

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

(CORAM: KEREFU, J.A., RUMANYIKA, J.A., And MGEYEKWA, J.A.)

CIVIL APPEAL NO. 88 OF 2023

MJAKA AHMADI SAIDI (*Administrator of the
Estate of the Late AHMADI SAIDI*).....**APPELLANT**

VERSUS

RUKIA SHABANI YUSUFU.....**1ST RESPONDENT**
MFANGAVU MUSTAFA.....**2ND RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Mtwara)**

(Ngwembe, J.)

**dated the 20th day of May, 2021
in
Land Appeal No. 22 of 2019**

RULING OF THE COURT

5th & 7th June, 2024

KEREFU, J.A.:

Mjaka Ahmadi Saidi, the appellant herein, sued Rukia Shabani Yusufu and Mfangavu Mustafa, the first and second respondents respectively before the Lindi District Land and Housing Tribunal (the DLHT), seeking a declaration that the sale of a parcel of land situated at Mkwanyule Village (suit land) in Kilwa Masoko, between the respondents was illegal as the suit land was still the property of the late Ahmadi Saidi (his father). The DLHT delivered its judgment in favour of the respondents.

Aggrieved, the appellant, unsuccessfully appealed before the High Court vide Land Appeal No. 22 of 2019, where his appeal was dismissed on 20th May, 2021. Still unsatisfied, on 4th June, 2021, he lodged a notice of appeal in this Court and on 14th April, 2022, he lodged a memorandum of appeal comprised of three grounds of complaint. However, for reasons which will be apparent shortly, we do not deem it appropriate, for the purpose of this ruling, to reproduce them herein.

Upon being served with the memorandum of appeal, the respondents lodged a notice of cross appeal together with the notice of preliminary objection challenging the competence of the appellant's appeal to the effect that:

"The appeal is time barred as the appellant did not apply for and serve on the respondents a letter to the Registrar of the High Court requesting to be supplied with appeal documents within thirty days of the impugned decision contrary to the mandatory provisions of Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009."

It is on record that on 28th May, 2024 when the appeal was presented before us for hearing, the appellant appeared in person whereas

the respondents were represented by Mr. Wilson Edward Ogunde, learned counsel.

As is the rule of practice, before we could embark on the hearing of the appeal on merit, we had to hear first the preliminary objection. As such, we invited the parties to address us on the above point of objection raised by the respondents.

On that, the appellant prayed for adjournment indicating that he was not served with the respondents' notice of the preliminary objection. Mr. Ogunde did not have any qualms with the prayer made by the appellant. In the circumstances, and for the interest of justice, we acceded to the appellant's unopposed prayers, ordered Mr. Ogunde to serve the notice of preliminary objection to the appellant and adjourned the hearing of the appeal under Rule 38A (1) of the Rules to 5th June, 2024.

At the scheduled hearing of the appeal on 5th June, 2024, the appellant appeared in person whereas the respondents were represented by the same counsel.

In his submission in support of the point of objection, Mr. Ogunde contended that the appeal is incompetent for being lodged out of the

prescribed time under Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). To clarify on this point, Mr. Ogunde argued that, the impugned decision sought to be challenged was delivered on 20th May, 2021, the notice of appeal was lodged on 4th June, 2021 and the memorandum of appeal was lodged on 14th April, 2022. Relying on the provisions of Rule 90 (1) of the Rules, Mr. Ogunde argued that, the appeal should have been instituted within sixty (60) days after lodging the notice of appeal and not otherwise. He then contended that, since the appeal herein was lodged after lapse of almost ten (10) months from the date of lodging the notice of appeal, it is time barred and deserves to be struck out.

The learned counsel contended further that, whereas the proviso to Rule 90 (1) of the Rules empowers the Registrar of the High Court to exclude, in the certificate of delay, the period from when the appellant requested for certified copies of the High Court's documents till when the same become ready for collection and supplied to him, the appellant cannot benefit from that Rule in the circumstances of this appeal. This is so, because, **first**, the appellant's letter requesting to be supplied with the High Court's proceedings for appeal purposes was lodged before the High

Court on 15th December, 2021 contrary to the proviso to Rule 90 (1) of the Rules which requires such letter to be lodged within thirty (30) days from the date of the impugned judgment; and **second**, the appellant did not serve a copy of the letter to the Registrar on the respondents in contravention of Rule 90 (3) of the Rules.

He thus challenged the validity of the certificate of delay issued by the Registrar found at page 184 of the record of appeal. It was his argument that, since the appellant's letter referred to in the certificate of delay was lodged out of time and was not served on the respondents as required under Rule 90 (3) of the Rules, the appellant cannot benefit from the excluded period, hence the appeal is hopelessly time barred. Based on his submission, Mr. Ogunde urged us to strike out the appeal with costs for being time barred.

In his response, apart from conceding that he lodged his letter requesting for certified copy of the High Court's documents for appeal purposes after lapse of almost ten (10) months and that he did not serve its copy to the respondents, the appellant submitted that he wrote a letter

to extend time and at the same time implored on us to extend time and determine the appeal on merit.

In his brief rejoinder, Mr. Ogunde challenged the submission made by the appellant as he argued that the same is not supported by the record of the appeal. He contended that, since there is no application for extension of time before the Court, the prayer made by the appellant for extension of time is misconceived. As such, Mr. Ogunde reiterated his previous submission and emphasized that the appeal is time barred and deserves to be struck out with costs.

On our part, having examined the record of appeal and the submissions advanced by the parties for and against the preliminary objection, the main issue for our determination is whether the objection raised is meritorious.

There is no doubt that the issue raised is regulated by Rule 90 (1) and (3) of the Rules which categorically states as follows: -

"90 (1) Subject to the provisions of rule 128, an appeal shall be instituted by lodging in the appropriate registry within sixty days of the date when the notice of appeal was lodged with –

- (a) a memorandum of appeal in quintuplicate;*
- (b) the record of appeal in quintuplicate;*
- (c) security for the costs of the appeal;*

*save that where an application for a copy of the 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.*

- (1) **An appellant shall not be entitled to rely on the exception to sub-rule (1) unless his application for the copy was in writing and a copy of it served on the respondent.*** (Emphasis added).

From the above cited provisions, some points emerge. **One**, an appeal is mandatorily required to be instituted within sixty (60) days from the date when the notice of appeal was lodged. **Two**, in order for the appellant to benefit from the exclusion of time spent in preparation and delivery of documents, he must apply for certified copy of the proceedings in the High Court within thirty (30) days of the date of the decision against

which it is desired to appeal and the application for the copy of proceedings must be in writing and a copy of it must have been served on the respondent.

In the instant appeal, it is on record that the decision sought to be challenged was handed down on 20th May, 2021, the notice of appeal was lodged on 4th June, 2021 and the memorandum of appeal lodged on 14th April, 2022. As correctly argued by Mr. Ogunde, pursuant to Rule 90(1) of the Rules, the appeal ought to have been lodged within sixty (60) days of the filing of the notice of appeal. This is so, because, in his submission, the appellant had readily conceded that he lodged his letter requesting to be supplied with the certified copy of the High Court's documents for appeal purpose out of the prescribed time and he did not serve the same on the respondents. As such, he is not entitled to benefit from the exclusion of days envisaged under the proviso to Rule 90 (1) of the Rules. In the case of **Victoria Mbowe v. Christopher Shafurael Mbowe and Another**, Civil Appeal No. 115 of 2012 [2016] TZCA 847: [22 July 2016: TanzLII], when this Court was confronted with an akin situation, it stated as follows:

"... We have found nothing in the record showing or suggesting that the appellant ever applied for the copy

of the proceedings within the time and in a manner provided for under Rule 90 (1) of the Rules. Similarly, Rule 90 (2) [Now 90 (3)] lays it down that an appellant cannot rely on the exception clause in Rule 90 (1) unless his application for a copy is in writing and served on the respondent. Again, there is nothing in the record upon which compliance with the provisions of the said Rule 90 (2) of the Rules could be ascertained."

Again, in the case of **The Principal Secretary, Ministry of Defence and National Service v. Devram P. Valambhia** [1992] TLR 387, the Court stressed that:

"There must be a time limit within which the appellant is to serve the respondent with a copy of the letter to the Registrar. We think that the period of 30 days within which the appellant is required under rule 83 (1) to apply to the Registrar for a copy of the proceedings should be construed to be co-extensive with the period within which the appellant has to send a copy of that letter to the respondent."

See also the cases of **Mwanaasha Seheye v. Tanzania Ports Corporation**, Civil Appeal No. 37 of 2003 (unreported), **Njake Enterprises Limited v. Blue Rock Limited & Another**, Civil Appeal No. 69 of 2017 [2018] TZCA 304: [3 December 2018: TanzLII] and **Nyanza**

Road Works Limited v. Hussein Bahaji, Civil Appeal No. 349 of 2019 [2020] TZCA 1807: [7 October 2020: TanzLII]. Specifically, in **Njake Enterprises Limited** (supra), the Court stated that:

"Having found that there was no valid certificate of delay, the appellant cannot benefit from the exclusion of time in which it was supposed to file its appeal. Since this appeal was filed on 5/12/2016, a period of 596 days after the notice of appeal was filed, this is beyond the prescribed period of sixty (60) days, the same is time barred."

Similarly, in this appeal, since the appellant has conceded that he lodged his letter requesting to be supplied with a certified copy of the High Court's documents out of the time, he cannot benefit from the exception under the proviso to Rule 90 (1) of the Rules. Therefore, we agree with the submission of the learned counsel for the respondents that the appeal is time barred. We equally agree with the submission of Mr. Ogunde that the appellant's prayer for extension of time is misconceived as this is not the appropriate forum.

In the premises, we are of the settled view that the appeal before us is incompetent for being time barred. In the end, we sustain the

preliminary objection raised by the respondents. Consequently, we strike out the appeal with costs for being time barred.

In the meantime, the hearing of the respondent's cross-appeal is adjourned under Rule 38A (1) of the Rules to the next convenient session of the Court as will be fixed by the Registrar.

DATED at MTWARA this 6th day of June, 2024.


R. J. KEREFU
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Ruling delivered this 7th day of June, 2024 in the presence of the Appellant in person unrepresented and Mr. Issa Issa Chiputula who took brief for Mr. Wilson Edward Ogunde, learned counsel for the Respondents is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL