

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

(CORAM: LUBUVA, J.A; MROSO, J.A. And NSEKELA, J.A.)

CIVIL APPEAL NO. 82 OF 2001

BETWEEN

PAUL MGANA APPELLANT

And

**THE MANAGING DIRECTOR TANZANIA
COFFEE BOARD RESPONDENT**

**(Appeal from the Ruling and Order of the
High Court of Tanzania
At Moshi)**

(Munuo, J.)

**dated 5th day of June, 2000
in
Civil Revision No.5 of 2000**

REASONS FOR THE RULING OF THE COURT

LUBUVA, J.A.:

In this appeal the Managing Director, Tanzania Coffee Board, the respondent, is appealing against the decision of the High Court

Munuo, J. (as she then was) in High Court Civil Revision No. 5 of 2000 of 5.6.2000. On 13.5.2003, when the appeal came on for hearing Mr. Jonathan, learned Counsel for the respondent, raised a preliminary objection notice of which he had duly given in terms of rule 100 of the Court Rules (hereinafter referred to as the Rules.). After hearing submissions by Mr. Jonathan and the appellant on the preliminary objection, we sustained the preliminary objection and struck out the appeal. The reasons were reserved which we are now set to give.

The essence of the preliminary objection was that the appeal was instituted out of time, it should be struck out it being incompetent. According to Mr. Jonathan, after the decision of the High Court on 5.6.2000, the notice of intention to appeal was filed on 14.6.2000. On 19.6.2000, the appellant wrote a letter to the Registrar, High Court applying for a copy of the ruling and proceedings in the High Court. This letter not only was copied to the respondent but was not received by the respondent. For this reason, in terms of the provisions of rule 83(1) of the Rules, the appeal

should have been instituted within sixty day's of the date when the notice of appeal was lodged i.e. 14.6.2000. As the letter of 19.6.2000, was not copied to the respondent the appeal which was instituted on 24.9.2001 was hopelessly out of time. The reason was that because of the appellant's failure to send a copy of the letter to the respondent, the exception to sub rule (1) of rule 83 cannot be relied on by the appellant.

Responding to these submissions, the appellant who was not represented by counsel, ardently maintained that the appeal was timeous on account of the following reasons. First, that he is a layman not conversant with the legal technicalities. Second, that even though it was not indicated in the letter of 19.6.2000 that it was copied to the respondent, he sent a copy of it to the respondent through the postal address of the respondent. When pressed by the Court on the evidence in support of his claim that the respondent had received a copy of the letter, he conceded that he had no such evidence. Third, that his case, subject of this appeal, involves a constitutional right in which case procedural rules should not be used

to thwart justice against him. In support of this submission, he referred to the decision of this Court in The Judge Incharge High Court Arusha Versus N.I.N. Munuo Ng'uni, Civil Appeal No. 45 of 1998 (unreported).

As the appellant also conceded, the letter of 19.6.2000 to the Registrar High Court, applying for a copy of the ruling and proceedings in the High Court was neither copied to the respondent nor was there proof it was sent and received by the respondent. In that light, the issue is straight forward, namely whether the appeal was instituted within the time prescribed under rule 83 (1) which provides as follows:

83 (1) - Subject to the provisions of Rule 122, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged.

The exception to this sub-rule reads:

Save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired 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.

In order for the appellant to rely on the exception to sub-rule (1) above, sub-rule (2) of Rule 83 states:

An appellant shall not be entitled to rely on the exception to sub-rule (1) unless his

application for the copy was in writing and a copy of it was sent to the respondent.

In this case, the letter of 19.6.2000, to the Registrar is of no avail to the appellant for the reason that it was not copied to the respondent. Furthermore, there is no evidence to support the appellant's claim that a copy of the letter was served on the respondent. In that case, as the appellant is not entitled to take advantage of the exception to sub-rule (1) of Rule 83, the appeal should have been instituted within 60 days from 14.6.2000, when the notice of appeal was lodged. That is, at the latest by 3.8.2000, the appeal should have been filed. Instead, the appeal was filed on 24.9.2001, about a year later. The appellant's plea that he should be excused for his failure to comply with Rule 83 (1) because he is a layman is devoid of any merit. There is no exception under the rule providing otherwise for laypersons. It is common knowledge that rules of procedure being the handmaids of justice, should be complied with by each and every body, laymen inclusive who come to the court to seek justice. We do not think that the case of Munuo

Ng'uni cited above by the appellant is of any assistance to the appellant in this case. In that case this Court had occasion to state inter alia:

It is trite law that procedural irregularity should not vitiate proceedings if no injustice has been occasioned.

In this case, unlike in Munuo Ng'uni (supra) it is not a question of a mere procedural irregularity, it is a matter of non-compliance with the requirement of Rule 83 (1) which goes to the substance or root of the matter. Whether the case involved a constitutional right as the appellant urged or not, so long as the provisions of Rule 83 (1) are mandatory going to the root of the matter, there is no way in which the appellant could be exempted from complying with the rule. Moreover, it is also to be observed that the Court's view on the provisions of Rule 83 (1) is not peculiar to the appellant's case. In a number of other similar cases, the Court has held similar view regarding the mandatory requirement of rule 83(1) for copying the

letter to the respondent. For instance, in Transcontinental Forwarders Limited Versus Tanganyika Motors Limited [1997] TLR 328, an application was made for striking out the notice of appeal on the ground that Rule 83 (1) had not been complied with. However it was shown that the appellant had copied the letter to the parties including the respondent. Dismissing the application, the Court stated inter alia:

That the present respondent, who had applied to the Registry for a copy of the proceedings sought to be appealed against and had not been furnished with any, had complied with the Rules by copying his letter to the relevant parties – there was no legal provision requiring him to keep reminding the Registry to forward the proceedings and once Rule 83 was complied with the intending applicant was home and dry. (emphasis supplied)

The important point to underscore in Transport Forwarders (supra) is that because a copy of the letter to the Registrar had been copied to the respondent Rule 83 (1) had been complied with. Otherwise, for failure to copy the letter to the respondent, among other reasons, the application to strike out the notice of appeal would be granted.

In yet another case, Francis Itengeja Versus Kampuni ya Kusindika Mafuta Limited [1997] TLR 148, an application was made for striking out notice of appeal for failure to lodge the appeal within 60 days of the date of notice of appeal in terms of Rule 83 (1). The Court among other things, said:

The net result, therefore, is that the respondent has failed to prove the allegation that the two documents i.e. a copy of the notice of appeal and copy of the letter to the Registrar applying for the proceedings of the case, were duly served on the applicant or his

counsel. Since there has been no application for extension of time to serve these documents on the applicant, the present application must succeed.

In the event, as we were satisfied that the appellant had not complied with the mandatory requirement of the provisions of Rule 83 (1), we upheld the preliminary objection and struck out the appeal. We made no order as to costs.

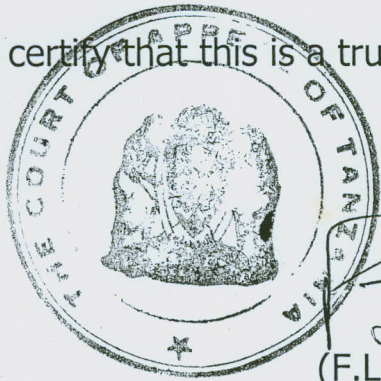
Dated at Arusha this 16th day of May, 2003.

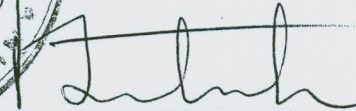
D.Z. LUBUVA
JUSTICE OF APPEAL

J.A. MROSO
JUSTICE OF APPEAL

H.R. NSEKELA
JUSTICE OF APPEAL

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




(F.L.K. WAMBALI)

DEPUTY REGISTRAR