

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LILA, J.A., MWANDAMBO, J.A. And MASHAKA, J.A.)

CIVIL APPEAL NO. 76 OF 2018

RAYA SAID.....APPELLANT

VERSUS

1. ATTORNEY GENERAL.....1ST RESPONDENT

2. TREASURY REGISTRAR.....2ND RESPONDENT

**[Appeal from the ruling and order of the High Court of Tanzania,
(Land Division) at Dar es Salaam]**

(Kente, J.)

dated the 30th day of March, 2017

in

Misc. Land Application Case No. 118 of 2015

JUDGMENT OF THE COURT

7th February, & 7th March 2022

MWANDAMBO, J.A.:

On 30/03/2017, the High Court (Land Division) dismissed Miscellaneous Land Application No. 118 of 2015 for being time barred. That application had sought to set aside an ex parte judgment entered against the appellant in Land Case No. 301 of 2010. The appellant has now appealed against the order dismissing his application premised on only one ground of appeal. For reasons which will become apparent shortly, the disposal of the appeal turns on a different issue from the merits of it.

Ahead of our discussion, we find it compelling to state some factual background in line with the determination of the issue, subject of this ruling. The appellant instituted the appeal on 14/05/2018 after obtaining requisite copies of proceedings, ruling and drawn order which he had applied for vide a letter to the Registrar of the High Court dated 6/04/2017. Believing that all was well, the Registrar issued the appellant with a certificate of delay in terms of rule 90(1) of the Court of Appeal Rules, 2009 (the Rules). That rule enjoins the Registrar to knock off all days necessary for the preparation and delivery of the documents applied by the intended appellant subject upon being satisfied that such an appellant applied for copies of the requisite documents for appeal purposes within 30 days of the impugned decision and a copy of such application was delivered to the respondent.

The certificate of delay issued to the appellant appearing at page 274 of the record of appeal excluded the days for the institution of the appeal from 30/04/2017 when the appellant is shown to have applied for the copies of documents to 13/03/2018 when such copies were supplied to the appellant. It transpired

that the record of appeal was deficient having omitted some vital documents, to wit; proceedings in an application for leave to file an application for setting aside an ex parte judgment and the resultant ruling. The appellant thus invoked the provisions of rule 96 (6) of the Tanzania Court of Appeal Rules, 2009 (the Rules) by filing a supplementary record of appeal which he did on 28/05/2018. However, that supplementary record did not cure the inadequacies in the record and hence the application for filing another supplementary record in Civil Application No. 488/17 of 2018. On 8/05/2019, the Court (Levira, J.A.), granted leave to the appellant to lodge a supplementary record of appeal to include the omitted documents in the record of appeal.

When the appeal was called on for hearing on 07/02/2022, Mr. Abubakari Salim, learned advocate representing the appellant sought the Court's leave under rule 96 (7) of the Rules with a view to lodging yet another supplementary record of appeal containing a proper certificate of delay in lieu of the certificate already in the record which was found to be erroneous in some respects. Ms. Grace Lupondo, learned State Attorney for the respondents strongly opposed the prayer on two grounds. One,

having granted leave to the appellant to file a supplementary record earlier on, the Court was barred by rule 96 (8) of the Rules to grant leave for the second time. Two, the learned State Attorney contended that at any rate, the supplementary record for which leave was sought would not cure the defect in the certificate of delay in the absence of a letter from the Registrar, High Court notifying the appellant that copies of the documents applied for are ready for collection.

Mr. Salim was still adamant that the Court should grant leave sought in terms of rule 96 (7) of the Rules since the appellant had never made any application similar to the one he was making. Prompted by the Court on the date the appellant was notified by the Registrar to collect the copies of the requisite documents, Mr. Salim was not in possession of any such proof. Instead, he sought refuge from the original record.

To everybody's surprise, upon perusal of the original record, it transpired that the appellant's letter to the Registrar, High Court requesting for copies of proceedings, ruling and drawn order was delivered on 25/05/2017 a date which was well beyond 30 days from the impugned decision delivered on 30/03/2017. We are

saying that this was a surprise because a copy in the record of appeal with identical contents addressed to the same person shows that it was delivered on 10/4/2017 with no indication of any rubber stamp of the High Court to evidence its receipt. Finding himself in that predicament, Mr. Salim felt compelled to concede that the appellant's original letter in the original court record was delivered beyond 30 days in contravention of rule 90 (1) of the Rules. Nevertheless, the learned advocate was reluctant to say anything as to the consequences of such eventuality.

Be it as it may, Ms. Lupondo urged the Court to find the appeal instituted on 14/05/2018 as time barred which could not be rescued by filing a supplementary record of appeal containing a rectified certificate of delay. She thus invited the Court to strike out the appeal with costs.

Having heard the learned counsel, and upon perusal of the original record of appeal, it is plain that the prayer by Mr. Salim to lodge another supplementary record with a view to rectifying the errors in the certificate of delay is no longer tenable. It is beyond peradventure that the certificate of delay is erroneous its face in that it makes reference to 31/03/2017 as the date on which the

appellant applied for copies of the impugned ruling, drawn order and proceedings for appeal purposes. With respect, that was not in accord with rule 90 (1) of the Rules which reckons the date on which the application for the copies was delivered to the Registrar rather than the date of the application or the date of judgment. Ordinarily, all factors being equal, the Court would consider the prayer for the rectification of a certificate of delay and grant leave to file a supplementary record of appeal in terms of rule 96 (7) of the Rules. However, as Mr. Salim conceded ultimately, his prayer cannot stand by reason of the fact that his letter as revealed from the perusal of the original record was delivered way beyond 30 days from the date of the impugned decision in contravention of rule 90 (1) of the Rules. Under the circumstances, even if we were minded to invoke our power under rule 96 (7) of the Rules, a supplementary record would not have served any useful purpose considering that the Registrar of the High Court would not have power to issue a fresh certificate of delay since the letter on the basis of which she could do so was delivered to him beyond 30 days from the date of the impugned decision. Consequently, we are constrained to sustain Ms. Lupondo's

submission and her attendant prayer that as matters stand now, the appeal is incompetent for being time barred and liable to be struck out.

The above said, we hereby strike out the incompetent appeal with costs.

It is so ordered.

DATED at DAR ES SALAAM this 2nd day of March, 2022.

S. A. LILA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

The Judgment delivered on this 07th day February, 2022, in the presence of Ms. Shamima Hiza, learned counsel for the appellant and Ms. Debora Mcharo, learned State Attorney for the Respondents, is hereby certified as a true copy of the original.




D. R. Lyimo
DEPUTY REGISTRAR
COURT OF APPEAL