

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MUGASHA, J.A., GALEBA, J.A. And RUMANYIKA, J.A.)

CIVIL APPEAL 176 OF 2019

**KASSIM MAHONYA..... APPELLANT
VERSUS
BENEDICT JOSEPH NJAU.....RESPONDENT**

**(An Appeal from the Decision of the High Court of Tanzania
at Dar es Salaam)**

(Mwarija, J.)

**dated 13th day of February, 2013
in
Civil Appeal No. 15 of 2011**

RULING OF THE COURT

6th & 21st June, 2022

RUMANYIKA, J.A.:

Before us, impugned is the judgment and decree of the High Court of Tanzania at Dar es Salaam (Mwarija, J.) (as he then was) dated 13/02/2013.

When the appeal was called on for hearing on 06/06/2022, Kassim Mahonya, the appellant appeared in person unrepresented. Benedict Joseph Njau, the respondent, had the services of Mr. Barnaba Luguwa, learned counsel.

From the outset of it all and on account of the belated notice, we invited and asked the parties to address us about the competence of the appeal.

The appellant forcefully submitted that he lodged the notice of appeal immediately and within time and requested to be supplied with the copy of the impugned judgment. However, getting it was not an easy task for the copy was supplied to him about one year later. After his several and repeated follow ups and upon the Principal Judge's intervention.

Mr. Luguwa submitted that the notice of appeal shown at page 9 of the record of appeal is liable to be struck out because the appellant lodged it on 01/07/2019 which is about six years from the date when the impugned judgment was issued and no extension of time was sought and granted by court. Therefore, he added, the appellant contravened the mandatory provisions of Rule 83(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

Therefore, the issue for our determination is whether the appeal is competent before this Court.

The time prescribed under rule 83(2) of the Rules for filing a notice of appeal in civil cases is thirty days. The rules read thus:

83(2) Every notice shall, subject to provision of rules 91 and 93, be so lodged within thirty days of the date of the decision against which it is desired to appeal.

(Emphasis added).

As intimated above, in this appeal it is not disputed that the decision appealed from was handed down on 12/02/2014. The record further speaks loudly that the notice of appeal shown at page 9 of the record of appeal was lodged on 01/07/2019. That is about five years and four months far beyond the prescribed time of thirty days.

Given the chequered historical background of this matter, it may have taken the appellant longer waiting for the copy of the High Court's proceedings also taking some initial essentials steps such as, filing an application for leave to appeal as required under rule 82(4) of the Rules, but he did this on 22/09/2014 which is again close to five years. Then he lodged the notice of appeal, as said before, far beyond the prescribed period. However, the appellant should have not waited for the copy of the impugned judgment for six years or any shorter period of time before he filed the notice of appeal because it was not a mandatory requirement under rule 83(5) of the Rules for him to append that copy to the appeal. For ease of reference and clarity, in that regard the Rules read as follows:

*83(5) Where it is intended to appeal against a judgment or decision of the High Court, **it shall not be necessary for a copy of the judgment or decision to accompany the notice of appeal.***

Now that, on account of the time bar in this case the notice of appeal at page 9 of the record of appeal is incompetent, too, the appeal is, without more, incompetent and liable to be struck out. About the effects of an out of time filed notice of appeal, present may not be the first case before us. For instance in **Emmanuel Funga v. Halmashauri ya Kijiji cha Mvumi Mission**, Civil Appeal No. 350 of 2019 (unreported), we subscribed the principle in **Dhow Mercantile Ltd v. Registrar of Companies and 4 Others**, Civil Appeal No.56 of 2005 (unreported), where the Court had stated as follows:

*"It is common ground that **a notice of appeal properly lodged in terms of the provisions of Rule 76 (Now Rule 83) is a pre-requisite condition for the institution of an appeal.** Otherwise, there is no denying the fact that **without a valid and proper notice of appeal there would be as it were, no leg upon which the appeal would stand.**"(Emphasis added).*

We wish to strictly further observe that on account of what we observed in **Dhow Mercantile (EA) Ltd** (supra), in this appeal the notice of appeal is not worth the name.

In the circumstances, since, as above observed the notice of appeal was filed beyond the prescribed thirty days, basically the appeal was not preceded by valid notice of appeal therefore the purported appeal is not competent. We accordingly strike it out with no order as to costs since the anomaly was raised *suo mottu* by the Court. Order accordingly.

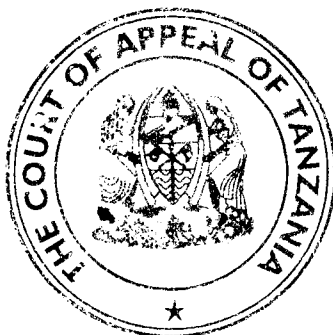
DATED at **DAR ES SALAAM** this 17th day of June, 2022.

S. E. A. MUGASHA
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

This Ruling delivered this 21st day of June, 2022 in the presence for the Appellant in Person, Mr. Barnaba Luguwa, learned Counsel for the Respondent and the respondent, is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL