

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA
(CORAM: JUMA, C.J., NDIKA, J.A. And MAKUNGU, J.A.)

CIVIL APPLICATION NO. 77/02 OF 2021

SAFIA AHMED OKASH (As administratrix of the
estate of the late **AHMED OKASH**) **APPLICANT**

VERSUS

SIKUDHANI AMIRI & 82 OTHERS **RESPONDENTS**
(Application from the Judgment and Decree of the High Court of Tanzania

at Arusha)

(Masara, J.)

dated the 14th day of February, 2020

in

Land Case No. 35 of 2012

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RULING OF THE COURT

21st & 23rd February, 2023

MAKUNGU, J.A.:

In this application, the applicant is seeking the Court's indulgence to make an order striking out the notice of appeal lodged by the respondents on 18/2/2020, aimed at challenging the judgment of the High Court of Tanzania, Arusha Registry dated 14/2/2020 in Land Case No. 35 of 2012. The application is brought under Rule 89 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit sworn by the applicant.

The application is contested by the respondents through the services of Ojare & Co. Advocates, Arusha. They filed an affidavit in reply through which they are firm that the instant application is without merit.

At the hearing of this application on 21/2/2023, Mr. Issa Rajabu Mavura, learned advocate represented the applicant; whereas the respondents enjoyed the services of Mr. Kelvin Edward Kwagilwa, learned advocate.

Mr. Mavura's starting point is that the respondents ought to have lodged their intended appeal within 60 days from the date they filed the notice of appeal as envisaged by provisions of Rule 90 (1) of the Rules, but that they failed to do so. He clarified that the decision of the High Court which is the subject of the intended appeal was delivered on 14/2/2020 and that the notice of appeal thereof was filed on 18/2/2020. He adds that it was discovered that there were some errors in the judgment of the High Court and the parties were requested by the Registrar of the High Court to return them for corrections. The corrected judgment was ready for collection on 5/10/2020.

Mr. Mavura pointed out that from 5/10/2020 until this application was filed before the Court on 16/2/2021 was almost 4 months the

respondents had not instituted the appeal, therefore in terms of Rule 90 (1) of the Rules, the respondents' right to lodge the record of appeal expired.

Mr. Mavura pointed out similarly that in computing the 60 days, he is aware that in terms of Rule 90 (5) of the Rules, the respondents had 90 days to wait for the documents from the Registrar of the High Court and 14 days thereafter to remind him. He pointed out that there were two reminder letters written by the respondents to the Registrar. That was, he adds, after 14 days had elapsed. He relied on the case of **Rehema Iddi Msabaha v. Salehbhai Jafferjee Sheikh and Another**, Civil Application No. 527/17 of 2019 (unreported). He contended that the respondents failed to take essential steps in the proceedings, therefore warranting the Court to strike out the notice of appeal under focus.

On his part, Mr. Kwagilwa submitted that the respondents were dissatisfied with the decision of the High Court and they filed notice of appeal on 18/2/2020 and on the same date submitted a letter requesting to be supplied with certified copies of all proceedings, judgment and decree for purposes of preparing memorandum of appeal and record of appeal. He submitted further that the respondents wrote

two reminder letters to the Registrar of the High Court to be supplied with the necessary documents but the respondents are yet to be supplied with those documents as requested. He maintained that all what has been done by the respondents cannot be easily ignored; to the contrary it strengthened their position that they were actively pursuing their appeal. He urged the Court to refuse the applicant's contention that the respondents failed to take essential steps to the appeal.

Mr. Kwagilwa submitted further that the case of **Rehema Iddi Msabaha** (supra) is distinguishable from the present matter. He contended that while in that case the essential steps were never taken by the respondent, the respondents in the present case had taken all the necessary steps including reminding the High Court to supply them with those necessary documents. He therefore prayed the Court to dismiss the application with costs.

In a brief rejoinder, Mr. Mavura reiterated what he submitted earlier. He maintains that the respondents have failed to take essential steps in instituting their appeal. He once more pressed the Court to strike out with costs the notice of appeal under focus.

We have soberly considered the rival submissions by the parties. The main issue is whether the respondents have failed to take essential steps to institute their appeal.

Our starting point is paragraphs 8 and 9 of the respondents' affidavit in reply. Under those paragraphs, the respondents have outlined the steps which were being taken in order to file an appeal in Court. It is clear from those paragraphs that following the decision of the High Court, they immediately lodged the notice of appeal, and also lodged a letter requesting for copies of proceedings, judgment and a decree. As it were, the respondents served the same on the applicant on time. Mr. Kwagilwa indicated likewise that the respondents have been following up the said documents and, as shown under paragraphs 8 and 9 of the affidavit in reply, they wrote two reminder letters to the High Court on 5/5/2020 and on 2/7/2020 but so far no response was forthcoming from Registrar.

We pause here to say that the respondents and their advocate were on the right track. We wish to revert to the case of **The Registered Trustees of Kagera Farmers' Trust Fund v. CRDB Bank Ltd**, Civil Application No. 58 of 2015 (unreported) in which the

Court was faced with a more or less similar situation to the present matter. It was stated in that case that:

*"As this Court has clearly stated in **Transcontinental Forwarders Limited v. Tanganyika Motor Limited**, once the respondent has shown that he had applied to the Registrar for a copy of proceedings sought to be appealed against, and he had not been furnished with any, he had complied with the Rules. It is evident from the correspondences between the respondent and the Registrar of the High Court that not all documents were furnished to the respondent and some of the documents supplied to him were problematic."*

In the **Registered Trustees of Kagera Farmers' Trust Fund's case**, the Court relied on its earlier decision on the point in the case of **Foreign Mission Board of the Southern Baptist Convention v. Alexander Panomaritis** [1984] T.L.R 146 where it was stated that: -

"Since the inordinate delay in furnishing a certified copy of the proceedings of the High Court cannot be blamed on the respondent no cause of action existed on his part to bar him from instituting and prosecuting his appeal."

In the premises, the respondents in the present case have so far done no dereliction of what they ought to have done to deserve any blames.

On the basis of the above, we find and hold that the application is without merit and we dismiss it with costs.

Order accordingly.

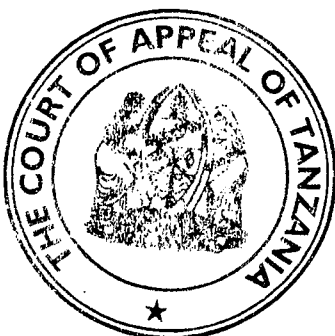
DATED at **ARUSHA** this 23rd day of February, 2023.

I. H. JUMA
CHIEF JUSTICE

G. A. M. NDIKA
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Ruling delivered this 23rd day of February, 2023 in the presence of Mr. Kelvin Kwagilwa, learned counsel for the respondents and also holding brief for Mr. Issa Mavura, learned Counsel for the applicant, is hereby certified as a true copy of the original.




E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL