

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 105 OF 2004

In the Matter of an Intended Appeal

**MURZAH OIL MILLS LTD. APPLICANT
VERSUS
KOUK OILS AND GRAINS PTE LTD.
RESPONDENT**

**(Application for extension of time to serve record to the
Respondent from the decision of the High Court of Tanzania at
Dar es Salaam)**

R U L I N G

MROSO, J.A.:

Before me is a Notice of Motion for an application under Rule 8 of the Court Rules seeking an order for extension of time for the applicant to serve a record of appeal on the respondent.

Apparently the applicant was aggrieved by a decision of the High Court and sought to appeal against it to this Court. A record of appeal was prepared and I am informed from the Bar by Mr. Mchome, learned advocate for the applicant, that the record of appeal was to be lodged in the Court by 5th May, 2004. According to an affidavit of one Mr. Mafuru, an advocate with Mbuna and Co. Advocates who represent the applicant, he submitted the record of appeal to the Court Registry on 5th May, 2004, paid the necessary fees and was issued with relevant receipts on the same day. The receipts showed that Civil Appeal No. 67 of 2004 was filed. Photocopies of those receipts, one of which shows that it

related to the lodging of a record of appeal, are annexures to Mr. Mafuru's affidavit.

The endorsement on the record of appeal by the Deputy Registrar of the Court shows however that the record of appeal was lodged on the 6th May, 2004. When, subsequently, Mr. Mafuru saw that date as the lodging date he became alarmed because by 6th May, 2004 the lodging of the record of appeal would be time-barred. He considered that the date on the endorsement was an error and wrote to the Registrar of the Court on 10th May, 2004 requesting that the error be corrected because, according to him, the lodging was done on the 5th, not 6th, May, 2004.

The rectification was done on 17th July, 2004 but the advocates for the applicant were notified about it on 13th August, 2004. By then it was well out of time to comply with Rule 90 (1) which requires that a copy of the record of appeal should be served on the respondent within seven days after the date of lodging. Hence this application before the Court.

Ms. Kasonda, learned advocate from Mkono and Co., Advocates who represent the respondent, opposes the application. She contends that the endorsement on the record of appeal clearly shows that the record of appeal was lodged on the 6th of May, 2004. That meant that the

memorandum of appeal was not lodged in time according to Rule 83 and also that Rule 90 (1) was not complied with. The letter dated 10th May, 2004 by the advocates for the applicant to the Registrar of the Court which sought correction of the date of lodging the record of appeal was not copied to the advocates for the respondent. Even when the advocates for the respondent wrote to the advocates for the applicant asking for a copy of that letter there was no response. She submitted that there were no good grounds for granting the extension of time sought and that the application should be dismissed with costs.

I think, with due respect to Ms. Kasonda, that the applicant is being blamed largely for a fault which does not lie with it.

The photocopies of the receipts for fees which were paid for lodging the record of appeal and for security for costs, which are annexed to Mr. Mafuru's affidavit, are clear proof that the record of appeal was lodged on the 5th of May, 2004 and that the Deputy Registrar's endorsement showing that the record was lodged on 6th of May, 2004 was erroneous. The receipts show that a Civil Appeal No. 67 of 2004 had been opened in the registry of the Court. Ms. Kasonda has not suggested that the Civil Appeal number related to an appeal other than the one between the parties. Surely, the registry of the Court could not have given a civil

appeal number to an appeal which had not been lodged. It is pertinent that a civil appeal is opened when a memorandum of appeal and the record of appeal are lodged in the Court registry and the necessary fees are paid. Rule 113 (1) of the Court Rules, 1979 says -

113. (1) The fee payable on lodging any document shall be payable at the time when the document is lodged.

Therefore, there would be no point for the advocates for the applicant to pay the necessary fees on 5th May, 2004 and then lodge the record of appeal on the following day, 6th May, 2004. The applicant clearly had paid the fees at the time it lodged the record of appeal in compliance with Rule 113 (1).

The Deputy Registrar in his letter dated 13th August, 2004 to Mbuna and Co., Advocates said he endorsed on the record showing it was lodged on 6th May, 2004 because that was the date “when the document was brought to my attentions (sic) for endorsement”. It would appear, therefore, that although the advocates for the applicant presented to the Court registry the record of appeal on 5th May, 2004 and paid the necessary filing fees on that date, the record was not taken to the Deputy Registrar for endorsement until the following day. Clearly the Registry

Staff of the Court were the cause for the Deputy Registrar to fail to comply with Rule 15 which requires him to cause the record to be endorsed forthwith (in this case himself to forthwith endorse it) showing the correct date and time when it was lodged. The Rule expressly says -

15. Whenever any document is lodged in the Registry or in a sub-registry or the High Court under or in accordance with these Rules, the Registrar or Deputy Registrar or the Registrar of the High Court, as the case may be, shall forthwith cause it to be endorsed, showing the date and time when it was lodged.

The applicant and its advocates must not be blamed for the dereliction of duty on the part of the registry staff. Had the staff taken the record of appeal to the Deputy Registrar of the Court on the same date when it was lodged, that is to say on the 5th of May, 2004, as they should have done, the applicant might not have failed to comply with Rule 90 (1) of the Court Rules.

In the circumstances there is a legitimate reason for the failure to comply with Rule 90 (1). To remedy the situation I grant the applicant extension of time to serve the respondent with the record of appeal. It is ordered that the

record of appeal be served on the respondent by 17th of October, 2005. The costs of this application to abide the result of the appeal.

DATED at DAR ES SALAAM this 13th day of October, 2005.

J.A. MROSO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S.A.N. WAMBURA)
SENIOR DEPUTY REGISTRAR