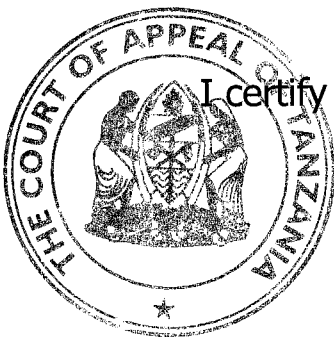
Order accordingly.

DATED at IRINGA this 29th day of April, 2021.

I. H. JUMA
CHIEF JUSTICE

G. A. M. NDIKA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL



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


B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL