

**IN THE COURT OF APPEAL OF TANZANIA
AT TABORA**

(CORAM: LUANDA, J.A., MMILLA, J.A. And MWARIJA, J.A.)

CIVIL APPEAL NO. 143 OF 2015

JOSEPH MLAPONI..... APPELLANT

VERSUS

SANDWICK MINING CONSTRUCTION (T) LTD..... RESPONDENT

**(Appeal from the decision of the High Court (Labour Division)
of Tanzania at Shinyanga)**

(Mipawa, J.)

Dated the 18th day of November, 2013

in

Civil Revision No. 27 of 2012

RULING OF THE COURT

31st July, & 4th August, 2017.

MMILLA, JA.:

This ruling addresses the preliminary objection on points of law raised by IMMA Advocates (Mwanza Branch), Part of DLA Piper Group, on behalf of the respondent, Sandwick Mining Construction (T) Limited, in Civil Appeal No. 143 of 2015. The said appeal was filed by the appellant, Joseph Mlaponi, who appears in person and is undefended.

The notice of preliminary objection was filed on 7.6.2012. It has raised two (2) grounds as follows:-

- (i) That the appeal is incompetent as the notice of appeal was lodged out of time contrary to Rule 83 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules).
- (ii) That to the extent that the notice was not served to the respondent as per the requirement of Rule 84 (1) of the Rules, this appeal is incompetent.

On the date of hearing, Mr. Faustin Malongo, learned advocate from the said branch of IMMA Advocates, appeared for the respondent company. In his submission in support of the first ground of the preliminary objection, Mr. Malongo has contended that since the decision which is the subject of the intended appeal was delivered on 18.11.2013, and because the notice of appeal was filed on 24.7.2015, it becomes obvious that it was filed beyond 30 days. As such, it offends the provisions of Rule 83 (2) of the Rules which instructs a notice of appeal to be filed within a period of 30 days from the date of delivery of a decision which is the subject of appeal. He contended that because the said notice of appeal was filed after 20 months had elapsed, the appeal is time barred. He pressed the Court to strike it out.

On the second ground of preliminary objection, Mr. Malongo has submitted that the appeal is incompetent because the said notice of appeal was not served on the respondent within a period of 14 days as directed by Rule 84 (1) of the Rules. For this reason too, he urged the Court to strike it out.

On his part, the appellant submitted that he made three attempts in the High Court to apply for extension of time in which to appeal, but he did not succeed. He added that thereafter, he filed a similar application in this Court. Unfortunately, he added, that one too did not advance his course. He purported that he was instructed to go back to the High Court, but did not elaborate what resulted. He allegedly went back to the High Court, but he was not assisted, which is why he proceeded as such.

We wish to begin with the first ground, for which the burning issue is whether or not the notice of appeal was lodged within time. The starting point is Rule 83 (2) of the Rules. That Rule provides that:-

"Every notice shall, subject to the provisions of Rules 91 and 93, be so lodged within thirty days of

the date of the decision against which it is desired to appeal.”

In the instant matter, there is no controversy that the decision which is the subject of appeal was delivered on 18.11.2013, and that the notice of appeal was lodged in the Court’s Registry on 24.7.2015. That means, it was lodged after almost one year and 8 months had elapsed. Although the appellant allegedly made several attempts to apply for extension of time, the fact remains that the notice of appeal was filed hopelessly out of time. Thus, the first ground has merit and we uphold it. See the cases of **Ami (Tanzania) Limited v. OTTU, on behalf of Assenga & 106 Others**, Civil Appeal No. 58 of 2008, and **Martin Siwa v. Sophia Kivugo**, Civil Appeal No. 161 of 2015, CAT (both unreported).

The second ground alleges that the appellant did not serve a copy of the notice of appeal he filed to the respondent. This argument hinges on the provisions of Rule 84 (1) of the Rules. This Rule requires a party, upon lodging a notice of appeal, to serve a copy to a person(s) against whom the appeal is preferred or any other interested party.

In this regard, the appellant admitted that he did not serve a copy of the notice of appeal to the respondent. Since this this omission is serious, it

renders the appeal incompetent. Thus, this ground too has merit and we uphold it.

That said and done, this appeal is incompetent for the reasons we have assigned. Consequently, it is struck out with no order as to costs.

DATED at **TABORA** this 2nd day of August, 2017.

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

