

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MJASIRI, J.A., KAIJAGE, J.A., And MMILLA, J.A.)

CIVIL APPEAL NO. 161 OF 2015

MARTIN SIWA APPELLANT

VERSUS

SOPHIA KIVUGO RESPONDENT

**(Appeal from the ruling and order of miscellaneous
Land Application No. 25 of 2011, Msuya, J., dated
16th day of September, 2013 and Ruling and Order
of Land Appeal No. 65 of 2008 Mzuna, J.
Dated 30th day of September, 2011
in High Court of Tanzania at Tanga**

JUDGMENT OF THE COURT

27th & 29th June, 2016

MJASIRI, J.A.:

This appeal originates from the Mkuzi Ward Tribunal in Muheza District, Tanga Region. The appellant Martin Siwa is appealing from the decision of the High Court, in Misc. Land Appeal No. 65 of 2008 (Mzuna, J.) having sustained the preliminary point of law that the appeal filed in the High Court was out of time. The appellant did not stop there. He filed an application for extension of time to lodge his appeal, Civil Application 25 of

2011, before another Judge, in the High Court (Msuya, J.), where his application was dismissed on September 16, 2013. He was properly directed to file an appeal in respect of Misc. Land Appeal No. 65 of 2008.

Upon being asked by the Court whether his appeal is properly before the Court, the appellant submitted that he did what he could given the circumstances, and that he is a layman. The respondent on her part complained that she has been troubled with this matter for nearly 10 years.

The appellant not having legal representation lodged an omnibus notice of appeal against the decisions of Mzuna, J and Msuya, J respectively. The notice of appeal is dated September 25, 2013. The appeal was subsequently filed on September 21, 2015.

In view of the fact that the Ruling of Mzuna J, was delivered by Teemba J. on September 30, 2011, the appeal filed by the appellant was hopelessly out of time.

According to Rule 83(1) of Tanzania Court of Appeal Rules 2009 (the Court Rules), a notice of appeal has to be filed within thirty days of the date of the decision against which it is desired to appeal.

Rule 90(1) of the Court Rules provides that an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged.

The notice of appeal, apart from being out of time did not conform to the requirements under Form D, as provided under Rule 83(6) of the Court Rules.

In the circumstances we are of the settled view that the appeal before us is incompetent. We accordingly strike it out. We make no order as to costs.

We are mindful of the fact that it is indeed very important for a party having a matter before this Court, the highest Court in the Land, which would finally and conclusively determine the rights of a party should have

access to legal representation. This will go a long way in avoiding such situations arising from the instant case.

DATED at **TANGA** this 28th day of June, 2016.

S. MJASIRI
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

B.M. MMILLA
JUSTICE OF APPEAL

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

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL