

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

**(CORAM: KILEO, J.A., ORIYO J.A. And MMILLA J. A.)**

**CIVIL APPLICATION NO. 19 OF 2013**

**BOMBO LAGWEN.....APPLICANT  
VERSUS  
IGWANGWI QUARAY.....RESPONDENT**

**(Application for strike out notice of appeal from the  
judgment/decreed/order/finding/decision of the High Court of Tanzania  
at Arusha)**

**(Sambo, J.)**

**dated the 22<sup>nd</sup> day of January, 2009  
in  
Civil Case Appeal No. 32 of 2005**

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**RULING OF THE COURT**

22<sup>nd</sup> & 22<sup>nd</sup> September 2014

**KILEO, J. A.:**

At the hearing of the application filed under Rule 89 (2) of the Court of Appeal Rules, 2009 the applicant appeared in person. The respondent was not in appearance. His brother, one Michael Quaray informed the Court that the respondent was ill, suffering from diarrhea. He tendered in Court a medical report showing however, that the respondent was suffering from severe malaria. The report which is dated 19<sup>th</sup> September,

2014 states that the respondent was admitted on 19<sup>th</sup> September and discharged on 24<sup>th</sup> September!

We were of the view that the report could not be a genuine one as today is 22<sup>nd</sup> September, and we are yet to see 24<sup>th</sup> September. Further still, it is inconceivable that a discharge letter of a patient from hospital would be written on a date prior to his discharge. In view of the lack of genuineness of the medical report we proceeded to hear the applicant, having found the respondent to have failed to appear for no good reason.

The applicant who was unrepresented did not have much to submit on his application for striking out the Notice of Appeal. He merely asked us to allow it.

The Notice of Motion was supported by the affidavit of the applicant. The respondent filed no affidavit in reply. In the affidavit in support of the Notice of Motion the applicant stated that the Notice of Appeal filed on 25/8/2011 was time bared as the decision against which it was intended to be appealed against was delivered on 13/8/2008.

On our part we are satisfied that the respondents. Notice of Appeal was filed out of time. The record of this application shows that the

decision that the respondent intended to challenge is dated 13/10/2008.

The Notice of Appeal was filed on 24/8/2011, almost three years later!

In terms of Rule 76 (2) of the Court of Appeal Rules, 1979 which were applicable in 2008 when the decision was given, the respondent was supposed to file his Notice of Appeal within fourteen days from the date of the decision which he intended to challenge. In consequence therefore, we find the application to have merit and we accordingly allow it. The Notice of Appeal filed on 24/8/2011 by the respondent is hereby struck out. The applicant shall have the costs of the application.


**DATED** at **ARUSHA** this 22<sup>nd</sup> Day of September, 2014.

E. A. KILEO  
**JUSTICE OF APPEAL**

K. K. ORIYO  
**JUSTICE OF APPEAL**

B. M. MMILA  
**JUSTICE OF APPEAL**

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

  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**