

**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. 359 OF 2021

BARUANI RAMADHANI MBWANA APPELLANT

VERSUS

THE COMMISSIONER GENERAL TANZANIA

REVENUE AUTHORITY (TRA) RESPONDENT

**(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal
at Dar es Salaam)**

(Mjemmas, J., Chairman)

Dated the 23rd day of October, 2018

in

Tax Appeal No. 2 of 2017

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RULING OF THE COURT

26th October & 16th November, 2022

MAKUNGU, J.A.:

The appellant, Baruani Ramadhani Mbwana, is challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) dated 23rd October, 2018 which sustained the decision of the Tax Revenue Appeals Board (the Board).

From what can be discerned in the record before us, the background to the present appeal is briefly as follows: the appellant is a Tanzanian national residing and doing transportation business in Tanzania, Rwanda and Democratic Republic of Congo.

On 20th December, 2014 the appellant imported [temporarily] a motor vehicle with registration No. 7584 AB 19 Scania registered in the Democratic Republic of Congo and a trailer with registration No. R.L. 0317 registered in Rwanda through the customs frontier port at Kabanga. He was issued with form C32.

On 7th July, 2015 the appellant was intercepted by the respondent's officers at Kasulu, Kigoma while heading to Nyarugusu 29 kilometers before reaching Mabamba customs frontier port on allegation that he had violated customs laws hence he was returned to Kigoma where his motor vehicle was put in customs warehouse and he was issued with notice of goods deposited in customs warehouse number 36474 and 36475 dated 7th July, 2015.

The appellant applied to the Commissioner for extension of the temporary importation permit and release of his motor vehicle. There followed exchange of communications between the appellant's attorneys and the respondent without success. On 7th October, 2015 the respondent gave her final decision on the matter refusing to release the appellant's motor vehicle on the ground that it had overstayed. The appellant appealed to the Board which dismissed his appeal.

Undaunted, the appellant unsuccessfully lodged an appeal to the Tribunal which sustained the decision of the Board and this is what made the appellant to lodge the present appeal.

The appellant's dissatisfaction is vividly demonstrated by six grounds of appeal contained in the memorandum of appeal. However, for the reason which shall come to light shortly, we do not intend to reproduce the respective grounds of appeal herein.

The appeal was initially called on for hearing on 24th October, 2022 in the presence of the appellant in person, unrepresented and Messrs. Marcel Busegano and Hospis Maswanyia, learned Senior State Attorneys for the respondent.

At the very outset, before we commenced the hearing of the appeal, we wanted to satisfy ourselves on the competence of the appeal before us. Thus, we invited the parties to address first.

In addressing on the question which was raised by the Court that the certificate of delay was not included in the record of appeal, the appellant informed the Court that he followed all the procedures regarding the filing of his appeal. He further told the Court that this Court allowed him to proceed with his appeal after it had granted leave to amend his notice of

appeal. He believed that the appeal is competent before the Court and urged us to proceed with the hearing of the appeal.

On his part, Mr. Maswanyia submitted that having gone through the record of appeal there is no indication that the appellant received the certificate of delay from the Registrar of the Tribunal before he lodged the instant appeal. He explained that the decision of the Tribunal was issued on 23rd October, 2018 and the notice of appeal was lodged on 29th October, 2018 but the memorandum of appeal was filed on 12th October, 2021. He went further to submit that in terms of Rule 90 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the appellant was not entitled to rely upon the exemption of time if the certificate of delay was not obtained.

In the circumstances, the learned Senior State Attorney submitted that as there is no certificate of delay that was sought and obtained by the appellant, the appeal is incompetent. He concluded his submission by urging the Court to strike out the appeal.

Having heard the learned Senior State Attorney for the respondent and the appellant, there is no doubt that the instant appeal is incompetent for being lodged out of time.

Our starting point would be restating what the law provides in relation to the institution of the appeal and certificate of delay. Rule 90 (1) of the Rules, provides as follows:

*"(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 notice of appeal was lodged with-***

- (a) a memorandum of appeal in quintuplicate;*
- (b) the record of appeal in quintuplicate;*
- (c) security for 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 that copy to the appellant.***
(emphasis added).

It is instructive to recapitulate that the provisions of Rule 90 (1) of the Rules as cited above makes it mandatory for the appellant to lodge a record of appeal as well as memorandum of appeal within sixty days of filing of the notice of appeal. However, that requirement is subject to the proviso for

exemption of time required for seeking and obtaining from the High Court a copy of the proceeding from that Court as may be certified by the Registrar where an application for such copy is made within thirty days of the delivery of the decision sought to be challenged.

There is no dispute that the appellant was aggrieved by the Tribunal's decision and decree dated 23rd October, 2018. As already indicated herein, he lodged a notice of appeal on 29th October, 2018 and the record of appeal shows that he received copies of proceedings, judgment and decree on 19th November, 2018 (at page 50 of the record of appeal). This means that he received the necessary documents for purposes of appeal twenty seven (27) days from the date of judgment and twenty one (21) days from the date of notice of appeal. He was supposed to institute his appeal within sixty days after lodging the notice of appeal. The appeal was supposed to be lodged on or before 29th December, 2018. Unfortunately, however, the appeal was lodged on 12th October, 2021, inordinate delay of three (3) years. Our view is that the appellant was not entitled to be issued with the certificate of delay but he was required to seek for extension of time which he did not do, instead he lodged a Civil Application No. 573/20 of 2018 for leave to amend

notice of appeal which on 18th August, 2021 was granted by this Court. The said leave has nothing to do with the lodging of appeal out of time.

Given the circumstances obtained in this appeal therefore, we are settled that the appeal before us is incompetent for being time barred. We accordingly strike it out. We order each party to bear its own costs, since the point was raised by the Court, *suo motu*. It is so ordered.

DATED at **DAR ES SALAAM** this 14th 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 16th day of November, 2022 in the presence of Appellant present in person, and Mr. Achileus Charles Kalumuna learned State Attorney for the Respondent is hereby certified as a true copy of the original.

A.L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL

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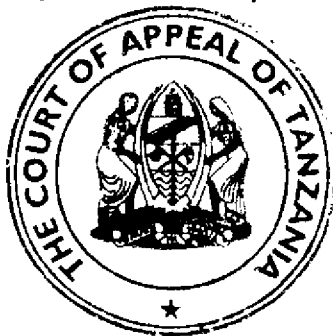
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