

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

(CORAM: LUBUVA, J.A., MUNUO, J.A., and NSEKELA, J.A.)

CIVIL APPEAL NO. 17 OF 1999

**HAMISI LUGA KITEGILE..... APPELLANT
VERSUS
THE LOANS AND ADVANCES REALIZATION TRUST
RESPONDENT**

**(Appeal from the order of the LART TRIBUNAL
OF TANZANIA at Dar es Salaam)**

(Msoffe, J.)

**dated the 11th day of December, 1998
in
Tribunal Case No. 37 of 1998**

R U L I N G

NSEKELA, J.A.:

This is a preliminary objection raised at the hearing of an appeal between the appellant, Hamisi Luga Kitegile, and the respondent, the Loans and Advances Realisation Trust. The preliminary objection raised by Mr. Kamugisha, learned advocate for the respondent, had two grounds, namely -

1. The appeal is incompetent as it was not instituted within 60 days period prescribed under Rule 83 (1) and the appellant cannot rely on the 'Certificate of Delay ' issued by the Registrar of the High Court, as there is failure by the appellant to comply

with Rule 83 (2) of the Tanzania Court of Appeal Rules, 1979.

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2. The appeal is incompetent as the Memorandum of Appeal relied upon by the appellant contravene Rules 15, 86 (1), (3) and Form 'F' of the First Schedule of the Tanzania Court of Appeal Rules, 1979.

At the hearing of the appeal, Mr. Kamugisha abandoned the second ground of complaint. On the first ground of complaint, he submitted that the appellant lodged notice of appeal on the 23.12.98 and the record of appeal was filed on the 6.4.99. On the 23.12.98 the appellant wrote a letter to the Registrar, LART Loan Recovery Tribunal, applying to be supplied with certified copies of the Tribunal's proceedings, judgment and decree for purposes of the intended appeal. It is the contention of the learned advocate that this letter was not sent to the respondent in terms of Rule 83 (1) of the Court Rules and therefore the appellant cannot rely on the exception contained in that sub—section. Under the circumstances, Mr. Kamugisha submitted, the appeal is time-barred.

The appellant who appeared in person and

unrepresented, submitted that on the 23.12.98, he wrote a letter to the Registrar applying for copy of the proceedings judgment and decree. These documents were supplied to him on the 19.2.99 and he filed the appeal on the 6.4.99 before the expiry of the sixty days. According to the appellant, the appeal was filed in time.

The preliminary objection revolves around non-compliance by the appellant with Rule 83 (1) and (2) of the Court Rules, 1979 which provide as under -

“83 (1) Subject to the provisions of Rule 122, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged -

- a) a memorandum of appeal, in quintuplicate;
- b) the record of appeal, in quintuplicate;
- c) the prescribed fee; and
- d) security for the costs of the

appeal;

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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.

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

It is a mandatory requirement that within sixty days of the date of lodging the notice of appeal, a memorandum and

record of appeal are to be lodged. In this case the Notice of appeal was lodged on the 23.12.98 and the record of appeal was lodged on the 6.4.99. Unless the appellant is covered by the exception to Rule 83 (1) and (2) the appeal was lodged out of time. It is a fact that a letter asking for a copy of proceedings from the Registrar was written on the 23.12.98, within thirty days of the date of the decision being appealed against. However, there is another requirement under sub-rule (2). The appellant has not provided any evidence or proof of service on the respondent of a copy of the letter to the Registrar of the High Court applying for a copy of the proceedings. Admittedly, the appellant wrote to the Registrar a letter dated 23.12.98 applying for a copy of the proceedings. This, however, is not enough. The respondent was not served with a copy of the letter dated the 23.12.98 and therefore the appellant cannot take advantage of the exception to sub-rule (1) of rule 83 in computing the time within which the appeal is to be instituted to exclude the time taken for the preparation and delivery of a copy of the proceedings to the respondent. Under the circumstances, the appeal having been instituted on 6.4.99, was time barred. The appeal should have been instituted within sixty days reckoned from 23.12.98 and this would have expired on the 21.2.99.

In the result, we accept the respondents' submission

that the appeal is incompetent. There was failure to comply with rule 83 (1) in instituting the appeal after sixty days from 23.12.98 when the notice of appeal was lodged.

The appeal is accordingly struck out with costs.

DATED at DAR ES SALAAM this 25th day of November, 2005.

D.Z. LUBUVA
JUSTICE OF APPEAL

E.N. MUNUO
JUSTICE OF APPEAL

H.R. NSEKELA
JUSTICE OF APPEAL

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

S.A.N. WAMBURA
SENIOR DEPUTY REGISTRAR