IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: WAMBALI, J.A., KEREFU, J.A And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 30 OF 2020

ABSA BANK TANZANIA LIMITED ..... 1ST APPELLANT

JOSEPH JOHN NANYARO ..... 2ND APPELLANT

VERSUS

HJORDIS FAMMESTAD ..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania, Commercial Division at Arusha)

(Fikirini, J.)

dated the 8th day of October, 2019

in

Commercial Case No. 06 of 2018.

RULING OF THE COURT

2nd & 24th May, 2022

MWAMPASHI, J.A.:

On 08.10.2019 the High Court of Tanzania at Arusha (Fikirini, J. as she then was) in Commercial Case No. 06 of 2018 passed a decree in favour of the respondent Hjordis Fammestad against the appellants, Barclays Bank Tanzania Limited (now known as Absa Bank Tanzania Limited) and Joseph John Nanyaro, hereinafter referred to as the first and second appellants respectively. In that case, the respondent claimed for payment of USD 335, 121.59 which was allegedly unlawfully withdrawn by the second appellant in collaboration with the first appellant from her bank account No. 7000070 maintained by the first appellant. At the end of the

trial, the claim was allowed to the tune of USD 201,072.93. The respondent was also awarded interest of 15% and 7% being commercial and court rates respectively.

Dissatisfied with the judgment and decree of the High Court, the appellants, lodged a notice of appeal and applied to the Registrar of the High Court (Deputy Registrar) for a certified copy of proceedings for appeal purpose on 21.10.2019. Thereafter, on 06.12.2019 the Deputy Registrar wrote a letter to notify the appellants that the requested documents were ready for collection and on the same date, a certificate of delay (first certificate) was issued. The instant appeal was then lodged on 14.02.2020.

The appeal came before the Court for hearing for the first time on 22.09.2021. Since the respondent had filed a notice of preliminary objections on two points; **firstly,** that the appeal is hopelessly time barred as the certificate of delay is misleading and problematic and thus incurably defective and, **secondly**, that the appeal is incompetent and bad in law for being preferred by a wrong party to the original proceedings in Commercial Case No. 6 of 2018 and without prior leave of the Court, as it is the practice of the Court, the objection had to be heard first. Upon being invited to argue the points of objection, the respondent's counsel sought leave to abandon the two points of objection which was granted. However, since the Court still wanted to satisfy itself on the correctness, validity or otherwise of

the certificate of delay, it invited the counsel for the parties to address it on that point.

In response, the respondent's counsel attacked the initial certificate of delay appearing at page 575 of the record of appeal by arguing that it suffered five shortfalls, the fifth one being that the date indicated therein, as the date the Deputy Registrar notified the appellants that the requested copy of the proceedings of the High Court was ready for collection was wrong. He argued that while it was indicated in the said certificate that the appellants were notified on 16.12.2019, the letter to that effect showed that they were so notified on 06.12.2019. The fact that the certificate of delay was defective on the shortfalls pointed out by the respondent's counsel was conceded by the appellants' counsel who however urged the Court to allow the appellants to file a rectified and valid certificate of delay. Since it was also revealed that the record of appeal was incomplete as it did not include the witness statement, the counsel for the appellants sought leave to file a supplementary record to include the missing statement and of course the rectified certificate of delay.

The Court, in its ruling dated 01.10.2021 agreed with the counsel for the parties that the initial certificate of delay was fatally defective and therefore invalid. As on the way forward, the Court adjourned the hearing and ordered the appellants to lodge a supplementary record of appeal in

terms of rule 96(7) of the Tanzania Court of Appeal Rules, 2009 (the Rules) to include the proper certificate of delay and the missing statement.

When the hearing of the appeal resumed on 02.05.2022, the Court did not only need to satisfy itself on whether the appellants have complied with the order of the Court issued 01.10.2021 particularly on the inclusion in the record of appeal a rectified and valid certificate of delay, but it also raised an issue regarding the name of the first appellant. This issue, as we have alluded to above, was one of the two points of objection raised by the respondent but which was however not argued and therefore not dealt with by the Court in our previous ruling dated 01.10.2021. It is also noteworthy that, originally, in Commercial Case No. 06 of 2018 and also in the judgment, decree and notice of appeal, the name of the first appellant appeared as Barclays Bank Tanzania Limited and not Absa Bank Tanzania Limited as appearing in the memorandum of appeal and in other various subsequent record of appeal before us.

Responding to the issue concerning the appellant's names, Mr. Mpaya Kamara, learned counsel for the first appellant conceded to the fact that the name of the first appellant as a party to the proceedings was informally changed and replaced without leave of the Court. He pointed out that just after the delivery of the judgment, lodgement of notice of appeal, application for a certified copy of proceedings for appeal purposes, issuance

of Deputy Registrar's letter on the readiness of the proceedings and a certificate of delay but before the filing of the memorandum of appeal, the first appellant changed its name from Barclays Bank Tanzania Limited to Absa Bank Tanzania Limited. To substantiate this, he referred us to a certificate of change of name No. 38557 issued by BRELA on 07.02.2020 appearing at page 575 of the record of appeal. He thus prayed under rule 4(2)(b) of the Rules, for the Court to make an order that Barclays Bank Tanzania Limited should now be known and referred to as Absa Bank Tanzania Limited. Dr. Onesmo Michael Kyauke and Mr. Salim Juma Mushi learned counsel for the second appellant and the respondent respectively, agreed to the prayer made by their learned friend. However, in addition, Mr. Mushi prayed for the same to apply to the respondent's cross appeal where the first appellant is also a party.

Having considered the submissions made by the learned counsel for the parties and scrutinized the contents of the certificate on change of the first appellant's name issued by BRELA on 07.02.2020, we, for purposes of regularizing the record of appeal, granted the unopposed prayer and took cognizance of the first appellant's change of the name from Barclays Bank Tanzania Limited to Absa Bank Tanzania Limited. That being the case, therefore, from 07.02.2020 when the certificate of change of name was issued, the first appellant should appear in the record of appeal by the

name of Absa Bank Tanzania Limited instead of Barclays Bank Tanzania Limited. This should also apply to the cross appeal lodged by the respondent.

Regarding the second issue on the validity of the rectified certificate of delay, which in the supplementary record of appeal is titled "Proper Certificate of Delay", Mr. Kamara conceded to the facts; firstly, that the appellants wrote to the Deputy Registrar requesting to be supplied with a certified copy of the High Court proceedings on 21.10.2019 and secondly, that according to the record of appeal, the letter by the Deputy Registrar notifying the appellants that the requested copy was ready for collection is dated 06.12.2019. His qualm was however on the issue whether the appellants were actually notified and the requested copy was delivered to them on 06.12.2019. It was his argument that there is no evidence on record proving the date the appellants were actually notified. He further argued that since the appellants collected the requested copy on 17.12.2019, then the period of exclusion need to be computed up to that date. In his endeavour to substantiate that the copy was collected on 17.12.2019, Mr. Kamara referred us to an exchequer receipt appearing at page 572 of the record of appeal. However, and upon being probed by the Court, Mr. Kamara conceded to the fact that basing on the record of appeal, the rectified certificate is invalid as it does not reveal the truth of the

matter. He admitted that the date of 16.12.2019 referred to in the said certificate is not borne out of the record. He thus prayed in terms of rule 4(2)(b) of the Rules, to be allowed to file a correct and valid certificate of delay. He contended that since the errors were made by the Deputy Registrar, the appellants are not to blame and should not be punished. He thus insisted that the appellants should be accorded their Constitutional right to appeal by being allowed to lodge a supplementary record of appeal including a correct and valid certificate of delay to support the appeal.

On his part, Dr. Michael was of the view that the rectified certificate of delay is correct and valid. He explained that while it is true that the letter notifying the appellants that the requested copy of proceedings is ready for collection was written at Arusha on 06.12.2019, the appellants' counsel who are based in Dar es Salaam had no such notice till on 14.12.2019 when a court clerk called from Arusha to inform them about that letter. Thereafter, on 16.12.2019, he contended, they sent one of their colleagues to Arusha who collected the letter on the same date before he collected the relevant requested copy on 17.12.2019. It was further argued by Dr. Michael that as reflected in the rectified certificate, the appellants were actually notified of the readiness of the requested copy on 16.12.2019 when the letter to that effect was collected by their colleague. He contended further that there should be evidence to that effect from the Deputy Registrar dispatch or

ledger at Arusha which they need to produce to the Court as evidence proving that the appellants were notified on 16.12.2019. Dr. Michael did therefore pray for leave to lodge a supplementary record to include such evidence proving the fact that the appellants were actually notified on 16.12.2019 when the letter dated 06.12.2019 was collected by their colleague, as correctly indicated in the rectified certificate of delay.

On his part, Mr. Mushi joined hands with Mr. Kamara that the rectified certificate of delay is defective and invalid. He, however, strongly opposed the prayer that the appellants should be given leave to lodge a supplementary record of appeal to include a valid certificate and evidence to prove that the appellants were notified on 16.12.2019. He firstly argued that the exchequer receipt relied upon by Mr. Kamara, appearing at page 572 of the record of appeal, is irrelevant to the issue at hand because it was issued for the payments made to file the written statement of defence in 2018. In addition, Mr. Mushi argued that this is the second time the appellants are seeking leave to rectify and lodge a valid certificate of delay. He insisted that leave to lodge a supplementary record can only be sought and granted once and further that since the record of appeal clearly indicates that the appellants were notified that the requested copy of proceedings was ready for collection on 06.12.2019 and as the appeal was lodged on 14.02.2020 then there is nothing that can be done to rescue the

appeal from being time barred. He contested the argument made for the appellants that they were notified on 16.12.2019 and that the requested copy was collected on 17.12.2019 for being barren because the law is settled that in computing the period of exclusion under rule 90(1) of the Rules what counts is the time from when the relevant proceedings are requested and when the Registrar of the High Court writes a letter notifying an appellant that the requested copy of proceedings is ready for collection. As on the argument that appeal is the appellants' Constitutional right, he argued that the right of appeal goes with the duty to comply to the relevant law and procedure. He finally prayed for the appeal to be struck out with costs. Regarding the cross – appeal, Mr. Mushi relied on our decision in **Attorney General v. Morogoro Autospares** [2007] T.L.R. 315, and prayed for the same to proceed for hearing on merit.

In brief rejoinder it was firstly conceded by Mr. Kamara that the exchequer receipt he had earlier on referred us to, is truly not related to the matter at hand. He however maintained that the letter dated 06.12.2019 bears the date it was written and not when it reached the appellants. He thus reiterated his earlier prayer that the appellants be afforded an opportunity to prove that they were actually notified of the readiness of the requested copy of proceedings on 16.12.2019 when the letter to that effect

was collected by them from the Deputy Registrar at Arusha. Mr. Kamara did not wish to comment on the status of the respondent's cross – appeal.

On his part, Dr. Michael insisted that the appellants should be allowed to lodge a supplementary record of appeal to prove that they were actually notified on 16.12.2019 when the letter dated 06.12.2019 was collected. He also argued that the previous order by the Court was for the appellants to file specific documents which were; the rectified certificate of delay and the statement of DW3 which was missing from the record of appeal which is not similar to what is presently being sought. It was insisted by Dr. Michael that the period of exclusion should be computed from the date the appellants requested for the copy of the proceedings up to the time when they were actually notified that the copy of the proceedings requested was ready for collection and not up to the time when the letter by the Deputy Registrar was written. As regard to the cross appeal, Dr. Michael argued that in event the appeal is struck out, the entire record of appeal will as well be automatically struck out and therefore the cross appeal will have no record on which to survive. He, however, did not say anything or distinguish the case of **Attorney General** (supra) cited by Mr. Mushi.

Having carefully and dispassionately considered the arguments from the counsel for the parties on the issue of the validity of the rectified certificate of delay, it is our observation that the central issue for our

determination is not just on the validity of the said rectified certificate of delay dated 15.10.2021 but also on the issue whether the appellants can be granted leave to lodge a supplementary record of appeal, to include evidence that they were notified on 16.12.2019. What is being pressed by the counsel for the appellants is that, though the Deputy Registrar's letter notifying the appellants that the requested copy of the proceedings was ready for collection is dated 06.12.2019, the period of exclusion should be computed up to 16.12.2019 when it is alleged that the appellants were actually notified that the requested copy of proceedings is ready for collection.

At this juncture, we find it apposite to first begin by revisiting the relevant law on institution of appeals to this Court and also on the issuance of certificates of delay. The relevant provision is rule 90 (1) and (2) of the Rules under which it is provided 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 the copy to the appellant.

(2) The certificate of delay under rules 45, 45A and 90(1) shall be substantially in Form L as specified in the First Schedule and shall apply mutatis mutandis".

It is glaringly clear from the above provision that an appeal to this Court must be lodged within 60 days from the time a notice of appeal is lodged. However, where an appellant had applied in writing for a copy of proceedings for appeal purpose within 30 days of the date of the impugned decision, the Registrar of the High Court may issue a certificate of delay excluding the period or number of days spent in preparation and delivery of the said requested copy of the proceedings. This position has been stated by the Court in various decisions including **Kantibhai Patel v. Dahyabhai Mistry** [2005]T.L.R. 438, **Mwalimu Amina Hamis v. National Examinations Council of Tanzania and Four Others** [2019] T.R.L. 552 and **Puma Energy Tanzania Limited v. Diamond Trust Bank Tanzania Limited**, Civil Appeal No. 54 of 2016 (unreported).

As regards on how a valid certificate of delay should be crafted and particularly on how the Registrar of the High Court should compute the period of exclusion, the Court in **Hamisi Mdeda and Saidi Mbogo v. The Registered Trustees of Islamic Foundation,** Civil Appeal No. 59 of 2020 (unreported) directed that the Registrar of the High Court must observe the following:

> *"He must state in very clear terms that the days to be excluded in computing the period of limitation are those from the time when the appellant requested for the copies of proceedings to the date he notified him that the documents are ready for collection".*

It is also a settled position that a valid certificate of delay should be free from errors and also that, a certificate issued in contravention of rule 90(1) and (2) of the Rules is invalid and cannot be relied upon in aiding the appellant to be entitled to the excluded number of days in computing the period of limitation. The position has been reiterated by the Court in a number of decisions including **Njowoka M.M. Deo and Another v. Mohamed Musa Osman,** Civil Application No. 78/17 of 2020, **Tanzania Occupational Health Services v. Mrs. Agripina Bwana and Another**, Civil Appeal No. 127 of 2016 (both unreported) and **Kantibhai Patel** (supra). In the latter case it was observed that:

"The very nature of anything termed a certificate requires that it be free from error and should an error crop into it, the certificate is vitiated. It cannot be used for any purpose because it Is not better than a forged document. An error in a certificate is not a technicality which can be glossed over; it goes to the root of a document".

In **Tanzania Occupational Health Services** (supra) the Court held that:

"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 is also a settled position that for a certificate of delay to be valid the dates indicated therein and on which the computation of the period of exclusion is based should be borne out of the record. In the absence of such record, the certificate cannot be relied upon for containing unverifiable details. See- **Tanzania Telecommunication Company Limited v. Stanley S. Mwabulambo**, Civil Appeal No. 26 of 2017 (unreported).

In the instant case, the impugned decision was handed down on 18.10.2019. The appellants duly lodged a notice of appeal and applied for a

copy of certified proceedings of the High Court for appeal purposes on 21.10.2019. Thereafter, on 06.12.2019 the Deputy Registrar wrote to the appellants notifying them that the requested copy of the proceedings was ready for collection and on the same date the initial certificate of delay was issued only to later be found defective for reasons that it excluded the period from 28.10.2019 to 16.12.2019 not borne out of the record. The appellants were then given leave to lodge a supplementary record of appeal to include the rectified certificate of delay, which its validity is again being questioned. It is common ground that as it was in the initial certificate of delay, the rectified certificate of delay still purport to exclude the period up to 16.12.2019 allegedly being the date on which the appellants were notified that the requested copy of the proceedings was ready for collection. Apart from the fact that 16.12.2019 is not borne out of the record, it is also contrary to the Deputy Registrar's letter dated 06.12.2019 which is to the effect that it was on that date when the appellants were notified that the requested copy of the proceedings was ready for collection. The rectified certificate of delay does not therefore tell the truth of the matter, it is erroneous, defective and invalid.

In their submissions the counsel for the appellants forcefully argued that it is not on 06.12.2019 when the appellants were notified that the requested copy of the proceedings was ready for collection but it is on

16.12.2019 when the Deputy Registrar's letter to that effect was allegedly collected by them. With due respect, we are unable to agree with them as their argument remains to be nothing but a statement from the bar. As we have amply demonstrated above, there is no evidence in the record of appeal to that effect. In essence, what the Court is being invited to do in this case, is to depart from the well settled position that in terms of rule 90(1) of the Rules, the period of exclusion is computed from the date the copy of the proceedings is requested up to the date when the Registrar of the High Court notifies the appellant in writing that the requested copy is ready for collection. Fortunately, this is not the first time the Court has been confronted by such an invitation. In **Tanzania Telecommunication Company Limited** (supra) it was argued for the appellant that computation of time to be excluded could not have ended on the date of the letter for notification because the appellant was yet to receive the notification that the documents were ready for collection. It was further argued in that case that, the counsel for the appellant had received the High Court Registrar's letter dated 11.10.2016 on 12.12.2016 and that the documents were collected on 13.12.2016. It was also a common ground that there was no evidence showing that the High Court Registrar's letter was received on 12.12.2016. Having heard and considered the arguments made by the counsel for the parties, the Court observed as follows:

"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 aspect, 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 being 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".

We associate ourselves with the above decision and insist that since 16.12.2019 indicated in the rectified certificate of delay as the date the appellants were notified that the requested copy of the proceedings is ready for collection is not borne out of the record and as there is no evidence on record contrary to the fact that the appellants were notified on 06.12.2019, then, as we have alluded to above, the said rectified certificate of delay or the so called "Proper certificate of delay" does not reveal the truth of the matter and it is therefore erroneous, defective and invalid.

Next is the issue whether leave can be granted for the appellants to lodge a supplementary record of appeal to include evidence proving that they were notified that the requested copy of the proceedings was ready for collection on 16.12.2019 when the Deputy Registrar's letter dated 06.12,2019 allegedly reached them. It is our considered view that since in the initial application to lodge the supplementary record of appeal, the appellants were granted leave to lodge a supplementary record of appeal to include not only the statement of DW3 but also a rectified certificate of delay, then the appellants cannot be allowed to again lodge a supplementary record of appeal for the second time in order to present evidence which intend to rectify the rectified certificate of delay. The evidence to prove that the appellants were notified of the readiness of the copy of the proceedings on 16.12.2019 and not on 06.12.2019 sought to be included in the record of appeal by lodging another supplementary record of appeal relates to the initial certificate of delay which the appellants were afforded an opportunity to rectify.

It is our considered view that since the appellants do not dispute the fact that the Deputy Registrar's letter was written on 06.12.2019 then granting them the leave sought will be useless. The evidence sought to be brought will not change the fact that there is a letter by the Deputy Registrar dated 06.12.2019 notifying the appellants that the requested copy

of the proceedings was ready for collection. So long as the letter to notify them was written on 06.12.2019 and since it is settled that in computing the period of exclusion under rule 90(1) of the Rules, the period of exclusion begins to run from the date the relevant copy of the proceedings is requested up to the date when the Registrar of the High Court writes a letter to notify the appellant that the requested copy is ready for collection and not when such a letter reaches the appellant, then the evidence sought to be brought by the appellants in the instant matter proving that it is on 16.12.2019 when the letter was received by them, will serve no purpose. It should be emphasized that even the original record does not support the appellants' claim that it was on 16.12.2019 when they were notified that the requested copy of the proceedings is ready for collection and collected the same as there are no further correspondence in that record to the contrary. In this regard, the Deputy Registrar cannot rectify the certificate of delay in disregard of the documents which are in the record as required by the law.

Regarding the argument by the counsel for the appellants that right of appeal is Constitutional and therefore that the appellant's right of appeal should not be curtailed, we agree with Mr. Mushi that right of appeal goes with the duty to comply to relevant laws and procedure. Any contravention of mandatory requirements of rule 90(1) of the Rules have the effect of going to the roots of the competence of an appeal. For the above reasons

and under the circumstances of this case, we respectfully find the argument by Mr. Kamara baseless.

It is also our considered view that the fact that the rectified certificate of delay is not defective but invalid then it cannot be salvaged by the overriding objective principle simply because institution of an appeal within the period of 60 days is a mandatory requirement. This Court has held in a number of its decisions that the principle is not meant to allow parties to defeat or circumvent procedural provisions which go or have the effect of going to the foundation of the case. See- **District Executive Director Kilwa District v. Bogeta Engineering Limited** [2019] T.L.R. 271, **Mondorosi Village Council and Two Others v. Tanzania Breweries Limited and Four Others**, Civil Appeal No. 66 of 2017, **Martin D. Kumalija and 117 Others v. Iron and Steel Limited,** Civil Application No. 70/18 of 2018 and **Njake Enterprises Limited v. Blue Rock Limited and Another**, Civil Appeal No. 69 of 2017 (All unreported).

Basing on the above observations and findings, since the rectified certificate of delay is found invalid, the appellants cannot benefit from the exclusion of the period spent in preparation of the relevant copy of proceedings for appeal purposes. That being the case, having lodged the notice of appeal on 21.102019, the appellants ought to have lodged their appeal within 60 days from the date the notice of appeal was lodged as

required by rule 90(1) of the Rules. The appeal which was lodged on 14.2.2020 was therefore lodged well beyond the period of 60 days hence time barred. Even if, for the sake of argument, the rectified certificate of delay, which has been found to be invalid, is considered in the computation of limitation period, still the appeal will be time barred because while the appellants were notified that the requested copy of the proceedings for appeal purpose was ready for collection on 06.12.2019 the appeal was lodged on 14.02.2020, about 8 days beyond the required period of 60 days.

Finally, it is on the argument in regard to the status of the cross appeal in event the appeal is struck out, which we think should not detain us at all. With due respect, we find the argument by the counsel for the appellants that once the appeal is struck out then the respondent's cross – appeal flops for lack of legs to stand on, to be misconceived. Fortunately, this is not the first time the Court is faced with an akin situation. In **Attorney General v. Morogoro Autospares** (supra) cited by Mr. Mushi, where the same argument was raised it was firmly held that a cross – appeal in a struck out appeal stands on its own like a cross – appeal in a withdrawn appeal and therefore that it can proceed for hearing. It was further insisted by the Court that a cross – appeal is an appeal of its own kind just like a counterclaim in a suit. Basing on the above decision of the

Court to which we wholly subscribe, we accordingly hold that the respondent's cross – appeal survives and it has to proceed for hearing.

In the event and for the above given reasons, we find the appellants' appeal incompetent for being supported by an invalid certificate of delay hence time barred and it is accordingly struck out with costs. We further order that the hearing of the cross – appeal is, in the meantime stand adjourned to the next convenient sessions of the Court on a date to be fixed by the Registrar.

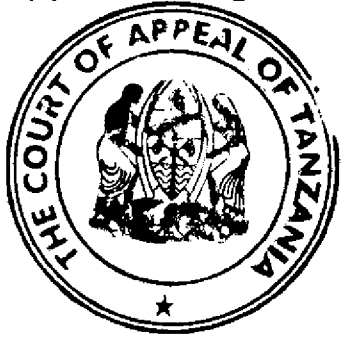
DATED at **DAR ES SALAAM** this 19th day of May, 2022.

F. L. K. WAMBALI
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 24th day of May, 2022 in the presence of Mr. John Laswai holding brief for Mpaya Kamara, counsel for the 1st Appellant and John Laswai, counsel for the 2nd Appellant and Mr. John Laswai holding brief for Salimu Mushi, counsel for the Respondent is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL