

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

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

CIVIL APPLICATION NO. 176 OF 2014

HASSAN ABDALLAH APPLICANT

VERSUS

TANZANIA TELECOMMUNICATIONS CO. LTD RESPONDENT

**(Application for strike out Notice of Appeal from the decision of the High
Court of Tanzania at Dar es Salaam)**

(Shangwa, J.)

dated the 30st day of November, 2012

in

Civil Appeal No. 34 of 2009

RULING OF THE COURT

14th September & 16th September 2016

MMILLA, J.A.:

In this application, Hassan Abdallah, who enjoys the services of Mr. Daminiic Daniel, learned advocate, is seeking the indulgence of the Court to strike out the notice of appeal filed on 25.3.2013 intending to impugn the judgment and decree in Misc. Civil Application No. 34 of 2009 in the High Court of Tanzania at Dar es Salaam. The said notice of appeal was filed by the respondent, Tanzania Telecommunications Company Limited. The application is brought by way of notice of motion and is made under Rule

89 (2) of the Tanzania Court of Appeal Rules, 2009 (**the Rules**). It has raised four grounds as follows:-

(1) The respondent filed the notice of appeal after the expire of the prescribed limit;

(2) The respondent neither filed the mandatory application for leave to appeal nor served it to the applicant;

(3) The respondent inordinately delayed in serving the notice of appeal to the applicant;

(4) The respondent neither filed in the High Court nor served to the applicant a letter requesting for certified copies of proceedings and ruling of the High Court;

When the application was called on for hearing, the respondent and/or her advocate did not enter appearance, thought served. Given such a position, Mr. Daniel successfully prayed for leave to proceed with the hearing of the application in the absence of the respondent under Rule 63 (2) of the Rules.

At the outset, Mr. Daniel prayed the Court to adopt the affidavit in support of the application, as well as the written submissions he filed on 7.9.2016. After adding one more ground to the effect that the notice of appeal is defective in as much as it purports that the intended appeal is against the judgment and decree of the High Court of Tanzania at Dar es Salaam (Hon. Shangwa, J) dated 28.2.2013 in Misc. Civil Application No.34 of 2009, whereas the correct position is that the intended appeal is against the ruling by Hon. Shangwa, J. dated 30.11.2012, hence that it is in respect of a non-existent decision; Mr. Daniel pressed the Court to strike out the notice of appeal on the basis of all the grounds he raised.

Before we may consider the grounds advanced, we desire to emphasize what the Court said in the case of **Asmin Rashid v. Boko Omari** [1997] T.L.R. 146 that the essential steps in the prosecution of an appeal as envisaged by Rule 82 (**now Rule 84**), were those steps which advanced the hearing of the appeal. With that in mind, the immediate issue is whether the grounds advanced herein are towards that end.

As will be appreciated, the first ground alleges that the appeal is time barred. According to Mr. Daniel, the ruling which is the subject of the

intended appeal was delivered on 30.11.2012. However, the notice of appeal was filed on 23.3.2013. That was after 113 days had elapsed from the date of delivery of the decision intended to be impugned. That was contrary to Rule 83 (2) of the Rules which requires the notice of appeal to be filed within a period of 30 days counting from the date of delivery of the decision sought to be impugned. This being the case, we agree with the applicant's advocate that because the respondent did not file any application for extension of time in which to appeal, it amounts to failure to take essential steps.

Equally strong is the allegation that the respondent inordinately delayed in serving the notice of appeal to the applicant. The said notice of appeal was served on the applicant on 6.3.2014, which was almost after one year had elapsed counting from the date of filing the notice of appeal. That was contrary to Rule 84 (1) of the Rules which require the notice of appeal to be served to the other party within a period of 14 days of its lodging in Court.

Further, the decision sought to be appealed against was a revision by the High Court in respect of the ruling of the Resident Magistrate's Court at Kisumu in Misc. Civil Cause No.2 of 2008. That being the case, the

respondent was duty bound to apply and obtain leave to appeal to the Court as contemplated by section 5 (1) (c) of the Appellate Jurisdiction Act Cap. 141 of the Revised Edition, 2002 **(the AJA)**.

In the case of **Asmin Rashid v. Boko Omari** (supra), the Court stressed that failure to apply and obtain leave in a matter where leave is required is a failure to take essential step in the prosecution of the appeal. Thus, we agree with Mr. Daniel that this ground too carries the application at hand.

Another complaint is that the respondent neither filed in the High Court nor served the applicant with a letter requesting for certified copies of proceedings and ruling of the High Court as directed by Rule 90 (2) of the Rules. This strengthens the applicant's position that the respondent failed to take essential steps in the prosecution of her appeal.

Finally is the complaint raised in Court concerning the date appearing in the notice of appeal when compared to the date appearing in the ruling

showing when it was indeed handed down. We agree with Mr. Daniel that the discrepancy entails that the notice of appeal is in respect of a non-existent decision. Since the respondent did not make efforts to rectify the error, this irregularity too amounts to failure to take essential steps.

That said and done, we find and hold that the applicant has demonstrated that the respondent failed to take the above shown essential steps. In the circumstances, the notice of appeal is struck out with costs as defended.

DATED at DAR ES SALAAM this 16th day of September, 2016.

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

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




Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL