

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWANDAMBO, J.A. KIHWELO, J.A. And MGONYA, J.A.)

CIVIL APPLICATION NO. 169/18 OF 2022

NBC LIMITED..... APPLICANT

VERSUS

ROSE E. SHIRIMA 1ST RESPONDENT

DEMETRIA MABEBA 2ND RESPONDENT

**(Application from the decision of High Court of Tanzania, Labour Division
at Dar es Salaam)**

(Wambura, J.)

dated the 28th day of August, 2020

in

Revision No. 279 of 2019

RULING OF THE COURT

5th & 12th February, 2024

MGONYA, J.A.:

NBC Limited (the applicant) filed the notice of motion which is brought under Rule 89 (2) of the Tanzania Court of Appeal Rules, 2009, (hereinafter to be referred as the Rules). The applicant is seeking to strike out the Notice of Appeal filed by Rose E. Shirima and Demetria Mabeba (the respondents) on 24th September, 2020.

The application is supported by an affidavit of Desmond Malyi, the Principal Officer of the applicant.

This application traces its history from the decision of the High Court of Tanzania, Labour Division at Dar es Salaam, in Revision No. 279 of 2019 delivered on 28th August, 2020 which was not in favour of the respondents. Being aggrieved, the respondents filed a Notice of Appeal to this Court. It is the said Notice of appeal which moved the applicant to file the instant application on the ground that, the respondents have not taken essential steps to institute and serve the appeal within the prescribed time.

When this application came up for hearing, the applicant was represented by Mr. Joseph Ndazi, learned counsel. The efforts to procure the attendance of the respondents via normal and substituted service by publishing in the Citizen and Mwananchi Newspapers dated 26th January, 2024 became fruitless, as they neither appeared nor filed any affidavit in reply. Therefore, under Rule 63 (2) of the Rules, the hearing of the application proceeded in the absence of the respondents.

Before us, the applicant's counsel placed reliance on what is deponed in the supporting affidavit and stated in the written submissions and the filed list of authorities.

Upon perusal of the notice of motion, the record of the application, written submissions and after hearing the submissions made by counsel Ndazi, the main issue calling for our determination is; whether respondents failed to take essential steps in the appeal warranting an order striking out the notice of appeal.

The Court derives powers to strike out a notice of appeal from rule 89(2) of the Rules which provides:

"(2) Subject to the provisions of subrule (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".

It is Rule 90 (1) and (3) of the Rules which directs the intended appellant on the next essential steps after lodging a notice of appeal. The law requires the appellant to make a written application for certified copies of the proceedings, judgment and decree in the High Court within thirty (30) days of the date of the decision and a copy of it to be served on the respondent. Where the appellant fails to do that, rule 90(1) of the Rules requires him to institute his appeal within 60 days from the date of lodging the notice of appeal. The Court has pronounced itself on this mandatory requirement in many of its decisions, amongst others; **Elias Marwa v. Inspector General of Police & Another**, Civil Application No.11 of 2012, **Victoria Mbowe v. Christopher Shafurael Mbowe & Another**, Civil Appeal No. 115 of 2012; **District Executive Director Kilwa District Council v. Bogeta Engineering Limited**, Civil Appeal No. 37 of 2017 and **Olivia Kisinja Mdetete v. Hilda Mkinga**, Civil Application No 4 of 2011 (all unreported). In **Olivia Kisinja Mdetete** (supra) which was referred to by this Court in the case of **Kondoa Painters and Decoration Trust Fund v. Kondoa District Council**, Civil Application No. 590/03 of 2017 (unreported) we stated:

"The law is now settled, upon lodging a Notice of Appeal, the impending appellant must not sit back but is required to move the process forward by taking essential steps that have been clearly outlined by the Court of Appeal Rules, 2009."

In the instant application, it is deponed under paragraphs 4 and 5 of the applicant's affidavit and the written submission in support of the application that, 557 days lapsed since 24th September, 2020 when the respondents lodged a notice of appeal.

There is no evidence that the respondents applied for a copy of proceedings and served the applicant within the prescribed period filed an application for extension of time to serve the applicant memorandum of appeal within sixty days counting from 25th September, 2020.

In the upshot, the respondents' failure to take essential steps to lodge an appeal after filing the notice of appeal, triggers the invocation of rule 89(2) of the Rules as the applicant has done. Consequently, we find

merit in the application and grant it. The notice of appeal which was filed on 24th September, 2020 is hereby struck out with costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 08th day of February, 2024.

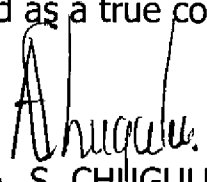
L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Ruling delivered this 12th day of February, 2024 in the presence of Mr. Joseph Ndazi, learned counsel for the applicant and absence of the Respondents, is hereby certified as a true copy of the original.




A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL