

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

(CORAM: JUMA, C.J., MKUYE, J.A. And WAMBALI, J.A.)

CIVIL APPEAL NO 351 OF 2019

SADALLAH IBRAHIM SADALLAH.....APPELLANT

VERSUS

1. NEMGANGA SADALLAH

2. ISAYA MPANGALA.....RESPONDENTS

(Appeal from the Ruling of the High Court of Tanzania at Dodoma)

(Hon. I. P. Kitusi, J.)

dated the 25th day of September, 2018

in

Misc. Civil Application No. 46 of 2016

RULING OF THE COURT

15th & 16th September, 2020

JUMA, C.J.:

The suit, leading up to this appeal was filed fifteen years ago in 2005, at the District Court of Dodoma (Civil Case No. 30 of 2009). The appellant, SADALLAH IBRAHIM SADALLAH, sued NEMGANGA SADALLAH (first respondent), ISAYA MPANGALA (second respondent) and two others to claim fifty million shillings of damages (Tshs. 50,000,000/=) over the

breakup of his marriage to the first respondent, Nemganga Sadallah. He also claimed a similar sum as general damages for being defamed by the respondents to that suit.

Upon the dismissal of his suit, the appellant promptly filed his first appeal, DC Civil Appeal No. 4 of 2009, in the High Court at Dodoma. On 23/02/2010 Mwangesi, J. (as he then was) dismissed that first appeal. On the same day, 23/02/2010, he lodged a notice of appeal against the decision of Mwangesi, J (as he then was). The then appellant embarked on a series of applications which culminated with the Ruling of Kitusi, J (as he then was) dated 25/9/2018 which is subject of this appeal. We propose to briefly narrate how the appellant embarked on a series of applications.

The appellant first filed Misc. Civil Application No. 13 of 2010 to seek leave to appeal to this Court against the decision of Mwangesi, J (as he then was). This application was on 25/10/2011 struck out by Kwariko, J. (as she then was) because of two fatal irregularities. The first irregularity related to the way the applicant moved the High Court by citing the repealed and non-existent Rule 43 of the Court of Appeal Rules, 1979. The second irregularity was the way the applicant filed his application for leave twenty (20) days after the dismissal of his first appeal by the High Court,

which was contrary to Rule 45 of the Tanzania Court of Appeal Rules, 2009.

The appellant then applied for extension of time to apply for leave to appeal. On 12/4/2012 Kwariko, J. (as she then was) granted the appellant an extension of fourteen (14) days within which to file his application for leave to appeal to the Court of Appeal. The application for leave which the appellant filed on 06/08/2013, was however struck out by Makuru, J. because the appellant had cited section 5(c) of the Appellate Jurisdiction Act Cap 141 (the AJA) which does not exist. The appellant should have instead cited section 5(1)(c) of this Act.

With the striking out of his application for leave to appeal to the Court of Appeal, the appellant found himself out of time in his quest for leave to appeal. He filed a fresh application, Misc. Civil Application No. 36 of 2013, for extension of time to apply for leave to appeal to this Court. This application, was dismissed on 15/09/2016 by Mohamed, J. because, instead of addressing the High Court on reasons to him grant an extension of time; the appellant had focused on the merits of the main application for leave which was not before that court.

Believing that Mohamed, J. had dismissed his application on technical grounds instead of its merits, the appellant filed yet another application for extension of time to apply for leave, Misc. Civil Application No. 46 of 2016. This application was on 25/9/2018 dismissed by Kitusi, J. (as he then was), not least on the ground that the appellant had filed that same application for a second time, an application that had earlier been heard and dismissed on merit by Mohamed, J. under the same provisions, before the same High Court.

Aggrieved with the decision of the High Court (Kitusi, J), the appellant filed his notice of appeal on 8/10/2018 and on 18/9/2020 he filed a Memorandum of Appeal containing a single ground of appeal contending:

"That, the Honorable 1st Appellate Court erred in fact and law in dismissing the Application that there was before it with costs on the ground that the same is an abuse of the court process as such denied the Appellant his right to a fair hearing."

At the hearing of this appeal on 15/09/2020, learned counsel Mr. Cheapson Luponelo Kidumage appeared for the appellant while learned counsel Rev. Kuwayawaya Stephen Kuwayawaya appeared for the

respondents. Bearing in mind that under Rule 90(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) the appellant was required to institute this appeal within sixty days of 25/09/2018 when the appellant filed his notice of appeal, we asked Mr. Kidumage to assure us whether this appeal was filed within the period of limitation prescribed under Rule 90(1) of the Rules, or it is already time barred. He conceded that counting from 25/9/2018 when the appellant filed his notice of appeal against the decision of Kitusi, J, the appellant should have thereafter filed this appeal within sixty days of this notice, that is by 25/11/2018. Instead, the appellant filed his appeal on 18/09/2019 which was more than eleven months after filing the notice of appeal.

Although the learned counsel for the appellant conceded that this appeal was filed outside the sixty days prescribed by Rule 90(1) of the Rules, still he maintained that since the appellant was busy pursuing other applications, which are relevant to this appeal, the Court should invoke Rule 4(2)(a) of the Rules to save this appeal from being declared time barred. When we pressed him to explain, how the Court can resort to Rule 4(2)(a) where Rule 90(1) already makes specific provisions governing time

within which appeals are to be filed, he finally, came around to concede that this appeal is indeed time barred.

In reply, Rev. Kuwayawaya, learned counsel for the respondent took a position that this appeal is time barred and that the appellant had made no attempt to obtain a certificate of delay issued by the Registrar of the High Court under Rule 90(1) of the Rules, which, according to the learned counsel, would have excluded the period the appellant was pursuing these other applications he alluded to.

As conceded to by the two learned counsel for the parties, this appeal was already well outside the prescribed sixty days when it was lodged on 18/09/2019. As we said earlier, Rule 4(2)(a) of the Rules cannot save a civil appeal to this Court that is already time barred. Rule 4(2)(a) states: -

"4 (2) Where it is necessary to make an order for the purposes of-

(a)-dealing with any matter for which no provision is made by these Rules or any other written law;"

The wording of Rule 4(2)(a) of the Rules only comes into play where the Court has to make an order over an issue over which there is no Rule or written law to guide it. Rule 4(2)(a) does not open doors for civil

appeals to be filed outside the sixty-days limitation period in circumstances where Rule 90(1) of the Rules already prescribes. Rule 90(1) states:

*"90-(1) 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** with*

(a) ...

(b) ...

(c) ...

Save that where an application for a copy of the proceeding in the High Court has been made within thirty days of the date of the decision against which it is designed 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." [Emphasis is added].

With the period of limitation for lodging civil appeals in this Court so clearly provided for by Rule 90(1) of the Rules, the fact that the appellant was busy pursuing other applications relevant to this appeal cannot

suspend the period within which appellants are required to lodge their appeals and conditions to be met if the intended appeal is to be filed outside the prescribed period of sixty days.

This purported appeal is a classic example of an appeal being time barred because of the learned counsel's failure to follow the procedures and conditions leading up to the filing of record of appeal, which have been expounded in so many decisions of the Court. One such decision is **MENEJA MKUU ZANZIBAR RESORT LIMITED V. ALI SAID PARAMANA**, CIVIL APPEAL NO. 263 OF 2017 (unreported) where the Court expounded the parameters of Rule 90(1) (2) as follows:

*"...[Rule 90] requires among other things the appeal to be instituted within 60 days after the notice of appeal is lodged: Also, according to 'the proviso thereto; the party is required to apply for copy of proceedings within thirty days from when the decision sought to be appealed against is delivered. The Registrar of the High Court is, also required to issue a certificate excluding **the number of days required for the preparation and delivery of documents applied by the appellant**. Sub rule (2) of the said Rule adds two conditions for one to benefit from this Rule in that the application for*

the supply of documents must be in writing and be copied to the respondent...”

Based on the foregoing, this purported appeal is time-barred. We have no other recourse other than to strike it out. We accordingly strike out this incompetent appeal without any order as to costs.

DATED at DODOMA this 16th day of September, 2020.


I. H. JUMA
CHIEF JUSTICE

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

The Ruling delivered this 16th day of September, 2020 in the presence of Mr. Lucas Komba who is holding brief for Mr. Cheapson Luponelo Kidumage for the Appellant and Mr. Kuwayawaya Stephen Kuwayawaya for the Respondents is hereby certified as a true copy of the original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL