

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

(CORAM: MROSO, J.A., NSEKELA, J.A., And KAJI, J.A.)

CIVIL APPEAL NO. 37 OF 2003

**MWANAASHA SEHEYE.....APPELLANT
VERSUS
TANZANIA POSTS CORPORATION..... RESPONDENT**

**(Appeal from the decision of the High Court
of Tanzania at Dar es Salaam)**

(Ihema, J.)

**dated the 30th day of August, 2001
in
CIVIL APPEAL No. 101 OF 2000**

RULING

NSEKELA, J.A.:

When the appeal was called on for hearing, Mr. Lukwaro, learned advocate for the respondent, raised and argued a preliminary objection on the competency of the appeal. The learned advocate canvassed three grounds, namely –

- i) that the appeal is time-barred;
- ii) that Rule 83 of the Tanzania Court of Appeal Rules, 1979 has not been complied with;
- iii) that the certificate made under Rule 83 of the Tanzania Court of Appeal Rules, 1979 is incompetent.

The essence of the preliminary objection to the appeal is based on non-compliance with Rule 83 of the Court of Appeal Rules. Mr. Lukwaro submitted to the effect that the appeal was time-barred since it was not instituted within sixty (60) days of the date of the notice of appeal as required by Rule 83 (1) of the Court Rules.

A brief factual background of the facts may be instructive in order to appreciate the nature of the preliminary objection. The judgment of the High Court (Ihema J.) being appealed against was delivered on the 30.8.2001 and notice of appeal was lodged in time on the 3.9.2001. The complaint by Mr. Lukwaro is that the notice of appeal was lodged on the 3.9.2001 but the appeal was instituted on the 9.6.2003, over six hundred days from the lodgement of the notice of appeal. The appeal should have been instituted within sixty (60) days in terms of Rule 83 (1) of the Court Rules.

Rule 83 (1) and (2) of the Court Rules provides as follows –

“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 fees; and
- d) 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.

(2) 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 was sent to the respondent.”

A question we ask ourselves is, when did the appellant apply to the Registrar for copy of the proceedings and serve the respondent with a copy of the said letter? Mr. Ndolezi, learned advocate for the appellant, readily conceded that the only letter on the record is the one dated 5.6.2002 on page 79 of the record of appeal. This letter reads in part as under: –

“The applicant hereinabove was granted LEAVE TO APPEAL to the Court of Appeal on the 30th May 2002 by Hon. Kimaro, J. Could we, please, be supplied with copies of RULING and the DRAWN ORDER thereof as

well as copies of the proceedings in the said application, so that we may prepare the intended appeal to the Court of Appeal of Tanzania. A NOTICE OF APPEAL was properly filed in this Court on the 31st August 2001. On the same date, the applicant applied for copies of judgment and proceedings of the main case, and duly served the same to the respondents. (copies of the same attached)“

This letter makes reference to a letter dated the 31.8.2001, but it is not on the record of appeal and Mr. Ndolezi conceded that much. It is also not insignificant to note that the above quoted letter was neither copied to nor sent to the respondent. The fact of the matter is that the appellant did not within thirty (30) days of the date of the decision, 30.8.2001, apply to the Registrar for copy of the proceedings as required by Rule 83 (1). An appeal must be instituted within sixty (60) days of the date when the notice of appeal was lodged unless the exception under sub-rule (2) applies. Secondly, he must have sent a copy of such application to the respondent. Under the circumstances, the appellant was not entitled to rely on the exception (see: (CAT) Civil Appeal No. 9 of 1994, **Tanzania Harbours Authority v. Mvita Construction Company Ltd.** (unreported)).

In the result we sustain the preliminary objection. The appeal was instituted outside the prescribed period of sixty (60) days after the notice of appeal was lodged. We accordingly strike it out with costs.

DATED at DAR ES SALAAM this 8th day of December, 2005.

J.A. MROSO
JUSTICE OF APPEAL

H.R. NSEKELA
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original



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