

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KAJI, J. A. KILEO, J.A. AND KIMARO, J.A.)
CIVIL APPEAL NO 63 OF 2001

BETWEEN

- | | | | |
|-----|----------------------|---|-----------------|
| 1. | HEMEDI RAMADHANI | } | |
| 2. | JUMA MASUDI | } | |
| 3. | JUMA TAMLA NGONZA | } | |
| 4. | JUMA HASSANI MWALIKO | } | |
| 5. | FRANCIS UDILI | } | |
| 6. | RAJAB NASSORO | } | |
| 7. | SALUM SALEHE | } | |
| 8. | SAIDI ALLY | } | |
| 9. | IBRAHIM SHILLA | } | |
| 10. | JUMANNE SULTAN | } | |
| 11. | SAIDI H. MNYANGA | } | |
| 12. | THOMAS S. MFUMBI | } | |
| 13. | SEIF ALLY | } | |
| 14. | PIUS MATOVU | } | |
| 15. | RASHID OMARI | } | |
| 16. | KASSIM SALUM MNYIGE | } |APPELLANTS |

AND

TANZANIA HARBOURS AUTHORITY.....RESPONDENT

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

(Kalegeya, J.)

Dated 9th day of November, 1999

In

Civil Case No. 43 of 1999

RULING OF THE COURT:

30 April & 24 May, 2007:

KILEO, J.A.:

The Tanzania Harbours Authority, the respondent in this appeal, (herein after to be referred to as THA) has filed a notice of

preliminary objections pursuant to rule 100 of the Court of Appeal Rules, 1979 against the appeal lodged by Hemedi Ramadhani and 15 others. The notice so filed contains four grounds, which are:

- The suit in the High Court as well as this appeal was filed against the Tanzania Harbours Authority which is a specified public corporation under Government Notice No. 543 of 1997 without first complying with the provisions of the Bankruptcy Ordinance Cap. 25 which is now an Act [i.e. Cap. 25 R. E. 2002] and the Public Corporations Act 1992 as Amended by Act No. 16 of 1993 [i.e. Cap. 257 R. E. 2002].
- The Appeal is against a non-existing respondent.
- The Decree against which the Appellants are appealing was signed by F. S. K. Mutungi, District Registrar contrary to the requirements of the Law.
- The appeal was filed out of time.

Mr. Waziri Mchome, learned advocate, argued the preliminary objections on behalf of the respondent. Mr. Ukwonga, learned advocate, represented the appellants.

Mr. Mchome began his submission by addressing the Court on the 4th ground. He argued that the appeal, which was filed on 3rd September was time barred because the period between 3rd July 2001, (the date when the advocate for the appellants was notified that the papers were ready for collection) and 3rd September 2001, when the record and memorandum of

appeal were filed was more than sixty days. The learned counsel submitted that the appeal was late by two days and in the circumstances asked the Court to dismiss it with costs.

Submitting on the third ground of preliminary objection, Mr. Mchome argued that the appeal is incompetent as it is accompanied by an invalid decree. He pointed out that the decree in the record was signed by the District Registrar while the law, in terms of Order XX rule (7) of the Civil Procedure Code, requires that a decree be signed by the trial judge or his successor.

On the second ground, Mr. Mchome contended that the appeal is against a non-existent respondent in view of the fact that Act No 17 of 2004 had repealed the Act establishing the THA. The learned counsel argued that on this account the appeal ought to be struck out.

Mr. Mchome pointed out, with regard to the first ground of objection, that the THA was declared a specified corporation vide Government Notice no 543 of 1997. This meant that it was placed under the receivership of the Parastatal Sector Reform Commission (PSRC) by virtue of section 43 (1) of the Public Corporations Act, 1992. It was further contended that it was necessary in the circumstances for leave to be obtained prior to the filing of the case in the High Court and also that PSRC

had to be joined in the case as a necessary party. The learned counsel referred to the case of **Nurdin Ibrahim & 147 others v. The Director General Tanzania Harbours Authority – Civil Application no 54 of 2003(unreported)** in support of his argument.

Responding to Mr. Mchome's submission, Mr. Ukwonga argued, in respect of ground four, that the appeal was not time barred. According to him the time for filing of the memorandum of appeal started to run from the date that the Registrar issued the certificate of delay, which was 23rd August 2001.

On the third ground, which relates to the decree that was signed by the Registrar, Mr. Ukwonga conceded reluctantly, because of what he termed “change of position by this Court.” He argued that on several occasions in the past, this Court had dealt with, and finalized several appeals in which decrees signed by Registrars had been used in the record of appeal. He asked the Court to allow him to file a supplementary record with a decree duly signed by the trial judge or his successor.

As for the first ground, Mr Ukwonga argued that GN 543 of 1997 does not state when the THA became a specified corporation and that it is only now that they have come to know that it was necessary to join the PSRC. In The circumstances, he has asked

the Court that he be given leave to bring in a supplementary record to make the PSRC a party.

In response to arguments raised in connection to the non-existence of THA, Mr. Ukwonga submitted that the change from THA to Tanzania Ports Authority is just like a mere deed poll on change of name. He argued that in any case, when the suit was filed as well as when the appeal was lodged, the respondents were known as THA and that the record has to remain the same. According to Mr Ukwonga, the change of name should not be a reason for striking out the appeal as the THA can still be identified through their new name.

After having summarized the arguments advanced by both counsel on the preliminary objections, we will begin by a discussion of the fourth ground, which is the ground that each counsel started to submit upon.

Mr. Mchome argued that, counting from the date that the advocate for the appellants was notified that the papers were ready for collection, to the date when the record and memorandum of appeal were lodged is a period of 62 days. Referring to rule 83 (1) of the Court of Appeal Rules, Mr. Mchome contends that the appeal was late for two days and in the circumstances it ought to be dismissed with costs.

Mr. Ukwonga argued on the other hand, that the period of sixty days within which to lodge the record and memorandum of appeal started to run from the date when the Registrar issued the certificate of delay.

A close look at the provisions of Rule 83 (1) of the Court of Appeal Rules will enable us to determine when the time within which to file the record and memorandum of appeal begins to run. The rule 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 fee; 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.”

Looking at the above provision, it is clear to us that basically, the period of sixty days begins to run from the date that the notice of appeal is lodged. However, where an application for copy of proceedings is made within thirty days of the decision against which it is desired to appeal, then the period necessary for the preparation and delivery of the copy of proceedings is to be excluded in computation of the sixty days. The period of sixty days is not computed from the date of issue, by the Registrar, of the certificate of delay as suggested by Mr. Ukwonga. The certificate of delay was issued after Mr. Ukwonga had received the copy of proceedings. In fact, in response to a question that was put to him by the Court, Mr. Ukwonga answered that he applied for a certificate of delay from the Registrar after he had received a copy of the proceedings. Mr. Ukwonga made a very weak argument, suggesting that the Registrar has discretion to give a date. We were unable to get the basis for this argument. The Registrar has no discretion; he is bound to comply with the law. In this particular case, he certified that the period from 23rd November 1999 when Mr. Ukwonga lodged the notice of appeal and applied for copies of proceedings, Order and Ruling, to 3rd July, 2001 when the advocate was notified that the papers were ready for collection was to be excluded for such days were required for preparation and delivery of the proceedings, ruling and Order to the advocate. Mr. Ukwonga does not dispute that he was notified that the papers were

ready for collection on 3rd July 2001. He lodged the memorandum of appeal on 3rd September 2001. He does not deny that 3rd July 2001 to 3rd September 2001 is a period of 62 days. He was obviously late in filing the appeal by two days. A delay, of even one day renders a matter incompetent.

In the light of the above considerations we find that the appeal by Hemed Ramadhani & 15 others is time barred and for this reason we dismiss it with costs.

Having determined the fourth ground as above, consideration of the other grounds becomes pointless.

DATED at **DAR ES SALAAM** this 24th Day of May, 2007.

S.N. KAJI

JUSTICE OF APPEAL

E.A. KILEO

JUSTICE OF APPEAL

N.P. KIMARO

JUSTICE OF APPEAL

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

I.P. KITUSI
DEPUTY REGISTRAR