

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: NDIKA, J.A., KWARIKO, J.A., And SEHEL, J.A.)

CIVIL APPEAL NO. 26 OF 2017

TANZANIA TELECOMMUNICATIONS CO. LTD.....APPELLANT
VERSUS
STANLEY S. MWABULAMBO.....RESPONDENT

**(Appeal from the decision of the High Court of Tanzania, Dar es Salaam
District Registry at Dar es Salaam)**

(Aboud, J.)

dated the 10th day of May, 2013
in
Civil Case No. 36 of 2006

RULING OF THE COURT

8th & 30th June, 2021

KWARIKO, J.A.:

This appeal is against the decision of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam (Aboud, J) dated 10th May, 2013. The respondent won a suit against the appellant for general and exemplary damages arising out of false imprisonment and defamation. At the trial, it was alleged that the appellant had falsely reported to the Police that the respondent and others had sent written threats to kill one Nigel Williams, an official of the appellant. That the said report led to the respondent's arrest and incarceration in Police custody for some days. The appellant refuted the claims and maintained

that the complaint was made by the said Nigel Williams on his own volition.

At the end of the trial, the High Court found that the complaint to the police was actually made by the management of the appellant and it was not justified, thus she was liable for damages. The court awarded the respondent general damages to a tune of TZS. 90,000,000.00 with interest at 7% per annum from the date of judgment and exemplary or punitive damages at a tune of TZS. 10,000,000.00.

Aggrieved by that decision, the appellant lodged a notice of appeal to this Court and also applied for a copy of the judgment and proceedings in the High Court on 17th May, 2013. The record and memorandum of appeal were filed on 1st February, 2017. Upon being served with the record of appeal, the respondent filed a notice of preliminary objection thus;

"The appeal is time barred for having a defective certificate of delay."

When the Appeal was called on for hearing, Mr. Gabriel Malata, learned Solicitor General together with Ms. Alice Mtulo, learned Senior State Attorney, appeared for the appellant, whilst Mr. Mpale Mpoki,

learned advocate appeared for the respondent. At the outset, Mr. Malata prayed and was granted leave to file a supplementary record of appeal under Rule 96 (7) of the Tanzania Court of Appeal Rules, 2009 (henceforth "the Rules") to include omitted documents namely; a corrected index and exchequer receipts for payment made by the appellant in respect of exhibit D1 and two certificates of delay.

As it is the practice of the Court, we first sought to dispose of the preliminary objection. When he was invited to argue the preliminary objection, Mr. Mpoki submitted that according to rule 90 (1) of the Rules, an appeal to the Court is required to be lodged withing sixty days of the filling of the notice of appeal. And that the days required to obtain a copy of the judgment and proceedings are excluded in the computation. The learned counsel argued that, in this case the Registrar of the High Court by a letter dated 11th October, 2016 notified the appellant that the documents were ready for collection. He went further that the certificate of delay issued by the Registrar excluded the days between 17th May, 2013 when the appellant applied for the copy and 13th December, 2016. He contended that the certificate ought to have excluded the days between 17th May, 2013 and 11th October, 2016 when the appellant was notified that the documents were ready for collection.

He added that the receipts dated 13th December, 2016 contained in the supplementary record of appeal relates to collection of exhibit D1, hence cannot be the basis upon which computation of limitation period could have started. Mr. Mpoki argued further that the certificate being an important document should be free from any ambiguity. That, if it was issued on 21st December, 2016 while it mentions 13th December, 2016 then it is defective and it renders the appeal incompetent. Mr. Mpoki finally argued that since the computation of time limit upon which to lodge an appeal ought to start on 11th October, 2016 the appeal was time-barred when it was filed on 1st February, 2017.

In response to the foregoing submission, Mr. Malata argued that the objection is without merit since the appeal was filed within sixty days. He explained that the Registrar informed the appellant that a corrected copy of exhibit D1 which was the last document to be supplied was ready for collection on 11th October, 2016. However, that letter was received by the counsel of the appellant Trustmark Attorneys on 12th December, 2016 and the copy was paid for and collected on 13th December, 2016. He added that the certificate was paid for on 21st December, 2016. He argued that the collection of documents was thus completed on 13th December, 2016 that is when the Registrar issued the

certificate and the exclusion of days as per Rule 90 (1) of the Rules was between 17th May, 2013 and 13th December, 2016. On that note, Mr. Malata argued that the Registrar who was dealing with the matter knew the reason behind the dates appearing in the certificate and there is no evidence to show that he erred in issuing the certificate.

The learned Solicitor General finally argued that computation of the time limit could not have started on 11th October, 2016 because the appellant was yet to receive notification that the documents were ready for collection. Basing on the foregoing, the learned counsel urged us to dismiss the preliminary objection. Upon being probed by the Court, Mr. Malata submitted that there is no any document to show that the appellant's counsel received the Registrar's letter on 12th December, 2016 but argued that the certificate is the answer that the letter dated 11th October, 2016 was received by the appellant on 12th December, 2016 and the documents were collected on 13th December, 2016.

In his rejoinder, Mr. Mpoki argued that Rule 90 (1) of the Rules excludes the days required for preparation of documents and not for waiting the appellant to collect them. He reiterated that the appellant has not presented evidence to show that she received the Registrar's

letter on 12th December, 2016 thus it remains to be a statement from the bar.

Having considered the submissions from the counsel for the parties, we are enjoined to decide the issue whether the appeal is time barred on account of having a defective certificate of delay. Rule 90 (1) of the Rules which relates to institution of appeal and the certificate of delay provides thus:

"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 sixty 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 the copy to the appellant."* (Emphasis supplied].

The import of this provision is that the appellant is obliged to file appeal within sixty days from the time of the filing of the notice of appeal. However, where he has applied for a copy of the judgment and proceedings from the Registrar of the High Court within thirty days from the date of the impugned decision and served a copy of that letter on the respondent, the Registrar may issue a certificate of delay excluding the period required for preparation and delivery of the said copy of the proceedings. This position of law has been the pronouncements of the Court in its various decisions; some of which **Kantibhai Patel v. Dahyabhai Mistry** [2005] TLR 438; **Mwalimu Amina Hamisi v. National Examinations Council of Tanzania & Four Others**, Civil Appeal No. 20 of 2015 and **Puma Energy Tanzania Limited v. Diamond Trust Bank Tanzania Ltd**, Civil Appeal No. 54 of 2016 (both unreported). In the case of **Kantibhai Patel** (supra), for instance, it was stated thus:

"A proper certificate under Rule 83 (1) of the Rules of the Court [now Rule 90 (1) of the Rules] is one issued after the preparation and delivery of a copy of proceedings to the appellant and the certificate contained in the Record of Appeal was improper; it might have been inadvertent error and no mischief was involved but the error

rendered the certificate of delay invalid. An error in a certificate is not a technicality which can be glossed over; it goes to the root of document."

In the instant case, the impugned decision was handed down on 10th May, 2013 and the notice of appeal was lodged on 17th May, 2013 and thus under normal course of things the appellant ought to have lodged her appeal within sixty days from that date. However, as she needed a copy of the impugned judgment and proceedings in the High Court to include in the record of appeal, she applied for the same on 17th May, 2013 and served the letter on the respondent's counsel on 21st May, 2013. The appellant was expected to lodge the appeal upon being supplied with the copy of proceedings. The record shows that on 11th October, 2016 the Registrar wrote to the appellant that the documents were ready for collection. The certificate of delay excluded the days from 17th May, 2013 when the appellant applied for and 13th December, when she collected the copy of proceedings.

With the foregoing backdrop, the respondent argued that the certificate of delay is defective since it mentioned 13th December, 2016 as the date the appellant was supplied with the copy of proceedings but not borne out of the record. This is because the date upon which the Registrar informed the appellant that the documents were ready for

collection is 11th October, 2016 hence it is the one upon which the time limit to lodge the appeal ought to start counting. The appellant argued that the last document (exhibit D1) was supplied on 13th December, 2016 hence the accrual date. In fact, the appellant forcefully argued that the letter of the Registrar was received by the appellant's counsel on 12th December, 2016 that is why the appellant paid for and collected the last document on 13th December, 2016.

We appreciate the fact that until the appellant was made aware by the Registrar that the documents were ready for collection, he could not have gone to collect them. However, it was incumbent upon the appellant to prove the date he received the Registrar's letter. In this respect, Mr. Malata forcefully argued that the letter was received on 12th December, 2016 but there is no proof in the record of appeal to support that contention. In the absence of that proof, we take that the appellant was notified by the Registrar that the documents were ready for collection on 11th October, 2016. That is the date upon which the sixty days within which to lodge the appeal ought to have started running. It is also the date which the Registrar ought to have indicated in the certificate of delay that the documents were supplied to the appellant.

As rightly argued by Mr. Mpoki, the date 13th December, 2016 appearing in the certificate of delay is not borne out of the record thus rendering the certificate defective. When faced with akin scenario in the case of **Puma Energy Tanzania Limited** (supra), the Court stated that:

"However, on our part we are certain that the certificate of delay is defective. This is so because the record of appeal bears out that the appellant was on 3/2/2016 notified that the documents were ready for collection. This means the clock stopped running on that date. But the appellant went to collect the same on 19/2/2016 on the pretext that the same could not have been delivered without payment of the court's fee."

The learned Solicitor General also argued that the Registrar was better placed to know the dates appearing in the certificate of delay and that there is no evidence to show that he erred in issuing it. With due respect to the learned counsel, it is not correct to say that whatever the Registrar writes in the certificate is correct. This is because, it is only the date when the appellant applied for the copy of proceedings and the date when he is notified that the same is ready for collection are the ones which are supposed to be indicated in the certificate. In this case,

the Registrar indicated 13th December, 2016 as the date the appellant was supplied with the copy of proceedings which is not borne of the record of appeal thus making the certificate erroneous.

From the foregoing analysis, we are of the settled position that an erroneous certificate of delay cannot be relied upon by the appellant in computation of the time within which to lodge the appeal. This position was reaffirmed in the case of **Tanzania Occupational Health Services v. Mrs. Agripina Bwana & Another**, Civil Appeal No. 127 of 2016 (unreported), where the Court stated:

"As matters stand now, the certificate of delay is, as it were, worthless. It serves no useful purpose to the appellant for the purpose of computing the time for instituting the appeal. We have said in numerous cases that the Deputy Registrar's certificate is not beyond question and thus the Court is entitled to disregard it for being erroneous."

It follows therefore that, the certificate of delay which excluded the days not borne out of record made it erroneous thus defective. Now, since the certificate of delay has been ruled out defective, it cannot be relied upon by the appellant in computation of the time within which to

lodge the appeal. The appellant was thus required to lodge the appeal within sixty days from 17th May, 2013 when he filed the notice of appeal. Therefore, this appeal which was filed on 1st February, 2017 was time barred thus incompetent before the Court.

In the event, we sustain the preliminary objection and proceed to strike out the appeal for being incompetent. The respondent shall have his costs.

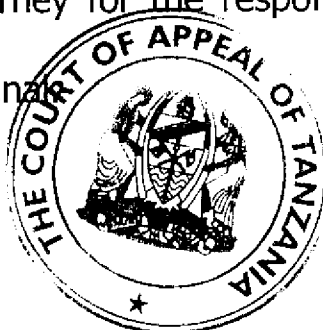
DATED at DAR ES SALAAM this 24th day of June, 2021.

G. A. M. NDIKA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

The judgment delivered this 30th day of June, 2021 in the presence of Mr. Stanley Mahenge, learned State Attorney for the appellant, who also holding brief for Mr. Mpare Mpoki, learned State Attorney for the respondent, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL