

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

**(CORAM: NDIKA, J.A., KEREFU, J.A., And KENTE, J.A.)**

**CIVIL APPEAL NO. 158 OF 2020**

**DOMINIC A. KALANGI ..... APPELLANT**

**VERSUS**

**TANZANIA POSTS CORPORATION ..... RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania  
(Labour Division) at Mtwara)**

**(Ngwembe, J.)**

**dated the 30<sup>th</sup> day of September, 2019**

**in**

**Civil Revision No. 10 of 2018**

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**RULING OF THE COURT**

21<sup>st</sup> & 28<sup>th</sup> March, 2022.

**KENTE, J.A.:**

When this appeal in which, the appellant Dominic A. Kalangi, is challenging the decision of the High Court sitting at Mtwara, upholding the decision of the Commission for Mediation and Arbitration for Lindi ("the CMA"), was called on for hearing on 21<sup>st</sup> March, 2022, the Court invited the parties to address it on the two points of preliminary objection raised by the respondent, the Tanzania Posts Corporation, a notice of which was lodged in Court on 16<sup>th</sup> March, 2022 and duly served on the appellant in compliance with Rule 107(1)

of the Tanzania Court of Appeal Rules, 2009 as amended ("the Rules"). To put the dispute between the appellant and the respondent into perspective, a brief statement of the factual background giving rise to the present appeal is particularly apt.

The respondent is a former employee of the appellant corporation. Prior to the termination of his contract of service on 10<sup>th</sup> July, 2017 on allegations of gross misconduct and dishonesty, he was the appellant's Regional Manager posted at Lindi. Following the termination of his employment contract, he vainly referred his grievances to the CMA which ruled against him. Aggrieved by the decision of the CMA, he applied to the High Court seeking revision of the decision of the CMA but once again, without success. However, while deciding in agreement with the CMA that, the appellant's contract of service was fairly terminated both procedurally and substantially, the learned High Court Judge (Ngwembe, J) went on awarding the appellant compensation for what the learned Judge called "*not causing any loss or defaulting any procedure laid down by the employer for a long time.*" Consequently, the respondent was ordered to pay the appellant a token amount to the tune of six month's

salary. Still protesting his innocence in the entire dispute, the appellant appealed to this Court.

Addressing the Court on the preliminary objection, Mr. Charles Mtae, learned State Attorney who appeared along with Ms. Debora Mcharo, Ms. Getrude Songoi, Ms. Jocqueline Kinyasi and Mr. Maximillian Erick, all learned State Attorneys, to represent the respondent, contended that, the appeal was time barred for having been filed in contravention of Rule 90(1) and (3) of the Rules. Expounding on this point, the learned State Attorney submitted that, upon dissatisfaction with the decision of the High Court which was handed down on 10<sup>th</sup> October, 2019 the appellant promptly wrote a letter requesting for the certified copies of the proceedings, judgment and decree for purposes of appeal. He also filed a notice of appeal on 15<sup>th</sup> October, 2019. However, what is not disputed by the appellant is the fact that, having written the said letter to the Deputy Registrar of the High Court, he did not serve the respondent with a copy of the same as required under Rule 90(1). The learned State Attorney contended that, in the circumstances, the appellant cannot rely on the exception to sub-rule (1) which provides for the exclusion of the time to be certified by the Registrar of the High Court, as having

been spent in the preparation and delivery of the required copies to the appellant, when computing the time within which this appeal was supposed to be instituted. The thrust of Mr. Mtae's submission on this point was that, the certificate of delay issued by the Registrar of the High Court pursuant to the proviso to Rule 90(1), was, in terms of Rule 90(3), ineffectual because of the appellant's omission to serve the respondent with a copy of a letter requesting for the copies of proceedings judgment and decree. The learned State Attorney therefore entreated us to follow our previous decisions and strike out the appeal as we did in **Augustino Mkali Moto (As Administrator of the Estate of Late Mlansitembo vs. Village Schools of Tanzania and Two Others**, Civil Appeal No. 154 of 2019 and **Consolata Mwakisu vs. Director General, NSSF**, Civil Appeal No. 325 of 2019 (both unreported).

As to the second limb of the preliminary objection, having raised a concern that the certificate of delay issued by the registrar of the High Court was erroneous and defective for excluding the days not borne out of the record, the learned State Attorney, perhaps seeing that the first point was almost irresistible, he abandoned the second point. Reverting to his first position, he insisted that, since the

respondent was not served with a copy of a letter requesting for the certified copies of proceedings, judgment and decree, the certificate of delay issued by the High Court registrar was of no legal effect.

When we invited the appellant to respond to Mr. Mtae's submissions, he had not much to say to counter the learned State Attorney's insightful arguments. He only lamented saying that, he did whatever he was required to do under the law to serve the respondent with the necessary documents despite the conspicuous absence of proof of such service on the Court record. The appellant went on urging us to ignore the shortcomings in the appeal and decide it on merit.

We have considered the arguments from both sides in this appeal. We also have in mind the provisions of Rule 90(1) and (3) of the Rules which provide unequivocally that;

*"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 proceeding 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) N.A*

*(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 added]*

We have carefully gone through the record of appeal and satisfied ourselves that, indeed a letter requesting for certified copies of proceedings, judgment and decree dated 10<sup>th</sup> October, 2019 which appears on page 556 of the record of appeal was copied but not duly served on the respondent. It follows therefore, as correctly submitted

by Mr. Mtae, that, in terms of Rule 90(3), the appellant cannot benefit from the exception under Rule 90(1) which, provides for the exclusion of the time certified by the High Court registrar as having been required to prepare and deliver the requested copies to the intending appellant. In the case of **Augustino Mkalimoto** (*supra*), we held that, where, as in the present case, a copy of a letter requesting to be availed with a copy of the proceedings for appeal purposes was not served on the respondent, the computation of sixty (60) days shall be reckoned from the day when the notice of appeal was filed.

In the instant case, the notice of appeal appearing on page 557 of the record of appeal was filed on 15<sup>th</sup> October, 2019. However, the appeal was lodged on 20<sup>th</sup> December, 2019 which was five days beyond the period prescribed by the law. As to the effect of the certificate of delay which was issued by the Registrar of the High Court, we are of the view that indeed, it was ineffectual for having been issued in violation of the mandatory provisions of Rule 90(1) of the Rules.

For the foregoing reasons, we are satisfied that the first point of the preliminary objection is well founded. Obviously, the appeal was lodged out of the prescribed timeline and it is therefore

incompetent. We accordingly sustain the preliminary objection and proceed to strike it out. However, we make no order as to costs since the appeal emanates from a labour dispute.

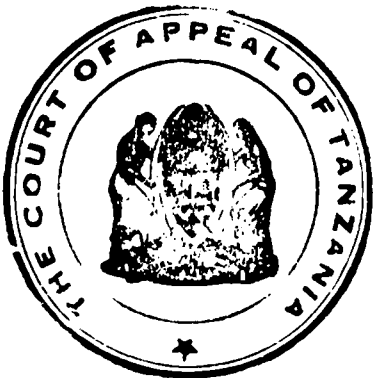
**DATED** at **MTWARA** this 26<sup>th</sup> day of March, 2022.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

The Ruling delivered this 28<sup>th</sup> day of March, 2022 in the presence of Mr. Evaristo Miho on behalf of Dominic A. Kalangi, for the Appellant and Ms. Getruda Songoi, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**