

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LUANDA, J.A., MUSSA, J.A. And MUGASHA, J.A.)

CIVIL APPEAL NO. 70 OF 2005

1. HENRY EZEKIEL ARON CHANI MBANGA
2. NEWTON PAMBE YA MWAUPINA KYANDO }APPELLANTS
3. KALA CHANI MBAGA }

VERSUS

1. TANZANIA POSTAL BANK
2. THE LOANS AND ADVOCANCES REALISATION TRUST }RESPONDENTS
3. G.T. MWAMANGA RECEIVER MANAGER CECK LTD }

(Appeal from the Judgment of the Court Loans Recovery Tribunal

at Dar es Salaam.)

(Rutakangwa, J.)

dated the 3th day of May, 2005

in

Tribunal Case No. 9 of 2004

RULING OF THE COURT

8th & 22nd February, 2017

MUSSA, J.A.:

The appellants are aggrieved by the decision of the defunct Lart Loans Recovery Tribunal (the Tribunal) which was pronounced on the 3rd May, 2005. They are presently seeking to impugn the decision through a memorandum of appeal which is comprised of four (4) points of grievance.

At the hearing of the appeal before us, the appellants entered appearance through Mr. Jerome Msemwa, learned Advocate, whereas Mr.

Julius Kalolo Bundala stood for the first respondent. The second and third respondents had the services of two Law Officers, namely, Mr. Vicent Tango, learned Principal State Attorney and Ms. Grace Mbunda, learned State Attorney.

At the very outset, Mr. Msemwa sought our leave to withdraw from the conduct of the appeal on account of poor communication with his clients. Nonetheless, since he was the one who compiled and lodged the record and memorandum of appeal, we required him to first comment on whether or not the appeal was lodged in time.

In response, Mr. Msemwa hesitated long before he, eventually, acknowledged that when reckoned from the days excluded in the certificate of delay, the record of appeal was, seemingly, lodged beyond the required sixty (60) days. The learned counsel, however, doubted the correctness of the certificate of delay, the more so as according to it, only four (4) days were excluded as having been required for the preparation and delivery of the copy of the Ruling which, to him, is unprecedented.

For his part Mr. Bundala had nothing to contribute on the issue but Mr. Tango submitted that the appeal is time barred and urged that on account of the shortcoming, the appeal should be dismissed. The learned Principal

State Attorney promised to avail an authority which supports his proposition to the effect that a time barred appeal is amenable to a dismissal rather than being struck out. Unfortunately, Mr. Tango did not fulfil his promise. In this regard, Mr. Msemwa rejoined that the established practice of the Court has been to strike out and not to dismiss matters which are time barred.

For a better appreciation of the gist of our concern on the competency of this appeal, we deem it instructive to unfold the chronology of the events that preceded the filing of the record and memorandum of appeal.

As already intimated, the decision which is desired to be impugned was pronounced on the 3rd May, 2005 and, in the immediate aftermath, the appellants duly filed a Notice of Appeal and requested the Registrar of the Tribunal to supply them with a certified copy of the decision for appeal purposes.

The certified copy of the Ruling of the Tribunal was supplied to the appellant on the 6th May, 2005. It is upon record that Mr. Msemwa, who was advocating for the appellants at the Tribunal, acknowledged receipt of the Ruling on the 6th May, 2005 in a letter dated the 4th July 2005 through which he requested the Tribunal Registrar to issue a certificate of delay pursuant to Rule 83(1) of the old Court of Appeal rules, 1979 (the old Rules)

that were in force at the material time. The certificate of delay was duly issued by the Registrar according to which the period from the 3rd to 6th May, 2005 when the appellants, respectively, applied for a copy of the Ruling and when the same was supplied was to be excluded in computing the time within which the appeal was to be instituted. Again, it is upon record that having obtained the Ruling and the certificate of delay, the appellant lodged the record and memorandum of appeal on the 8th July, 2005. As hinted upon, the issue of our concern is whether or not the appeal was filed within the sixty (60) days which were required by Rule 83(1) of the old Rules.

Addressing the issue, it is noteworthy that the Ruling of the Tribunal was expeditiously prepared and issued to the appellants. To us, such was a commendable disposal by the Registrar of the Tribunal and, from where we are standing, we find no cause to doubt the correctness of the certificate of delay simply because the Ruling of the Tribunal was expeditiously issued. Incidentally, Mr. Msemwa's query on the genuineness of what is posted in the certificate of delay is frowned by his own written acknowledgement to the Registrar to the effect that the Ruling was received on the 6th May, 2005.

All said, we are of the settled view that when reckoned from the 7th May, 2005 the memorandum and record of appeal ought to have been filed

latest on the 5th July, 2007. Filed as it was on the 8th July 2007, the record of appeal was lodged beyond the required sixty (60) days. In the result, this appeal is incompetent for being filed out of time and going by the established practice of this Court we, accordingly, strike it out. As the issue of incompetence was raised by the Court *suo motu*, we give no order as to costs.


DATED at DAR ES SALAAM this 17th day of February, 2017

B.M. LUANDA
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

S.E.A. MUGASHA
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL

