

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**(CORAM: WAMBALI, J.A., MWANDAMBO, J.A. And MGONYA, J.A.)**

**CIVIL APPEAL NO. 275 OF 2020**

**AZZORI MARWA MANG'EHE.....APPELLANT**

**VERSUS**

**SAMSON ODENY MASONY**

**GILIAD O. MASONY (As Legal Representative) ..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Mwanza)**

**(Gwae, J.)**

**dated the 18<sup>th</sup> day of December, 2015**

**in**

**Misc. Civil Application No. 01 of 2014**

**.....**

**JUDGMENT OF THE COURT**

21<sup>st</sup> & 28<sup>th</sup> August, 2023

**MWANDAMBO, J.A.:**

On 18/12/2015, the High Court sitting at Mwanza dismissed an application preferred by the appellant for extension of time to reinstate PC Civil Appeal No. 101 of 1998 which was dismissed on for want of prosecution. Aggrieved, the appellant has preferred the instant appeal against the order dismissing his application.

The tale from which the appeal has arisen has a chequered history dating, as far back as 1996, in a dispute for recovery of land

against the respondent, Samson Odeny Masony before Shirati Primary Court, Tarime District. The Primary Court entered judgment in favour of the appellant which resulted into an appeal before the District Court of Tarime. The District Court reversed the decision of the Primary Court in a judgment rendered on 28/10/1998 culminating into PC. Civil Appeal No. 101 of 1998 before the High Court at Mwanza. That appeal was dismissed on 04/09/2002 by Rutakangwa, J. (as he then was) for want of prosecution. Subsequently, the appellant sought to reinstate the dismissed appeal but, as he was late in doing so, he filed Miscellaneous Civil Application No. 128 of 2003 for extension of time. However, Mackanja, J. dismissed that application on 27/03/2006 for want of prosecution.

Undaunted, the appellant filed an application for extension of time to set aside an order for reinstating his appeal which he wrongly designated as PC. Misc. Civil Application No. 101 of 1998. Due to his non-appearance on 23/05/2013, Mwangesi, J. (as he then was) struck out that application for want of prosecution. It is that order which culminated into Miscellaneous Civil Application No. 1 of

2014 for extension of time to restore the application for enlargement of time within which to apply for an order to reinstate the dismissed appeal. It is from that ruling the appellant has instituted the instant appeal. It is instructive that, the respondent had passed away on 12/02/2003 three years before the order dismissing Miscellaneous Civil Application No. 128 of 2003.

The appellant appeared before us in person when the appeal was called on for hearing on 21/08/2023. Not so surprisingly, the respondent was absent. It transpired to the Court upon dialogue with the applicant that service could not be effected because the notice was in the name of the deceased respondent who could not have been served with such notice. It is common cause that, the application whose ruling is sought to be challenged indicates Samson Odeny Masony as the respondent so is the notice of appeal but the memorandum of appeal cites Samson Odeny Masony Giliad O. Masony (As Legal Representative). At the Court's prompting on the anomalies surrounding the appeal, the appellant conceded that under the circumstances, such anomalies rendered the appeal incompetent. Needless to say, the appellant solicited our indulgence

to allow him rectify the infractions and reinstitute the appeal but, as unrepresented lay person, he could not clarify how could he rectify the anomalies and yet reinstitute the appeal in view of the state of the proceedings before the High Court.

Having examined the record of appeal and heard the appellant, there can be no doubt any more that the appeal is incompetent as it could not have been instituted against a dead person. It follows thus that since the respondent had passed away years later, there could not have been a competent application in Miscellaneous Civil Application No. 1 of 2014 resulting into the impugned ruling. Besides, despite the lodging of a notice appeal from the impugned ruling, it is inconceivable that the appellant could have complied with rule 84 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) by serving a copy of the notice of appeal on a dead person. Neither could he have complied with rule 90 (3) of the Rules by serving a copy of a letter applying for certified copies of proceedings on a dead person.

The cumulative effect of the above leaves no doubt that the appeal is incompetent and liable to be struck out. However, in view

of the peculiar circumstances surrounding the appeal, we have found ourselves compelled to retain the record and exercise the Court's power of revision under section 4 (2) of the Appellate Jurisdiction Act (the AJA). This course of action has become necessary in order to address the glaring irregularities in the proceedings before the High Court from which the appeal has been brought consistent with our decisions in **Chama cha Walimu Tanzania v. The Attorney General**, Civil Application No. 151 of 2008 and **Tanzania Heart Institute v. The Board of Trustees of National Social Security Fund**, Civil Application No. 109 of 2008 (both unreported).

We have considered the applicant's concession to the infractions in the appeal and his prayer inviting the Court to make an order that will enable him reinstate a valid appeal. In view of the glaring irregularity in the proceedings and the ruling as we have endeavoured to demonstrate, in the exercise of the Court's revisional power under section 4 (2) of the AJA, we quash the proceedings and the resultant ruling and order in Miscellaneous Civil Application No. 1 of 2014 for being a nullity from which no valid appeal could have

been made. If minded, the appellant is at liberty to pursue his legal rights in the High Court in accordance with the law.

The incompetent appeal is accordingly struck out.

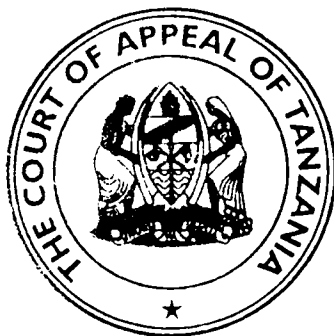
**DATED** at **MWANZA** this 25<sup>th</sup> day of August, 2023.

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

L. E. MGONYA  
**JUSTICE OF APPEAL**

The Judgment delivered this 28<sup>th</sup> day of August, 2023 in the presence of the appellant in person unrepresented through Video Conference linked to Dar es Salaam and in the absence for Respondent, is hereby certified as a true copy of the original.



  
A. L. KALEGEYA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**