

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MWAMBEGELE, J.A., LEVIRA, J.A. And RUMANYIKA, J.A.)**

**CIVIL APPLICATION NO. 124/16 OF 2021**

1. DOUBLE A COMPANY LIMITED  
2. AA TRANS LIMITED  
3. AKBAR BASHIR VERSI  
4. ASGHER BASHIR VERSI

} ..... APPLICANTS

**VERSUS**

**ECOBANK TANZANIA LIMITED ..... RESPONDENT**

**(Application to strike out notice of appeal from the decision of the High Court,  
at Dar es Salaam)**

**(Fikirini, J.)**

**dated the 21<sup>st</sup> day of May, 2020**

**in**

**Miscellaneous Land Application No. 612 of 2017**

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**RULING OF THE COURT**

*25<sup>th</sup> & 31<sup>st</sup> August, 2022*

**MWAMBEGELE, J.A.:**

In this application by a notice of motion taken under the provisions of rule 89 (2) of the Tanzania Court of Appeal Rules (the Rules), the applicants move the Court to strike out a notice of appeal dated 04.06.2020 lodged by the respondent. The application is supported by a joint affidavit affirmed by Akber Bashir Versi and Asgher Bashir Versi, respectively, the third and fourth

applicants. It is resisted by an affidavit in reply sworn by Deogratias William Ringia, an advocate of the High Court and courts subordinate thereto.

A brief factual background leading to the instant application is this: the respondent bank had advanced to the applicants credit facilities of Tshs. 29,854,402.93 and USD 3,856.379.09 which they defaulted to repay. The respondent thus instituted in the Commercial Division of the High Court Commercial Case No. 164 of 2018 to reclaim the loan amount. The respondent's suit was struck out with costs on a preliminary objection by the applicants.

Following the striking out of the aforesaid suit in which the respondent was the plaintiff and the applicants the defendants, the applicants filed a bill of costs for taxation. The taxing officer (Rumisha, DR) taxed it at Tshs. 17,744,176.115 and USD 168,250.5236 in favour of the applicants. The decision of the taxing officer aggrieved the respondent. She thus lodged Commercial Reference No. 2 of 2019 in the High Court to challenge it. As bad luck would have it on the part of the respondent, the reference was dismissed by Fikirini, J. (as she then was) on 21.05.2020.

Undeterred, the respondent lodged a notice of appeal on 04.06.2020 to the Court seeking to assail the decision of the High Court on the reference.

The respondent also successfully filed an application for leave to appeal to this Court. The respondent, by a letter dated 02.05.2020, also applied for certified copies of proceedings, ruling and drawn order to the Deputy Registrar of the High Court for appeal purposes.

It is the applicants' contention that the respondent was supplied with the applied for documents but has ever since not taken any step to file the intended appeal, hence the present application.

When the application was placed before us for hearing on 25.08.2022, the applicants were represented by Mr. Raphael Dismas, learned counsel and the respondent was represented by Ms. Inviolata Wangoma, also learned counsel. Both parties had earlier on filed their respective written submissions for and against the application which they sought to, and adopted as part of their oral arguments. They had very little to add to their respective written submissions.

In the written submissions in support of the application, the gravamen of the applicants' arguments is that the respondent was supplied with the documents in respect of the impugned decision on 10.06.2020 and thus she should have lodged the appeal within sixty days thereof in terms of rule 90 (1) of the Rules. The applicants are alive to the respondent's explanation

that she applied for other documents related to the impugned Civil Reference No. 2 of 2019, like proceedings in Commercial Case No. 164 of 2018 and Taxation Cause No. 33 of 2019. However, the applicants' advocate was quick to remark that the same are not relevant to the appeal and thus, he concludes, the respondent has failed to take essential steps in furtherance of the appeal.

For her part, the respondent agrees that she was supplied with some of the documents on the impugned decision but that some of the documents from which the impugned decision stemmed were not availed to her. The documents which were yet to be supplied were proceedings in respect of Commercial Case No. 164 of 2018, Taxation Cause No. 33 of 2019 and Miscellaneous Commercial Application No. 90 of 2020. The learned counsel intimated to the Court that the said documents had since been availed to them and the appeal is now in place.

We have considered the contending learned arguments by counsel for the parties. The main issue of controversy on which the two trained minds have locked horns, is whether the respondent has not taken essential steps after she was supplied with the documents in respect of the impugned decision to further the appeal.

It is no gainsaying that the respondent, having been aggrieved by the decision of Fikirini, J. (as she then was) which was handed down on 21.05.2020, she timely lodged a notice of appeal on 04.06.2020. Having done that, she timely applied for relevant documents for appeal purposes. Thereafter, the respondent filed an application for leave to appeal to the Court 09.06.2020 and leave was granted on 07.09.2020. In the meanwhile, the applicants lodged the instant application on 31.03.2021.

It is also apparent on the record placed before us that after the Deputy Registrar of the High Court availed to the respondent documents respecting the impugned decision, the respondent wrote again to the Registrar asking for other documents from which the impugned decision emanated. The letters by the respondent of diverse dates and references asking for documents in respect of Commercial Case No. 164 of 2018, Taxation Cause No. 33 of 2019 and Miscellaneous Commercial Application No. 90 of 2020 applied to be supplied with document which, in our view, were all relevant for the preparation of the appeal of the impugned decision. The respondent appended to the affidavit in reply fourteen copies of letters reminding the Registrar to supply to her the documents under reference. With profound respect, we are not prepared to go along with the applicants' counsel that the documents asked for had no bearing with the intended appeal. With

equal profound respect, we are prepared to swim the current of the respondent's counsel to the effect that the documents traced the origin of the impugned decision and therefore relevant to the intended appeal. We thus agree with the respondent's counsel that the respondent has been taking steps to further the filing of the intended appeal. It seems the applicants just rushed to lodge this application while the respondent was still taking steps in furtherance of the appeal and while the Registrar had not yet supplied her with all the documents asked for.

This application was filed without justifiable cause. We dismiss it with costs.

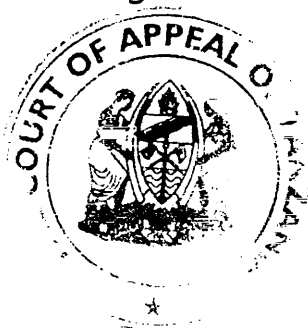
**DATED at DAR ES SALAAM** this 29<sup>th</sup> day of August, 2022.

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

M. C. LEVIRA  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The Ruling delivered this 31<sup>st</sup> day of August, 2022 in the presence of Mr. Moses Mvungi, learned counsel for the Respondent also holding brief for Mr. Dismas Raphael, learned counsel for the Applicants is hereby certified as a true copy of the original.



*F. A. Mtaranja*  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**