

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: NDIKA, J.A., KWARIKO, J.A., And SEHEL, J.A.)

CIVIL APPEAL NO. 73 OF 2016

**JUMA MARUMBO, MAULIDI FUNDI, AISHA SARIKO
ASHA MUHAGAMA AND 99 OTHERS** }APPELLANTS

VERSUS

**1. REGIONAL COMMISSIONER,
DAR ES SALAAM REGION
2. DISTRICT EXECUTIVE DIRECTOR,
ILALA MUNICIPAL COUNCIL
3. ATTORNEY GENERAL** }RESPONDENTS

(Appeal from the Judgment and Decree of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam)

(Muruke, J.)

dated the 22nd day of February, 2016

in

Land Case No. 151 of 2012

RULING OF THE COURT

26th May & 3rd June, 2021

KWARIKO, J.A.:

This appeal emanates from the decision of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam (Muruke, J) in Land Case No 151 of 2012 dated 22nd February, 2016.

The appeal was called on for hearing on 26th May, 2021, where the first, third and fourth appellants appeared while the rest of the appellants did not appear though they were duly served with the notice of hearing. On the other hand, the respondents were represented by Mses. Alice Mtulo and Flora

Luhala, learned Senior State Attorneys together with Ms. Lilian Machage, learned State Attorney.

At the outset, the third and fourth appellants informed the Court that they were satisfied with the decision of the High Court. As such, they prayed to withdraw their respective appeals. The respondents' counsel did not oppose this prayer and we accordingly marked the appeal by the third and fourth appellants withdrawn in terms of Rule 102 (1) of the Tanzania Court of Appeal Rules, 2009 (henceforth "the Rules").

For her part, Ms. Mtulo informed the Court that, the appellants have not complied with the court order dated 30th July, 2019 which granted them leave to lodge a supplementary record of appeal within sixty days from that date to include omitted page 60 of the trial court's judgment and names of all appellants in the notice of appeal.

The learned Senior State Attorney argued further that, in terms of Rule 96 (8) of the Rules the appellants are precluded from applying for another leave to lodge a supplementary record of appeal. She thus argued that the absence of the said documents makes the record of appeal incomplete which renders the appeal incompetent. She urged us to strike it out.

On the other hand, the first appellant argued that the appellants complied with the court order dated 30th July, 2019 and lodged documents involving 43 appellants a copy of which was served on the respondents by their advocate, Mr. Leonard Manyama.

In rejoinder, Ms. Mtulo reiterated her earlier submission. She added that the alleged 43 persons were involved in Civil Application No. 242 of 2016 between **Juma Marumbo & 42 Others v. Regional Commissioner, Dar es Salaam & Two Others**, for stay of execution which was determined by Mwarija, JA, on 31st October, 2016.

We have considered the submissions by the parties and now we are enjoined to decide whether the appellants have complied with the court order dated 30th July, 2019 which granted them leave to lodge a supplementary record of appeal. Before that order was made, the Court was satisfied that the record of appeal was incomplete that is why it granted leave under Rule 96 (7) of the Rules for the appellants to lodge a supplementary record of appeal. The intention of that provision was to give effect to the overriding objective enshrined under section 3A (1) (c) of the Appellate Jurisdiction Act [CAP 141 R. E. 2019] and rule 2 of the Rules to ensure and achieve substantive justice and timely dispensation of justice. Otherwise, the appeal would have been rendered incompetent deserving to be struck out.

We have inspected the court record and we agree with the learned Senior State Attorney that the appellants have not lodged the supplementary record of appeal pursuant to the court order. This means that, the first appellant's argument that they have complied with the court order is untrue. It follows therefore that, since the appellants have not complied with the court order to lodge a supplementary record of appeal, it renders the record of appeal incomplete which makes the appeal incompetent. Further, the appellants' failure to comply with the aforesaid order precludes them from applying for another leave to lodge a supplementary record of appeal. This bar is provided under rule 96 (8) of the Rules thus:

"Where leave to file a supplementary record under subrule (7), has been granted, the Court shall not entertain any similar application on the same matter."

In the case of **Puma Energy Tanzania Limited v. Ruby Roadways (T) Limited**, Civil Appeal No. 3 Of 2018 (unreported), leave was sought for the appellant to lodge a second set of supplementary record of appeal where the Court had this to say:

"We wish to recap that considering that the Court had granted the appellant leave to lodge a supplementary record to cure the defects in the record of appeal, rule

96 (8) of the Rules prohibits us to invoke rule 96 (7) yet again."

See also the cases of **Nakomolwa Matepeli Shila v. Mwanahamisi Ally Nongwa [Legal Representative of Kidawa Seif (Deceased)]**, Civil Appeal No. 21 of 2016 and **Blue Pearl Hotel & Apartment v. Ubungo Plaza Limited**, Civil Appeal No. 78 of 2017 (both unreported).

In the event, since the record of appeal is incomplete, it renders the appeal incompetent. As a result, we strike out the appeal for being incompetent. We make no order as to costs.

DATED at DAR ES SALAAM this 1st day of June, 2021.



G. A. M. NDIKA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

This Ruling delivered this 3rd day of June, 2021 in the absence for the appellants despite being informed through 1st appellant and Ms. Lilian Machage, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.


E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL