

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: JUMA, C.J., MUSSA, J.A. And MUGASHA, J.A.)

CIVIL APPEAL NO. 100 OF 2017

COMMISSIONER GENERAL  
TANZANIA REVENUE AUTHORITY.....APPELLANT

VERSUS

JSC ATOMREDMETZOLOTO(ARMZ).....RESPONDENT

(Appeal from the from the Judgment and Decree of the Tax Revenue  
Appeals Tribunal at Dar es Salaam)

(Hon. H. M. Mataka Vice Chairman, Prof. J. Doriye, Member  
and Mr. W. Ndyetabula, Member)

dated the 18<sup>th</sup> day of December, 2013

in

Tax Appeal No. 16 of 2013

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**RULING OF THE COURT**

30<sup>th</sup> October, 2017 & 3<sup>rd</sup> November, 2017

**JUMA, C.J.:**

After this Court had on 19/02/2016 struck out Civil Appeal No. 16 of 2014 because the record of that appeal was supported by a defective decree, the COMMISSIONER GENERAL OF THE TANZANIA REVENUE AUTHORITY has come back to this Court with a fresh appeal, Civil Appeal No. 100 of 2017, which the appellant filed on 27/04/2017. The

respondent JSC ATOMREDMETZOLOTO has opposed this appeal on various grounds, and also by a preliminary ground of objection contending that the appeal was filed outside the prescribed period, hence it is time barred.

The background to the dispute between the respondent and the appellant traces back to 2010. Then the respondent, which is a company registered in the Russian Federation, entered into an arrangement to purchase shares from an Australian company, Mantra Resources Limited of Australia which also happens to own shares in Mantra Tanzania Limited. Registered in Tanzania, Mantra Tanzania engages in uranium exploration at the Mkuju River Project.

The share-purchasing arrangement soon attracted the interest of the appellant who wanted to collect stamp duty. It was the Tax Investigations -Department (Mwanza) of the appellant which set the motion through a letter dated 18<sup>th</sup> October, 2011 to inform the respondent company about its possible tax liability arising from the shares-purchasing arrangements. The exchange of letters between the appellant and the respondent drew in FB ATTORNEYS, the respondent's learned counsel. Through Mr. G.E. Ishengoma and Mr. F.A. Bhojan,

respondent reiterated that the shares-purchasing arrangements referred to by the appellant, did not result in any change of ownership of the shares of the Mantra Tanzania Limited. The respondent's counsel expressed their readiness to provide further clarifications, should the appellant require. The exchange of letter came to a head on 30<sup>th</sup> November 2011 when the appellant wrote, what has to become a final exchange of letters. Although the respondent was at the time a non-resident company, the appellant wrote, it had a source of income in Tanzania and therefore had the obligation to pay taxes in Tanzania, appellant concluded.

Aggrieved by the outcome of the exchange, the respondent initiated Appeal Number 27 of 2011 in the Tax Revenue Appeals Board at Dar es Salaam (hereinafter referred to as "**the Board**"). At the Board, the respondent sought two declarations: (1) that the notice of liability issued by the appellant is unlawful, and (2) that the respondent had no outstanding tax liability. On May 15, 2013, the Board allowed the respondent's appeal, reckoning that the respondent is not liable to tax regime in Tanzania, and the appellant has no jurisdiction to tax the respondent company.

Aggrieved with the decision of the Board, the appellant lodged an appeal, Tax Appeal No. 16 of 2013, to the Tax Revenue Appeals Tribunal (The Tribunal). On 18/12/2013, the Tribunal dismissed the matter, concluding that the share purchasing transactions did not relate to any property in Tanzania to be subject of stamp duty obligations.

After the striking out of his Civil Appeal No. 16 of 2014, the Appellant sought for an extension of time to file a fresh notice of appeal. The extension was duly granted by the Tribunal on 10/3/2016. The following day the appellant filed a fresh Notice of Appeal. A year later, the appellant lodged this appeal on April 27, 2017.

At the hearing, the appellant was represented by Mr. Salvatory Switi learned advocate. Mr. Fayaz Bhojan learned advocated represented the respondent. Before allowing the two learned counsel to address us on threshold question whether the appeal is time barred, we engaged them to comment on whether the Board had requisite jurisdiction to determine the respondent's appeal in the circumstances where the respondent did not first lodge an objection against Stamp Duty to the Commissioner General as is implied by Sections 7, 7A, 12, 14 (2), 16 (1) and (3) of the Tax Revenue Appeals Act, Cap 408 [R.E.

2010]. After a brief exchange, the Court left open this question, to be determined in future when a right occasion presents itself to the Court.

Reverting back to the ground of objection suggesting that this appeal was in the first place filed outside the prescribed time, Mr. Bhojan drew our attention to the period between 11/03/2016 when the appellant filed his notice of appeal and 16/03/2016, when the appellant wrote a letter to request for a copy of the proceedings, Rulings and Drawn Orders. He submitted that this period should be counted as part of the sixty days within which the appellant was supposed to lodge a memorandum and record of appeal to initiate this appeal. The learned counsel insisted that when the appellant finally filed the appeal on 27/04/2017 his appeal was already beyond the sixty days prescribed by Rule 90(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

Mr. Bhojan contended that the appellant should have filed this appeal latest by 24/04/2017 which was a Monday, but not as he did on 27/04/2017. Mr. Bhojan cited to us two decisions of the Court to cement his position that this appeal is time barred: See— **Joseph Mhina Msumari vs. Mkurugenzi Mtendaji One Stop Co. Ltd.**, Civil Appeal No. 12 of 2008 (unreported), and **Maneno Mengi Limited and Three**

**Others v. Farida Said Nyamachumbe and the Registrar of Companies** [2004] T.L.R. 391.

In his replying submissions, Mr. Switi did not directly address the question whether this appeal is time barred as submitted by Mr. Bhojan. He instead questioned the competence of Appeal No. 27 of 2011 which the respondent had initiated in the Board. In his opinion, the appeal to the Board should have been backed up by a Notice of Appeal to the Board. He submitted further that considering that Notice of Appeal to the Board is a mandatory document under Rule 4 (1) of the Tax Revenue Appeal Board Rules, 2001 GN No.57 of 2001 (Board Rules), the proceedings, before the Board, the judgment and the decree of the Board, are all defective for want of support of the Notice of Appeal to the Board. He further submitted that Rule 7 of the Board Rules recognizes Notice of Appeal to the Board as a material document, which he contended was not even served on the appellant.

From the submissions of the two learned counsel for the parties, and after perusing the record of appeal, we are satisfied that the only question for our determination is whether this appeal was filed within

the prescribed sixty days' limitation period when it was filed on 27/4/2017.

The law governing appeals from the Tribunal to the Court begin to flow from the provisions of section 25 of the Tax Revenue Appeals Act, Cap. 408 R.E. 2006 which provides:

*"25.-(1) Any person who is aggrieved by the decision of the Tribunal may prefer an appeal to the Court of Appeal."*

The procedures governing appeals to this Court from decisions of the Tribunal is provided for by Rule 24 (3) of the Tax Revenue Appeals Tribunal Rules, 2001 GN. No. 56 of 2001 (Tribunal Rules) which states:

*"24 (3) An appeal to the Court of Appeal shall be on matters of law only and the provisions of the Appellate Jurisdiction Act and the Court of Appeal Rules, 1979 **(now 2009 Rules)** shall apply mutatis mutandis."* [Emphasis added].

It is clear from the above-cited provisions that Rule 90 (1) of the Rules provides the procedure to be followed by the appellants who intend to institute their appeals to the Court from decisions of the

Tribunal. The intending appellants are required to lodge their memorandum of appeal and record of appeal in the appropriate registry, within sixty days of the date when the notice of appeal was lodged. Therefore, the question whether this appeal was filed within the prescribed sixty days, will be determined by looking at the sixty days counted from the date when the notice of appeal was filed, to the date when the appeal is instituted.

It is a common cause that the appellant filed his fresh notice of appeal on 11/03/2016, and it took another five days until 16/03/2016 when he applied to the Registrar of the Tribunal for a copy of the proceedings which was received on 27/02/2017. There is no doubt from the record of appeal that the period from the date when the appellant received a copy of the proceedings to 27/4/2017 when the appellant filed memorandum and record of appeal to initiate this appeal, adds up to a total of fifty nine (59) days. But, Mr. Bhojan has staked a position that it had taken the appellant more than sixty days to file his memorandum and record of appeal to be lodged because of the earlier five (5) days between 11/3/2016 and 16/3/2016 when the appellant had sat back after filing his notice of appeal. In his reckoning, the total



number of days added up to sixty four (64) days which is beyond the prescribed period of sixty days.

We think Mr. Bhojan is correct in his conclusions that although the appellant filed his memorandum and record of appeal fifty-nine (days) after receiving the copy of proceedings from the Registrar of the Tribunal, he has not accounted for the five days he took no action after the filing of notice of appeal. It is also evident from the record that on 24/3/2017 when the learned counsel for the appellant asked the Registrar of the Tribunal to issue a Certificate of Delay, he did not specifically ask the Registrar to exclude the five days which remained unaccounted for. The appellant's request, stated:

*"...Kindly take note that we received the Judgment, Proceedings and Decree on 27/02/2017 in respect of the above named Tax Revenue Appeal vide....*

*However we cannot lodge our records of appeal unless and until we obtain a certificate of delay in order to comply with Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009.*

*In view of the above we kindly request to be supplied with **a certificate of delay excluding the days from 16<sup>th</sup> March 2016 when we applied for copies of***

*the said documents up to 27<sup>th</sup> February 2017*  
*when we received the same to enable us to complete*  
*and lodge our records of appeal in the Court of Appeal*  
*of Tanzania accordingly.”*

It is also clear from the record of appeal that the Certificate of Delay which the appellant obtained, did not cover the five days which the appellant has not accounted for. In so far as the sixty days limitation period is concerned, the Certificate of Delay which the Registrar issued cannot be of any benefit to the appellant.

We think, an intending appellant whose appeal is struck out by the Court, should strictly remain within the prescribed sixty days after the filing of notice of appeal before instituting a fresh appeal. Decisions of the Court are now unanimous that failure of the appellant to institute a civil appeal within the prescribed sixty (60) days renders the appeal incompetent: **For example— Henry William vs. Anyigulile, Mwasomola**, CIVIL APPEAL NO. 81 OF 2014 (unreported).

In result, the appellant having lodged the memorandum and record of appeal beyond the 60 days prescribed by Rule 90 (1) of the

Rules, this appeal is not competently before us. It is hereby struck out.

The costs shall lie where they fall.


**DATED** at **DAR ES SALAAM** this 2<sup>nd</sup> day of November, 2017.

I. H. JUMA  
**CHIEF JUSTICE**

K. M. MUSSA  
**JUSTICE OF APPEAL**

S. E. MUGASHA  
**JUSTICE OF APPEAL**

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

  
P. W. Bampikya  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**