

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

(CORAM: MKUYE, J.A., KIHWELO, J.A., And MAKUNGU, J.A.)

CIVIL APPEAL NO. 12 OF 2020

BRIGHT TECHNICAL SYSTEMS & GENERAL SUPPLIES LTD..... APPELLANT

VERSUS

INSTITUTE OF FINANCE MANAGEMENT (IFM) RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
(Commercial Division) at Dar es Salaam)**

(Philip, J.)

Dated 4th October, 2019

in

Commercial Case No. 114 of 2018

.....

RULING OF THE COURT

31stOctober & 11th November, 2022

MAKUNGU, J.A.:

This appeal emanates from the decision of the High Court of Tanzania (Commercial Division) at Dar es Salaam in Commercial Case No. 114 of 2018. At the hearing, Mr. Gabriel Simon Mnyele, learned counsel, appeared for the appellant, whereas Mr. David Kakwaya, learned Principal State Attorney, assisted by Mr. Lameck T. Buntuntu, learned Senior State Attorney and Mr. Stanley Mahenge, learned State Attorney entered appearance for the respondent.

Before we commenced the hearing of the appeal, Mr. Mnyele raised a concern which he sought guidance from the Court, on the propriety of the certificate of delay which was issued by the Registrar of the High Court to the appellant. His main concern was that the date, that is 11th October, 2019 indicated in the certificate of delay as the one in which the appellant applied to be supplied with the requisite documents is wrong since the appellant's letter was written on 21st October, 2019 and it was received by the High Court Registry on 22nd October, 2019. He was of the view that the certificate of delay is defective and the record of appeal is incorrect.

As to the way forward, Mr. Mnyele, proposed one of the two options that **either**, the Court to proceed with the hearing of the appeal because it was not affected with that errors; **or** the Court relying on overriding objective in terms of sections 3A and 3B of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2002] the appellant be allowed to approach the Registrar of the High Court in order to obtain a proper certificate to be lodged in a form of supplementary record of appeal. He referred to us the case of **ABSA Bank Tanzania Limited and another v. Hjordis Fammestad**, Civil Appeal No. 30 of 2020 (unreported)

While conceding the mentioned errors on the face of the certificate of delay, Mr. Kakwaya strongly contended that the same are inconsequential as they do not affect the validity of the appeal. They never occasioned any prejudice or injustice to anybody and as such they can as well be safely ignored, he stressed, in order to achieve substantive justice. For this reason, he strongly urged us to proceed with the hearing of the appeal.

Having heard counsel for the parties on the above concern, we are settled that the certificate of delay is defective. We thus have no hesitation to state that the said errors vitiate the certificate of delay. In the circumstances the crucial point for our determination is the way forward as proposed by Mr. Mnyele.

As stated in a number of decisions of this Court an obvious error in the certificate of delay goes to its very root and vitiates it. For instance, in **ECO Bank Tanzania Limited v. Future Trading Company Limited**, Civil Appeal No. 82 of 2019 (unreported), we made reference to the decision of this Court in **Kantibhai Patel v. Duhyabhai F. Mistry** [2003] TLR 437 in which it was plainly stated that:

"The very nature of anything called 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 other purpose because it is not better than a forged document an error in a certificate is not a technicality which can be conveniently glossed over; it goes to the very root of the document you cannot sever the erroneous part from it and expect the remaining part to be a perfect certificate; you can only amend it or replace it altogether as by law provides."

In the present appeal, there is no doubt that although on 22nd October, 2019 the Registrar of the High Court received the appellant's letter dated 21st October, 2019 requesting to be supplied with copies of proceedings and other relevant documents for the purpose of appeal, he still indicated a different date (11th October, 2019) in the certificate of delay. Much as Mr. Kakwaya submitted that the error indicated in the certificate of delay no mischief was involved, but as correctly stated in **Kantibhai Patel v. Duhyabhai F. Mistry** (supra) the error rendered the certificate invalid.

Indeed, while we acknowledge the fact that it is the duty of the Registrar of the High Court to issue a proper certificate as required by law, we equally have the view that it is also the responsibility of the party who collects the certificate of delay to ensure that it is correct and if it has any defect to request for rectification immediately. A party who receives a defective certificate of delay and act on it without seeking rectification is equally to blame and cannot apportion full responsibility on the Registrar of the High Court.

All in all, in this appeal, considering the circumstance that led to the said defects we have no hesitation to state that the errors in the certificate of delay are largely attributed to the Registrar of the High Court.

In the result, in terms of rule 4 (2) (a) and (b) of the Rules, we accede to the second proposal of the appellant to seek a rectification of the certificate of delay to make it in conformity with the requirement of the law and in accordance with the relevant materials which were placed before the Registrar of the High Court. Consequently, we order that a rectified version of the certificate of delay, if obtained, be lodged in a form of supplementary

record of appeal within twenty one (21) days from delivery of this Ruling. In the meantime, the hearing of the appeal is adjourned to a date to be fixed by the Registrar.

DATED at DAR ES SALAAM this 9th day of November, 2022.

R. K. MKUYE
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Ruling delivered this 11th day of November, 2022 in the presence of Mr. Lucas Myula, counsel for the Appellant and Mr. Boaz A. Msofe, learned State Attorney for the Respondent is hereby certified as a true copy of the original.




A.L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL