

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: KIMARO, J.A., LUANDA, J.A., And MJASIRI, J.A.)

CIVIL APPEAL NO. 26 OF 2014

**ZATHOCODAWU MEMBERS REPRESENTED BY
GENERAL SECRETARY OF ZATHOCODAWU APPELLANT
VERSUS**

MANAGING DIRECTOR C.R.J.E. ZANZIBAR RESPONDENT

**(Appeal from the Ruling and Order of the High Court,
Industrial Division of Zanzibar)**

(Hon. Sepetu, J.)

Dated the 27th day of June, 2013

In

Civil Case No. 09 of 2006

RULING OF THE COURT

1st & 5th December, 2014

MJASIRI, J.A.:

This appeal arises from the decision of the High Court Industrial Division of Zanzibar (Sepetu, J).

When the appeal was called on for hearing, Mr. Masoud Rukazibwa, learned advocate for the respondent raised five preliminary points of law, a notice of which was filed on November 25, 2014 in line with the

requirement under Rule 107 (1) of the Court of Appeal Rules, 2009 (the Court Rules). The lengthy grounds of objection are reproduced as under:-

1. That, the appeal is time barred for:-

(a) Failure to file their appeal within sixty (60) days from the date when notice of appeal was lodged on 8th day of July, 2013 contrary to Rule 90(1) of the Court of Appeal Rules, 2009.

(b) Failure to apply for a copy of the proceedings within thirty (30) days from the date of the decision contrary to Rule 90(1) of the Court of Appeal Rules, 2009.

(c) Failure to apply and obtain extension of time or obtain a certificate of delay to file the appeal out of time as prescribed under Rule 10 and Rule 90(1) of the Court of Appeal Rules, 2009.

(2) That the Appellants failed to file a written submission within 60 days from the date of filing Memorandum of Appeal and Record of Appeal on 21st day of November, 2013 and even until now no written submission has been filed by the Appellants in this Appeal in violation of Rule 106(1) of Tanzania Court of Appeal Rules, 2009.

- (3) *That the applicants are also in breach of Rule 106(9) of the Court of Appeal Rules, 2009 for failure to apply for extension of time within which to file the mandatory written submission in support of appeal filed in this Honourable Court since 21st day of November, 2013.*
- (4) *That an appeal is incompetent for lack of leave to appeal against an order of High Court made on 27th June, 2013 contrary to section 5(1) (c) and 5(2) (a) (1) of the Appellate Jurisdiction Act Cap 141 R.E. 2002.*
- (5) *That an appeal is incompetent for appellants being uncertain and unknown and lack of legs to stand and instructions to institute / commence and appear in this appeal, Rule 4(2) (a), (b) and (c) and 30(3) of the Court of Appeal Rules, 2009.*

The appellants were represented by Mr. Isaac Msengi, learned advocate while the respondents had the services of Mr. Masoud Rukazibwa, learned advocate, assisted by Mr. Ismail Kaaya, learned advocate.

We shall commence with the first ground of objection which is basically that the appeal is out of time.

Mr. Rukazibwa on his part submitted that the appeal is time barred as the appellants failed to file the appeal within a period of sixty (60) days contrary to the requirements under the Court Rules. He argued that the appellants could not benefit from the exception to sub-rule (1) of Rule 90 as he neither applied for a copy of proceedings from the Registrar nor did he serve the Respondent with a copy of that request. He relied on the case of **Amir Hamidu Abrahman versus Sogea Satom Rehabilitation and Extension of Zanzibar Airport Runway Co.**, Civil Appeal No. 74 of 2013, CAT (unreported).

Mr. Msengi, on his part conceded that no letter was written to the Registrar requesting for a copy of proceedings and judgment therefore no letter was served to the respondent. He however, urged the Court not to base its decision on technicalities.

We on our part are of the considered view that Mr. Rukazibwa has a valid argument. Under Rule 90(2) of the Court Rules, an intended appellant can only take advantage of the exception to the sixty-days limitation of instituting appeals if he copies the letter applying for copies of proceedings, judgment and decree to the respondent. Mr. Msengi has readily conceded that no letter was sent to the Registrar and or served to the respondent. This means there was non compliance with the requirements under Rule 90(2) of the Court Rules. Rule 90(1) and (2) of the Court Rules provides as under:-

"Subject to the provisions of Rule 128, 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)

(b)

(c)

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 served on the respondent.***

Emphasis ours.

The law is settled. It has been consistently held by this Court that failure to institute the appeal within the prescribed period under Rule 90 renders the appeal incompetent. As the appeal was lodged after sixty (60) days from the date of the decision of the High Court the appellant is not in a position to rely on the exception to Rule 90(1) of the Court Rules. See **Amir**

Hamidu Abrahman (supra); Maneno Mengi Limited and Three Others v Farida Said Nyamachumbe and Registrar of Companies 2004 TLR 390 and **Mrs Kamiz Abdullah Kermal V The Registrar of Buildings and Miss Hawa Bayona** [1988] TLR 199.

We therefore sustain the preliminary point of law in respect of ground one. In view of our finding on the first preliminary point of law raised by the respondent, which is sufficient to dispose the appeal we need not delve on the other grounds of objection.

In the result, we accordingly dismiss the appeal with costs. It so ordered.

DATED at ZANZIBAR this 5th day of December, 2014.

N. P. KIMARO
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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




F.J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL