

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

**(CORAM: MKUYE, J.A., KOROSSO, J.A. And MAIGE, J.A.)**

**CIVIL APPLICATION NO. 493/16 OF 2020**

**TANZANIA BUREAU OF STANDARDS .....1<sup>ST</sup> APPLICANT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ERYTHIA TRADING COMPANY .....RESPONDENT**

**(Application for order to strike out a Notice of Appeal lodged by the  
respondent on 30<sup>th</sup> March, 2020 against the Judgment of the High  
Court of Tanzania, Commercial Division)**

**(Hon. Magoiga, J.)**

**Dated 27<sup>th</sup> day of March, 2020**

**in**

**Commercial Case No. 137 of 2017**

.....

**RULING OF THE COURT**

30<sup>th</sup> August & 06<sup>th</sup> September, 2022

**MAIGE J.A.:**

By a notice of motion substantiated by an affidavit of Mr. Hangi H. Chang'a, learned Principal State Attorney, the applicants have moved the Court pursuant to rule 89(2) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"), for an order striking out the notice of appeal lodged by the respondent on 30<sup>th</sup> March, 2020. The main ground for the application according to the notice of motion, affidavit and submissions, it would appear to us, is failure to take essential steps within time. In accordance with the affidavit, while more than 150

days have passed since the date of lodging the notice of appeal, the intended appeal has not been instituted. The respondent, it is further deposed, has never served the applicants with a letter showing that he requested for a copy of the proceedings.

In resistance to the application, the respondent, through her advocate Mr. Patrick Toyi Kaheshi, deposed an affidavit in reply. The assertion in the said affidavit is that, the respondent did take the relevant essential steps, including requesting for a copy of the proceedings and serving the applicants with a copy of the request letter. Further claimed is the fact that, the respondent though procured a copy of the proceedings and the related certificate of delay, she could not lodge the intended appeal because the certificate of delay availed to her by the Registrar was defective and indeed, she has requested the Registrar to correct the same.

On the date of hearing, Mr. Hangi Chang'a, learned Principal State Attorney assisted by Ms. Narindwa Sekimanga, learned State Attorney, appeared for the applicants whereas Mr. Patrick Kaheshi, learned advocate appeared for the respondent.

In her brief oral submissions, Ms. Sekimanga contended that as the respondent did not take steps to collect the proceedings after applying for a copy of the proceedings on 30<sup>th</sup> March, 2020 and more than 150 days have passed since the lodging of the notice of appeal, the notice of appeal should be struck out. She submitted further that, in terms of rule 91(a) of the Rules, the respondent was obliged which she did not, to take steps to collect the requested copy of proceedings within fourteen days (14) after the expiry of ninety days of the submission of the request letter. Omission to make a follow up after expiry of the said 14 days, she submitted, amount to failure to take essential steps in terms of rule 89(2) of the Rules. Reference was made to the cases of **Daudi Robert Mapunga & 417 Others v. Tanzania Hotels Investment Ltd and Others**, Civil Application No. 462/18 of 2018 and **Kagozi Amani Kagozi (as Administrator of the estate of the late Juma Selemani v. Ibrahim Suleman and Others**, Civil Application No. 290/11 of 2021 (both unreported).

In rebuttal, Mr. Kaheshi having adopted the notice of motion and affidavit in reply, refuted the applicant's proposition that some essential steps in the proceedings have not been taken. The counsel submitted, making reference to annexure ETC2 of the affidavit in reply, that the request letter was submitted to the Registrar and a copy

thereof served on the applicants. He submitted further that, aside from the request letter, the respondent took steps as per annexure ETC2 of the affidavit in reply, to remind the Registrar, on 31<sup>st</sup> August, 2020, of the request. He submitted further that; the respondent has been prevented to institute the intended appeal for the reason of the certificate of delay supplied to her being defective. He prayed, therefore, that the application be dismissed with costs.

We have considered the notice of motion, the affidavits and rival submissions and we shall hereinafter consider the merit or otherwise the application.

As we said above, this application has been initiated under rule 89(2) of the Rules which, in essence, allows a person on whom a notice of appeal has been served or ought to have been served, to apply to the Court for the respective notice to be struck out on the grounds, among others that, some essential steps in the proceedings have not been taken at all or taken beyond the prescribed time.

In the instant matter, it is apparent, the notice of appeal was lodged on 30<sup>th</sup> March, 2020. The respondent, it is now not in dispute, applied, in writing, for a copy of the proceedings to the Registrar and served a copy thereof on the applicants. Ordinarily, the respondent

was required, in terms of rule 90 (1) of the Rules, to file the intended appeal within 60 days from the date of filing of the notice. However, under the proviso to the provision just referred read together with sub rule (3) thereof, it is the law that, in computing time of lodging an appeal, for the purpose of limitation, the period within which the intended appellant was awaiting to be supplied with a copy of the proceedings is excluded. The exclusion is nonetheless subject to two conditions. First, the intended appellant must have requested in writing to the Registrar for a copy of the proceedings. Second, the request letter must have been served on the respondent within thirty (30) days. Sub rule (5) of the Rules provides as follows:

*(5) Subject to the provisions of subrule (1), the Registrar shall ensure a copy of the proceedings is ready for delivery within ninety (90) days from the date the appellant requested for such copy and the appellant shall take steps to collect upon being informed by the Registrar to do so, or within fourteen (14) days after the expiry of ninety (90) days."*

The above provision, in our reading, imposes a duty to both the Registrar and the intended appellant to take steps in collection of the proceedings. While the Registrar is obliged to ensure that a copy of the proceedings is ready for delivery within 90 days from the date of

the request and inform the intended appellant accordingly, the latter is obliged to take steps to collect the documents upon being informed or within 14 days from the expiry of such period if there be no information from the Registrar. In the case of **Rehema Idd Msabaha v. Salehbhai Jafferjee Sheikh and Another**, Civil Application No. 527/17 of 2019 (unreported), this Court, dealing with more or less a similar issue, was of the firm view that, failure to approach the Registrar for a copy of the proceedings, within 14 days after expiry of 90 days from the date of the request, amounts to failure to take essential steps. In particular, the Court stated as follows:

*" In light of the provisions of rule 90(5) of the Rules, the consequence of the failure to approach the Registrar within the prescribed period is now clear. The failure amounts to failure to take necessary steps within the meaning of rule 89(2) of the Rules."*

In our view, therefore, as the respondent stayed dormant for more than 14 days after expiry of 90 days from the period of her request for a copy of the proceedings, she is taken to have failed to take essential steps in terms of rule 89(2) of the Rules. In the circumstances, we find the application with merit. As a result, the notice of appeal lodged on 30<sup>th</sup> day of March, 2020 expressing the

respondent's intention to appeal against the decision of the High Court herein mentioned, is hereby struck out with costs.

Ordered accordingly.

**DATED** at **DAR ES SALAAM** this 1<sup>st</sup> day of September, 2022.

R. K. MKUYE  
**JUSTICE OF APPEAL**

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

I. J. MAIGE  
**JUSTICE OF APPEAL**

The ruling delivered this 6<sup>th</sup> day of September, 2022 in the presence of Ms. Narindwa Sekimanga, learned State attorney for the applicants and Mr. Patrick Kaheshi, learned counsel for the respondent, is hereby certified as a true copy of the original.



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