

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

**(CORAM: MWARIJA, J.A., KEREFU, J.A., And KENTE, J.A.)**

**CIVIL APPEAL NO. 503 OF 2021**

**SUZANA MASEBU ..... APPELLANT**

**VERSUS**

**NG'WANZA CHALO.....1<sup>ST</sup> RESPONDENT**

**MATONGO RICHARD ..... 2<sup>ND</sup> RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania at Shinyanga)**

**(Makani, J)**

**Dated the 16<sup>th</sup> day of November, 2018**

**in**

**Land Appeal No. 69 of 2016**

.....

**RULING OF THE COURT**

11<sup>th</sup>, & 28<sup>th</sup> November, 2022

**KENTE, J.A.:**

When the appeal was called for hearing on 11<sup>th</sup> November, 2022, Mr. Paul Kaunda, learned advocate for the respondents raised a preliminary objection a notice which he had already filed in Court and served on the appellant in terms of rule 107 (1) of the Tanzania Court of Appeal Rules, 2009 (hereinafter "the Rules"). The gist of the preliminary objection is that, the appeal was time barred because of the appellant's non-compliance with the mandatory provisions of Rule 90 (1) of the Rules.

Going by the chronological order of the events culminating in the instant appeal, the learned counsel submitted and this was common ground that, the impugned decision of the High Court was handed down on 16<sup>th</sup> November, 2018, and on 11<sup>th</sup> December, 2018, in a timely fashion, the appellant lodged a notice of appeal with the view to challenging the said decision. Assuming that by that time the appellant had already been issued with a copy of the proceedings in the High Court together with a judgment and decree, Mr. Kaunda submitted that, in terms of rule 90 (1) of the Rules, the appellant ought to have lodged the appeal not later than 11<sup>th</sup> February, 2019. Since it was not in dispute that the appeal was lodged on 17<sup>th</sup> November, 2021, Mr. Kaunda contended, correctly so in our view that, the appeal could only be saved by the proviso to rule 90 (1) which provides that:

*"save that where an application for a copy of 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.”*

Still on the subject, the learned counsel submitted further that, the above quoted provision of the law gives a favour to the intending appellant only if he or she had written a letter requesting for a copy of the proceedings and served a copy of the said letter to the intended respondent within thirty days of the judgment sought to be challenged on appeal. Since in the instant case, the time to request for a copy of the proceedings, the judgment and decree had expired on 16<sup>th</sup> December, 2018 and no such letter was written by the appellant and copied to the respondents, the appeal was barred by the law of limitation, Mr. Kaunda submitted. In the circumstances, he urged us to strike out the appeal with costs.

In reply, the appellant conceded to not only failing to write a letter requesting for a copy within the prescribed period but also to the fact that, up to the 16<sup>th</sup> December, 2018 she had not served the respondents with a copy of that letter as required by law. The only explanation the appellant had is that, she thought that the only requisite key to access this Court by way of appeal in the circumstances of this case, was Miscellaneous Civil Application No. 75 of 2020 before the High Court (at Shinyanga) in which

she was granted leave to appeal. She therefore wondered how on the 23<sup>rd</sup> July, 2021 the High Court could have granted her the leave to appeal and yet be told that her appeal was filed out of time. She implored us to dismiss the preliminary objection and proceed to hear and determine the appeal on merit.

As can be deduced from the arguments advanced by Mr. Kaunda on one side and the appellant on another side, the crucial point here is whether the appeal before us is time barred. Amongst other things, Rule 90 (1) of the Rules, requires an appeal to be filed within sixty days of the date when the notice of appeal was lodged. It follows therefore, as correctly submitted by Mr. Kaunda that, since the appellant had lodged the notice of appeal on 11<sup>th</sup> December, 2018, she had time up to 11<sup>th</sup> February 2019, to lodge the appeal. And she could enjoy the fruits of the proviso to Rule 90 (1), if in terms of Rule 90 (3), she had written a letter requesting for the necessary copies within thirty days of the judgment sought to be appealed and served a copy of it on the respondents.

In the absence of such a letter as envisaged under Rule 90 (3) of the Rules which would have made the appellant the beneficiary of the proviso to

Rule 90 (1) of the Rules, the appeal before us has no legs to stand on, for being hopelessly time barred. We accordingly strike it out with costs.

**DATED at DAR ES SALAAM** this 22<sup>nd</sup> day of November, 2022.


A. G. MWARIJA  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

P.M. KENTE  
**JUSTICE OF APPEAL**

The Judgment delivered this 28<sup>th</sup> day of November, 2022 in the presence for the Appellant in person and Mr. Paul Kaunda, learned Counsel for the Respondents, both linked via video from Shinyanga High Court, is hereby certified as a true copy of the original.



  
J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**