

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

**(CORAM: NDIKA, J.A., KOROSSO, J.A. And MAKUNGU, J.A.)**

**CIVIL APPEAL NO. 468 OF 2020**

**RAPHAEL OLOGI ANDREA ..... APPELLANT**

**VERSUS**

**MUSOMA URBAN WATER SUPPLY AND  
SANITATION AUTHORITY ..... RESPONDENT**

**(Appeal from Judgment and Decree of the High Court of Tanzania  
at Musoma)**

**(Kisanya, J.)**

**dated the 29<sup>th</sup> day of May, 2020  
in  
Labour Revision No. 21 of 2019**

.....

**RULING OF THE COURT**

8<sup>th</sup> & 14<sup>th</sup> June, 2022

**MAKUNGU, J.A.:**

This appeal emanates from the judgment and decree of the High Court of Tanzania at Musoma in Labour Revision No. 21 of 2019 dated 29<sup>th</sup> May, 2020 (Kisanya, J). The facts leading to this appeal are as hereunder.

The respondent, Musoma Urban Water and Sanitation Authority, employed the appellant, Raphael Ologi Andrea on temporary basis in the position of a plumber. This was on 1-1-1997. The appellant's personal

records (Exhibit P4) show that he was employed on temporary basis. Ten years later, on 30-08-2007, the appellant signed a three years contract in the same position of plumber (Exhibit P1). The said contract was extended for five years with effect from 1-4-2013 as per letter Ref. No. UWSA/PF 16/34 dated 10-04-2013 (Exhibit P2). However, there is another letter Ref. No. UWSA/PF 16/44 dated 01-08-2014 (Exhibit P3) showing that the contract was extended from 1-7-2014 to 30-06-2017. Therefore, basing on paragraph 6 of Exhibit P2 the appellant's employment was expected to lapse on 31-03-2018.

However, the appellant was terminated with effect from July, 2017 as per letter Ref. No. UWSA/PF16/58 dated 02-07-2018 (Exhibit P7) on the ground that he had failed to submit his form four (F IV) secondary academic certificate. Prior to the said termination, he was suspended and given time to submit the said certificate as per letter Ref. No. UWSA/PF16/58 dated 20-07-2017 (Exhibit P6).

The appellant was unsatisfied with that termination, hence he referred the matter to the Commission for Mediation and Arbitration (CMA). After a full trial the CMA decided in favour of the appellant. Consequently, the respondent was ordered to pay the appellant TZS.

18,360,000/= being compensation for the remaining duration of contract of three years from 01-07-2017.

Dissatisfied, the respondent filed Labour Revision No. 21 of 2019 before the High Court at Musoma where the High Court revised the award issued by CMA. Consequently, it was ordered that the appellant was entitled to compensation of 9 months' salary (TZS 4,500,000) and not 36 months' salary (TZS 18,360,000).

Aggrieved by the decision of the High Court, the appellant appealed to this Court on three (3) grounds of appeal which for a reason to become apparent shortly, we shall not reproduce.

On the other hand, the respondent filed a notice of preliminary objection (PO) on three (3) points as follows:-

- 1. The notice of appeal contained in the record of appeal at page 151 is fatally defective for not being served to the respondent as mandatorily required by the law hence renders this appeal incompetent.*
- 2. The purported written letter for the copy of proceedings in the High Court which is found at page 153 of the record of appeal was lodged on 29<sup>th</sup> June, 2020 but was neither copied nor served on the respondent in contravention to law.*
- 3. The appeal is incompetent due to failure by the arbitrator to append his signature at the end of each witness's evidence.*

When the appeal was called on for hearing, the appellant was represented by Mr. Evangel Onyango Otieno, learned advocate; whereas the respondent had the services of Messrs. Edwin Joshua Webiro and Kitia Sylvester Turoke, both learned State Attorneys.

As is ordinarily the practice of the Court, once a preliminary objection is raised, the Court would shelve the hearing of the substantive matter to allow the disposal of the preliminary objection first. We thus allowed Mr. Webiro to address us on the Preliminary Objection.

In his submissions in support of the preliminary objection, he prefaced his submission by adopting the notice of preliminary objection and written submission they had filed earlier on to form part of their submission. He informed us that he abandoned the 3<sup>rd</sup> point of objection and will submit on the remaining two grounds.

Briefly, the submission of Mr. Webiro on the 1<sup>st</sup> ground was to the effect that the appeal is incompetent for the appellant's failure to comply with Rule 84 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) requiring the notice of appeal to be served on the respondent within 14 days. He pointed out that, the appellant did not serve the respondent despite the fact that the copy of dispatch appearing on page 154 shows that some documents were received on 06-07-2020. He argued that in

the said attachment, there is no description of the documents, no name of the officer of the respondent who signed that dispatch and no rubber stamp of the respondent. Therefore, in the absence of the evidence, it cannot be said that the respondent was served according to Rule 84 (1). To bolster his arguments, he referred us to the case of **National Microfinance Bank v. Muyodeso**, Civil Appeal No. 289 of 2019 and **Grumeti Reserves Limited v. Morice Akir**, Civil Appeal No. 334 of 2019 (both unreported).

On addressing on 2<sup>nd</sup> ground Mr. Webiro submitted that the impugned judgment was given on 29/5/2020 while the appellant filed a notice of appeal against that decision on 29/06/2020. The appellant also filed a letter requesting a copy of proceedings on the same day but no copy was served on the respondent as required under Rule 90 (3) of the Rules. He contended that, the letter is very important, failure to serve the said copy to the respondent rendered the certificate of delay issued to the appellant on 24<sup>th</sup> August, 2020 invalid.

It was Mr. Webiro's further contention that the appellant was supposed to file his appeal within sixty (60) days from the date the notice of appeal was filed. However, this appeal was filed on 23<sup>rd</sup> October, 2020 thus being out of time for 113 days. He made reference to the cases of

**Mayira B. Mayira V. Kapungu Rice Project**, Civil Application No. 350 of 2019 and **Filon Felician Kwesiga V. Board of Trustees of NSSF**, Civil Application No. 136 of 2020 (all unreported) to that effect.

Consequent to the foregoing, Mr. Webiro prayed for striking out of the appeal with costs.

In response, Mr. Otieno in relation to the 1<sup>st</sup> point of the preliminary objection on failure to comply with Rule 84(1) of the Rules, dismissed it for having no merit. He argued that the appellant served a notice of appeal on the respondent as shown in the copy of dispatch appearing on page 155 of the record of appeal. He submitted that the notice of appeal was duly lodged in time and it was served on the respondent within time, unless there was an affidavit which the respondent denied that he was not served. There was no such affidavit which was filed in the Court. Therefore the respondent was properly served and one of his officers in the office signed the dispatch on 6-7-2020. Accordingly, Rule 84(1) was not contravened as alleged by the respondent, he added.

Regarding the 2<sup>nd</sup> point of the preliminary objection, it was Mr. Otieno's argument that the respondent was served with the letter requesting for a copy of proceedings as shown on page 155 of the record of appeal. He submitted that everything done according to the Rule 90(1)

of the Rules. He admitted that on the dispatch there was no rubber stamp of the respondent to show that he received the said documents. He stated that some of the offices they received the dispatch but they signed it without stamping it. He prayed for the two points to be dismissed.

In rejoinder, Mr. Webiro insisted that the respondent never received those two documents as indicated on page 155 of the record of appeal. He concluded by saying that the respondent when receiving any dispatch always puts a rubber stamp of the office because it is a government office. He then reiterated his previous prayer that the appeal be struck out with costs.

We have considered the notice of preliminary objection, written submission by the respondent in its support and the oral arguments for and against the points of preliminary objection raised. We will start our deliberation with the first point of objection in respect of the failure by the appellant to serve the copy of the notice of appeal on the respondent. The requirement to serve the respondent, with the notice of appeal is provided under Rule 84(1) of the Rules which states thus:

*"An intended appellant shall, before, or within fourteen days after lodging a notice of appeal, serve copies of it on all persons who seem to him to be directly affected by the appeal; but the court*

*may, on an ex-parte application direct that service need not be effected on any person who took no part in the proceedings in the High Court.”*

Clearly, this provision imposes an imperative obligation on the intending appellant to serve the notice of appeal on the respondent within fourteen days of its lodgement. Indeed, the notice of appeal appearing at pages 151-152 of the record of appeal was not copied to the respondent and was not duly served on the respondent because there is no indication to that effect. There is no name of the recipient, rubber stamp or anything to prove that the respondent ever received the notice.

It is our considered view therefore that the importance of serving the respondent with the notice of appeal is to alert him that an appeal is being preferred thus enable him to prepare for it. Failure of which is fatal to the appeal. In our earlier decision in the case of **Bank of India (Tanzania) Limited v. Y.P. Road Haulage Limited & Two others**, Civil Appeal No. 322 of 2017 (Unreported), it was stated that:-

*"... We are of the settled mind that the non-compliance with Rule 84(1) of the Rules rendered the appeal incompetent. In the event the appeal is hereby struck out with costs."*

Eventually, like in the decision cited above, we are enjoined to find that failure to serve the notice of appeal on the respondent renders the



appeal incompetent. Since this holding suffices to dispose of the matter, we find no need to consider the issue in relation to the letter applying for the copy of proceedings in the High Court.

In the event, we sustain the first point of preliminary objection. The appeal is thus incompetent and we proceed to strike it out. Since the matter arose from a labour dispute, we make no order as to costs.

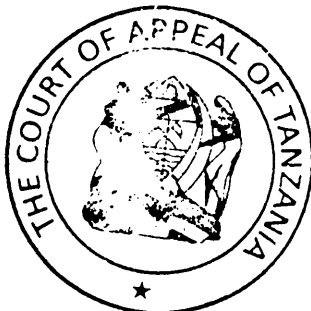
**DATED** at **MUSOMA** this 14<sup>th</sup> day of June, 2022.


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

W. B. KOROSSO  
**JUSTICE OF APPEAL**

O. O. MAKUNGU  
**JUSTICE OF APPEAL**

The Ruling delivered this 14<sup>th</sup> day of June, 2022 in the presence of Mr. Kitia Sylvester Turoke, learned State Attorney for the Respondent and also holding brief of Mr. Evangel Onyango Otieno, learned counsel for the Appellant, is hereby certified as a true copy of the original.



  
C. M. MAGESA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**