



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



**ARUSHA BLOOMS LIMITED (UNDER RECEIVERSHIP) AND
ANOTHER v. TIB DEVELOPMENT BANK LIMITED AND
TWO OTHERS
COURT OF APPEAL OF TANZANIA**

AT ARUSHA

(LILA. J.A. RUMANYIKA, A. And MANSOOR J.A.)

CIVIL APPEAL NO. 154 of 2015

(Appeal from the Ruling and Drawn Order of the High Court of Tanzania at Dar es Salaam delivered by Mlyambina. J dated the 31st day of October, 2019 in Misc. Civil Cause No. 809 of 2018)

Civil procedure and practice – when the court is confronted with a novel situation of the existence of two orders in the same court record showing different dates of delivery of a ruling on extension of time. Which one should be relied on?

The Appellants filed a petition in the High Court seeking, among other reliefs, a referral of their dispute with TIB Development Bank Limited to arbitration and a preservation order over their farm property. The High Court dismissed the petition, partly on the basis that the preservation order had become moot after the bank validly auctioned the property and obtained a certificate of sale. Dissatisfied, the Appellants appealed to the Court of Appeal.

Before the appeal hearing, the Respondents' Counsel obtained leave under Rule 4(2)(b) of the Tanzania Court of Appeal Rules, 2009 to raise a point that could render the appeal time-barred. The Respondents argued that the High Court's decision was delivered on 31/10/2019, and although the Appellants were granted an extension of 15 days to file a notice of appeal, there was a discrepancy in the record.

Two High Court orders showed different dates for the delivery of the ruling by Deputy Registrar S. B. Fimbo: one order indicated 15/11/2023 and the other 30/11/2023. If the 15-day period is reckoned from 15/11/2023, the notice of appeal filed on 6/12/2023 would be six days late, making the appeal time-barred. If reckoned from 30/11/2023, the notice of appeal falls within the 15-day limit, rendering the appeal timely.

The Respondents urged the Court to consider the 30/11/2023 order as correct, as it is supported by a drawn order showing the ruling date and the parties present, which the 15/11/2023 order



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lacks. They contended that the discrepancy is a technicality and urged the Court to proceed to hear the appeal on its merits.

Held:

- (i) There is a clear confusion regarding the correct date of the High Court ruling, which directly affects the calculation of the time limit for filing the notice of appeal. This uncertainty makes it difficult for the Court to determine whether the notice of appeal and consequently the appeal itself was filed within the prescribed time or is time-barred.
- (ii) The Appellant, ought to have rectified the record by seeking correction of the error in terms of section 96 of the Civil Procedure Act, Cap. 33.
- (iii) The Court directs the parties, especially the Appellants, to resolve the anomaly with the High Court using proper legal procedures and then file a supplementary record of appeal containing the correct High Court order so that the appeal can subsequently be heard on its merits.

The hearing of the Appeal was adjourned until the anomaly is resolved

Statutory provisions referred to

- (i) Section 96 of the Civil Procedure Act, Cap. 33
- (ii) Rules 83(2) and 10 of the Court of Appeal Rules
- (iii) Section 11(1) of the Appellate Jurisdiction Act, Cap. 141

Case Laws

- (i) China Henan International Cooperation Group v Salvand K. A. Rwegasira, Civil Reference No. 22 of 2005 (unreported).
- (ii) Zuberi Musa v Shinyanga Town Council, Civil Application No. 100 of 2004 (unreported)

Mr. Samweli Lawrence Kimaro, counsel for the Appellants

Ms. Angelina Ruhumbika, State Attorney for the 1st Respondent.