

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KWARIKO, J.A., GALEBA, J.A., And FIKIRINI, J.A.)

CIVIL APPEAL NO. 136 OF 2019

DAL FORWARDING (T) LTD APPELLANT
VERSUS

SAKAS INTERNATIONAL (Z) LTD RESPONDENT

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

(Muruke, J.)

dated 20th day of August, 2014

in

Civil Case No. 47 of 1998

RULING OF THE COURT

21st & 25th March, 2022

KWARIKO, J.A.:

The appellant lost a suit to the respondent on 20th August, 2014 in Civil Case 47 of 1998 in the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam. The record shows that subsequent to that decision, on 18th February, 2015, the appellant filed a letter to request for a copy of proceedings in the High Court. Later on, she applied and was granted leave to lodge a notice of appeal out of time on 5th April, 2016 which notice was lodged on 29th April, 2016. Before the lodgement of the notice of appeal, on 5th April, 2016, the appellant had filed a letter to request for a copy of the proceedings in the High Court. The certificate

of delay in terms of rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (henceforth "the Rules"), was issued to the appellant excluding the days for preparation and delivery of the copy of proceedings in the High Court between 29th April, 2016 when the notice of appeal was lodged and 10th April, 2019 when the requested copy was ready for collection. This appeal was lodged on 10th June, 2019.

At the hearing of the appeal, Mr. Rosan Mbwambo learned advocate, appeared for the appellant, whilst the respondent had the services of Mr. Melchisedeck Lutema assisted by Misses. Dora Mallaba and Subira Omary, all learned advocates. Before the hearing could commence in earnest, the Court wanted to satisfy itself on the propriety of the appeal for two reasons, namely; one, whether the letter to request for a copy of proceedings in the High Court was filed within time and; two, whether the certificate of delay was proper.

When Mr. Mbwambo took the stage to submit on those points, he argued firstly that, the appellant's letter to request for a copy of proceedings dated 18th February, 2015 was not for appeal purpose because the appellant had not lodged the notice of appeal which could have prompted her to request for the copy of proceedings in the High Court. He was of the contention that the copy of proceedings was

requested on 8th April, 2016 following extension of time to lodge the notice of appeal.

Mr. Mbwambo submitted further that the certificate of delay is defective as it mentioned the date of the notice of appeal as accrual date for exclusion of the time required to prepare and deliver a copy of proceedings in the High Court instead of the date of the letter requesting for the copy. In that case, he prayed for leave to file a supplementary record of appeal in terms of rule 96 (7) of the Rules to include a properly drawn certificate of delay. He thus prayed for adjournment of hearing of the appeal.

On her part, Ms. Mallaba submitted that under rule 90 (1) of the Rules, an appeal ought to be filed within sixty days after the lodgement of the notice of appeal, whilst a letter to request for a copy of the proceedings in the High Court ought to be filed within thirty days after the delivery of the impugned decision. It was the contention of the learned counsel that the appellant should have applied for extension of time to file the letter requesting for the copy of proceedings. She thus argued that under rule 90 of the Rules, the letter is independent of the notice of appeal, thus in this case the appellant was granted extension of time to file the notice of appeal and not the letter requesting the copy of proceedings in the High Court.

Secondly, Ms. Mallaba submitted that the certificate of delay erroneously mentioned a date of the notice of appeal instead of the date of the letter for the accrual of the exclusion of the time required for preparation and delivery of the copy of proceedings in the High Court. For that reason, the learned counsel argued that the appeal is time barred deserving to be struck out with costs as the Court lacks jurisdiction to entertain it.

In his further reply, Mr. Mbwambo argued that his prayer to file a supplementary record of appeal was not opposed by the respondent. He reiterated that the appellant filed a letter to request for a copy of the proceedings after the extension of time to file a notice of appeal. He argued further that, the appellant could not apply for the extension of time to file the letter as it could amount to omnibus application.

We have considered the submissions by the parties. The issue calling for our determination is whether the appeal is properly before the Court. According to rule 90 (1) of the Rules, an appeal is supposed to be lodged within sixty days from the date of lodging of the notice of appeal unless the period used for preparation and delivery of the copy of the proceedings in the High Court is excluded by the Registrar upon the appellant filing a letter to request them within thirty days of the date of the decision against which it is desired to appeal. Rule 90 provides thus:

“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 the 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) 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 was served to the Respondent.”

This provision has been discussed by the Court in its various decisions, including the case of **Elizabeth Jerome Mmassy v. Edward Jerome Mmassy & Six Others**, Civil Appeal No. 390 of 2019 (unreported) where it was observed at page 6 thus:

"It is clear that where a party desires to appeal, the procedure requires that the intended appellant to lodge a notice of appeal within a period of 30 days of the impugned decision. Thereafter an appellant is mandatorily required to lodge an appeal within 60 days of the lodging of the notice of appeal. However, an appellant may be exempted of some days excluded by a certificate of delay by the Registrar. That exemption will only be available to an appellant if the letter applying for proceedings and judgment was lodged within 30 days of the impugned decision in terms of the provision of Rule 90 (1)."

In the case at hand, following the cited provision, the appellant was supposed to file his appeal within sixty (60) days from the date of lodging the notice of appeal. Which means after the extension of time to file the notice of appeal on 5th April, 2016 which notice was lodged on 29th April, 2016, the appellant's appeal ought to have been filed by 28th June, 2016. This appeal was filed on 10th June, 2019. Earlier, on 8th April, 2016, the appellant had requested to be supplied with the proceedings in the High Court. Ultimately, the appellant was issued with a certificate of delay under rule 90 (1) of the Rules to exclude the days required for preparation and delivery of the copy of proceedings in the High Court between 29th April, 2016 when the appellant lodged the notice of appeal and 10th April, 2019 when the appellant was supplied with the requested proceedings.

However, even if the certificate of delay was required in this case, the date of accrual of exclusion of the period used to prepare and deliver the requested proceedings was wrong. In a proper case, the correct date of accrual would have been that of the letter requesting for the copy of proceedings in the High Court.

We would like to stress here that the exclusion of the period required to prepare and deliver the requested documents aims only to benefit the appellant who has written a letter to the Registrar requesting for the copy of proceedings and serve it to the respondent within thirty days of the date of the decision against which it is desired to appeal. We are thus of the considered view as rightly argued by Ms. Mallaba that, the time for filing the notice of appeal is independent of the time of filing of the letter to request for the copy of proceedings. This is contrary to what Mr. Mbwambo wanted us to believe.

Now, we agree with Ms. Mallaba that, if the appellant wished to benefit from the exclusion provided in the cited provision, he ought to have applied for the proceedings within thirty days of the date of the impugned decision and serve it to the respondent as required under rule 90 (1) and (2) of the Rules. This was not done by the appellant and she did not apply for extension of time to do so. Mr. Mbwambo was categorical that the proceedings requested by the letter dated 18th February, 2015

was not for appeal purpose. However, even if it was for appeal purpose, it was clearly filed out of time of thirty days as required under rule 90 (1) of the Rules.

In a similar scenario, in the case of **Director General, Regional Manager (Iringa) NSSF v. Machumu Mkama**, Civil Appeal No. 5 of 2018 (unreported), the Court observed thus:

"...it is apparent on the record of appeal at pages 92, 93 and 94 that both notice of appeal and a letter requesting for copies of proceedings, judgment and decree were filed on 10th day of August, 2017 after the appellant was granted an extension of time to lodge notice of appeal out of time. In terms of the exception provided under the proviso to Rule 90 (1) of the Rules, the appellant was required to write a letter requesting to be supplied with the copy of the proceedings to the Registrar of the High Court within thirty days counted from the date when the intended impugned decision was made."

In the circumstances, the appellant was supposed to lodge her appeal within sixty days from 29th April, 2016 when the notice of appeal was lodged. It follows therefore that this appeal which was lodged after lapse of about three years on 10th June, 2019, was out of time of sixty days as prescribed under rule 90 (1) of the Rules.

As this point disposes of the appeal, we find no need in discussing the second issue of whether or not the certificate of delay was valid.

Consequently, this appeal is incompetent for being time barred and we hereby strike it out with costs.

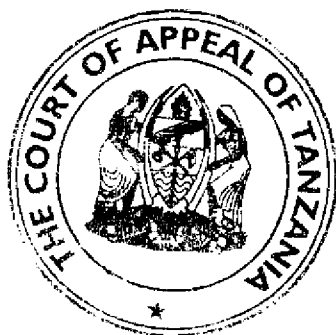
DATED at DAR ES SALAAM this 24th day of March, 2022.

M. A. KWARIKO
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

The Ruling delivered this 25th day of March, 2022 in the presence of Ms. Susan Botto, learned counsel for the Appellant and Ms. Dora Mallaba, learned counsel for the Respondent is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL