

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

(CORAM: MWAMBEGELE, J.A., MASHAKA, J.A. And RUMANYIKA, J.A.)

CIVIL APPLICATION NO 162/12 OF 2023

**TANGA CITY COUNCIL1ST APPLICANT
THE ASSISTANT REGISTRAR OF TITLES, MOSHI.....2ND APPLICANT
THE ADMINISTRATOR GENERAL.....3RD APPLICANT
THE ATTORNEY GENERAL.....4TH APPLICANT
ZAKIA FIDA HUSSEIN MOHAMED.....5TH APPLICANT**

VERSUS

TANGA GENERAL INDUSTRIES LIMITED.....RESPONDENT

**(Application to strike out the notice of appeal from the Decision of the
High Court of Tanzania at Tanga)**

(Mkasimongwa, J.)

dated 3rd day of October, 2016

in

Civil Case No. 25 of 2016

.....

RULING OF THE COURT

8th & 9th May, 2024

RUMANYIKA, JA.:

This is an application by Tanga City Council and 4 others, to strike out a notice of appeal filed in the Court on 10th October, 2019. Supporting the application, there is an affidavit sworn by Samwel Cosmas Mutabazi, who is a Principal Officer of the 3rd respondent. The application is predicated on rules 48 (1) and 89 (2) of the Tanzania

Court of Appeal Rules, 2009 (the Rules”). The 3rd applicant, by way of notice of motion seeks to assail the decision of the High Court of Tanzania, at Tanga (“the trial court”), in Land Case No. 25 of 2016. In this case, the applicants partly won both the war and battle.

Before embarking on the merits of the application, we shall state its background albeit briefly, which we find to be useful. It goes thus: The respondent partly succeeded and partly lost his claim against the applicants in the trial court. The respondent claimed, for, among other things, two declaratory orders: **One**; that it is the lawful owner of Plot No. 14 Block “10” Ngamiani Area, Tanga City (“the property”) vide Certificate of Title No. 8362, Land Office No. 125289, and **two**, that the rectification of the property by the Land Officer, on account of error in the respective register is erroneous, thus, null and void *ab initio*. The present applicants vehemently disputed the claims. Upon full trial, the parties got the said victory each, as noted above. Being uncontented, and wishing to appeal, the respondent requested to be supplied with a certified copy of the proceedings in writing on 4th October, 2019. She filed a notice of appeal about six days later on 10th October, 2019. According to the 3rd applicant, by 18th January 2022 the documents were all ready for collection. However, until 10th June, 2022 when this

application was lodged, the respondent had not collected them. Her failure triggered the filing of this application, where the 3rd applicant is beseeching the Court to strike out the said notice of appeal, on two grounds, namely: One, that, no appeal lies and two, that, no essential step has been taken by the respondent in the proceedings.

At the hearing of the application, Messrs. Samwel Cosmas Mutabazi, Rashid Mohamed Said and Mkama Musalama, learned State Attorneys lined up representing the 1st – 4th applicants. The 5th respondent was not in court. However, with the indulgence of the Court, one Mr. Hussein Tajiri who introduced himself to be son representing the 5th applicant and holder of power of Attorney intimated to the Court that his mother died on 24/07/2022. Unless the context otherwise required, we shall not recognize his appearance any further. It is because, he asserted, as the matter now stands, Mr. Tajiri is not legal representative of the 5th applicant. The respondent had filed an affidavit in reply. However, she did not enter appearance, although she was duly served through Mr. Method Bernard Kabunga, learned counsel. Therefore, in terms of rule 63 (2) of the Rules, the hearing proceeded in the absence of the respondent.

Having taken the floor and adopted the supporting affidavit, very briefly, Mr. Said contended that, after the filing of the notice of appeal at issue on 10th March, 2019, and until 8th April, 2024, which is a span of about three years, the respondent had not taken any essential step towards filing an appeal. On that account, Mr. Said urged us to strike it out because, he asserted, since then the sixty days limit prescribed by the Rules for filing an appeal has run off. To bolster his point, he cited the Court's decision in **James Z. Chanila v. Ramadhani Mtundu**, Civil Application 10 of 2016) [2016] TZCA 269 (24 October 2016; TanzLII).

Upon hearing the contention of the learned State Attorney, the issue is whether the applicant has so made out his case that the notice of appeal should be struck out, due to the respondents' failure to take some essential step.

For our case, it is trite, pursuant to rule 89 (2) of the Rules, that, any person on whom the non-starter notice of appeal has been served, is entitled to have it struck out by the Court, on the grounds presented above. Of interest and relevance to this application, that rule reads as follows;

*"Subject to the provisions of sub rule (1), **any other person on whom a notice of appeal***

was served or ought to have been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice of appeal or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.”

(Emphasis added)

As to what an essential step or rather a “necessary step” is, once and again the Court has discussed it. For instance, in **Asmin Rashidi v. Bako Omari** [1997] T.L.R. 146, that it is a step taken by the intending appellant towards the filing of an appeal or those which may advance its hearing. Few decades later, on 5th December 2019, the Court restated its proposition in **James Bernado Ntambala v. Furaha Denis Pashu** (Civil Application No.178/11 of 2016) (2016) [2019] TZCA 481 (5 December 2019; TanzLII).

In this application, we are mindful that the respondent filed the notice of appeal at issue timeously. And that he requested for copy of the proceedings to facilitate the appeal process also timely, as admitted by the applicant. Also, we note from the record of application which the applicant also agrees, that, on or by 18th January, 2020, the documents

requested were certified and ready for collection. At least, firstly, the respondent wrote a letter to the Registrar on 4th October, 2019 requesting to be supplied with the documents vainly. However, he did not write a reminder letter until after eight months had lapsed, on 18/06/2020. This is more than seven months far beyond the fourteen days prescribed under sub rule (5) of rule 90 of the Rules, for a party to take steps to collect the copy. This is reckoned from the date which the Registrar has failed to supply the same within ninety days. The respondent may have written the reminder letter as an essential step, perhaps in a bid to show she is not home and dry. Nonetheless, she took this step late in the day, as noted above.

Equally important to note therefore, is that, rule 89(2) of the Rules is there to serve as a safety gadget against whoever may use the Court's registry as a parking yard for the undesirable abandoned notices of appeal. If we allow the contrary to happen, most likely, there would be countless and hopeless intended appeals, which we have to discourage with zeal and vigour.

To wind up, we stress that, the role of a Registrar in the Court business processes cannot be stated better than saying he is a case manager, in terms of rule 90 (5) of the Rules. He is obliged as much as

it is practicable, to cause the Court to be easily accessible with the view of rendering justice timely, by causing the copy of proceedings readily available to the parties. Nevertheless, this guarantees no party a leeway to sit back not playing his part to follow up the matter militantly. See **M/S Flycatcher Safaris Ltd. v. Hon. Minister for Lands and Human Settlements Development and Another**, Civil Appeal 142 of 2017) [2020] TZCA 1945 (26 March 2020;TanzLII).

Moreover, we note that, the dynamics of a nonstarter notice of appeal are that, no appeal lies, just as execution of the decision cannot be carried out at the earliest. What an absurdity? It is so, because, it has long been established law that, the moment a notice of appeal is lodged in the Court, the High Court ceases to have jurisdiction over the matter. See- our decision in **Aero Helicopter (T) Ltd F.N Jansen** [1990] T.L.R. 142 which we followed in **Tanzania Electric Supply Company Ltd v. Dowans Holding SA (Costa Rica) and Another** (Civil Application 142 of 2012) [2013] TZCA 437 (27 March 2013; TanzLII).

All the above said, we are satisfied that, indeed the applicant did not take some essential step in the proceedings. The application is hereby granted. Consequently, the notice of appeal which was filed in

Court by the respondent on 10th October, 2019 against the decision of the High Court of Tanzania at Tanga in Land Case No. 25 of 2016 is hereby struck out, with costs.

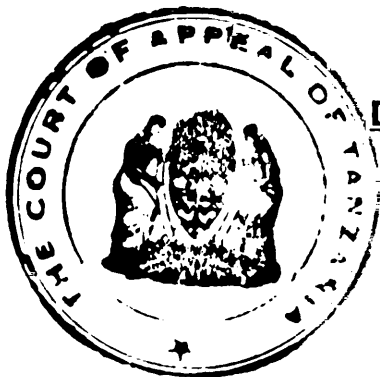
DATED at TANGA this 9th day of May, 2024.


J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 9th day of May, 2024 in the presence of Mr. Rashid Mohamed Said, learned State Attorney for the 1st - 4th Applicants, the 5th Applicant appeared in person and in the absence of the Respondent is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL