**IN THE COURT OF APPEAL OF TANZANIA**

**AT MUSOMA**

**(CORAM: WAMBALI, J.A., KITUSI., J.A. And MASHAKA., J.A.)**

**CIVIL APPEAL NO. 457 OF 2020**

**NORTH MARA GOLD MINE LIMITED ..... APPELLANT**

**VERSUS**

**SINDA NYAMBOGE NTORA .....RESPONDENT**

**[Appeal from the Judgment and Decree of the High Court of Tanzania Musoma District Registry at Musoma]**

**(Kahyoza, J.)**

**dated the 26th day of February, 2020**

**in**

**Land Case No. 1 of 2019**

---

## RULING OF THE COURT

*29th October, 2021 & 9th May, 2022*

**KITUSI, J.A.:**

This appeal emanates from the decision of the High Court of Tanzania at Musoma in Land Case No. 1 of 2019. In its decision dated 26th February, 2020 the High Court entered judgment in favour of the respondent in which among other reliefs it awarded him general damages to the tune of TZS 144,000,000.00, interest at the rate of 7% per annum from the date of judgment until the date of full payment, and half costs of the suit. The appellant was also ordered to hand back the respondent's house in good and tenantable condition connected with a three-phase electric system. The appellant is aggrieved by that

judgment and decree and has lodged a memorandum of appeal comprising of three grounds of appeal.

At the hearing of this appeal, Mr. Waziri Mchome, learned counsel appeared for the appellant, whereas Messers Stephen Michael Kaijage and Edwin Aron, both learned counsel, represented the respondent. At the outset, before we commenced the hearing of the appeal on merit, we drew counsel's attention to three certificates of delay in the record of appeal issued by the Registrar of the High Court of Tanzania, bearing different dates, and all purporting to exclude some days spent in the preparation of requisite documents applied by the appellant. The first certificate of delay is dated 30th June, 2020 while the second and third are dated 3rd August, 2020 and 7th September, 2020, respectively. Though the first and second certificates of delay refer to the date the appellant requested for a copy of proceedings to be 12th March, 2020 and the date of notification that they were ready for collection to be 30th June, 2020, they indicate the number of days excluded to be 60 and 111 respectively. On the other hand, the number of days excluded in the last certificate of delay are 180 from 12th March, 2020 to 7th September, 2020. Unfortunately, there is nothing on the title of the respective certificate suggesting that it is an amended certificate of delay.

Both Mr. Mchome for the appellant and Mr. Aron who responded on behalf of the respondent, were at one that in view of the obtaining situation, there is no valid certificate of delay, an error rendering the appeal time barred. The learned counsel had opposite views on the fate of the appeal, whether it should be struck out as suggested by Mr. Mchome, or whether it should be dismissed, as argued by Mr. Aron. That is simply what is before us for consideration.

It is unfortunate that the determination of this matter had to take so long. The truth of the matter is that after lodging the notice of appeal on 17th March, 2020, the appellant ought to have either filed the appeal within sixty days of that date, or obtained and presented a valid certificate of delay in terms of the proviso to rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) excluding the days spent in the preparation of proceedings for appeal purpose.

The appellant did not take the first option. However, in utilizing the second option, she obtained three certificates of delay issued on various dates and presented all of them as being part of the record of appeal. We agree with counsel that all certificates of delay were not valid because even the last one issued on 3rd September, 2020 and purporting to rectify errors in the previous certificate, refers to a wrong

date of judgment. There is no indication in the record of appeal that apart from the letter dated 12th March, 2020 applying for a copy of proceedings, the appellant wrote another letter to the Registrar of the High Court requesting for rectification of the previous certificates of delay. Besides, there is no letter from the Registrar informing the appellant that the proceedings requested for were ready for collection. In the circumstances, the appellant cannot rely on either of the certificates of delay to benefit from the exclusion of the days in terms of the proviso to rule 90 (1) of the Rules, to make the appeal to have been lodged within the prescribed time.

Even in the wake of the overriding objective principle, the error of having more than one certificate of delay in the record of appeal with no plausible explanation from the appellant, cannot be glossed over as a mere technicality, because it touches on the timeliness of the appeal itself. Nor, in our view, is this a fit case for us to grant the appellant leave to present a proper certificate of delay. We took a similar position in one of our previous decisions in the case of **The District Executive Director Kilwa District Council v. Bogeta Engineering Limited** [2019] T.L.R 271. In that case we held: -

> *"The Court cannot have jurisdiction to entertain an appeal which is time barred and no extension*

*of time has been sought and granted. We think the issue of time iimit is not a technicality which goes against the just determination of the case or undermines the application of the overriding objective principle contained in sections 3A (1) and (2) 3B (1) (a) of Act No. 8 of 2018".*

In the event, since the notice of appeal was lodged on 17th March, 2020, in terms of rule 90 (1) of the Rules, the appeal had to be lodged within sixty days of that date, that is, on or by 16th May, 2020. Thus, as the instant appeal was lodged on 22nd October, 2020, almost five months from the date of the lodgment of the notice of appeal, it is incompetent for being time barred.

As for the fate of this appeal, it is certainly liable to being struck out. With respect to the respondent's counsel, this has been our position in our previous decisions such as, **Hezron M. Nyachia v. Tanzania Union of Industrial and Commercial Workers & Another,** Civil Appeal No. 79 of 2001 (unreported), cited in another unreported case of **The Director General NSSF v. Consolata Mwakisu,** Civil Application No. 329/01 of 2017. In the latter case we held: -

*"It is important to state here that; the Court considered the effect of the application filed out*

*of time in the High Court and its consequence under S. 3 of the Law of Limitation Act. The authority is therefore inapplicable to proceedings filed in this Court. The reason is that the Law of Limitation Act does not apply to such proceedings.* ***In effect, whenever an appeal or application is filed out of time, the practice has been to strike it out".*** (Emphasis added).

Consequently, and for the above reasons, we strike out this appeal for being time barred. As the matter was raised by the Court, we make no order as to costs.

**DATED** at **DAR ES SALAAM** this 29th day of April, 2022.

F. L. K. WAMBALI
**JUSTICE OF APPEAL**

I. P. KITUSI
**JUSTICE OF APPEAL**

L. L. MASHAKA
**JUSTICE OF APPEAL**

The Ruling delivered this 9th day of May, 2022 in the presence of Mr. Godon Nashon, hold brief for Mr. Waziri Mchome, learned counsel for the Appellant, also hold brief for Mr. Stephen Kaijage, learned counsel for the respondent, is hereby certified as a true copy of the original.


G. H. HERBERT
**DEPUTY REGISTRAR**
**COURT OF APPEAL**