



**EDWARD JAPHET MBANGALA AND ANOTHER v. TENENDE
MWAKAGILE**

COURT OF APPEAL OF TANZANIA

AT IRINGA

(MKUYE, KIHWELO and MGEYEKWA, JJ. A)

CIVIL APPEAL NO. 415 OF 2020

(Appeal from the decision of the High Court of Tanzania at Iringa, before Shangali, J dated the 11th November, 2016 in Land Application No. 08 of 2015)

Civil Procedure and Practice- Appeal -- competence of the Appeal- Whether an appeal was lodged within the permissible time frame.

Civil Procedure and Practice-Service of letter to request a copy of proceedings-whether failure to serve the required letter renders an appeal incompetent.

The dispute concerns ownership of Plots No. 337 and 338, Block "Z" in Mjimwema, Njombe region. The respondent had purchased the land from the wife of the deceased at the time the same land was sold to the second appellant by an administrator of the estate.

The District Land and Housing Tribunal (DLHT) ruled in favor of the second appellant, declaring him the legal owner. The respondent appealed to the High Court, which overturned the DLHT's decision in an ex parte judgment, declaring the respondent the lawful owner. The appellants' attempt to set aside the ex parte judgment was unsuccessful hence this appeal.

In their subsequent appeal, the appellants failed to serve the notice of appeal and other required documents to the respondent within the prescribed time under Rule 84(1) and Rule 90(3) of the Court of Appeal Rules. Consequently, the appeal was deemed incompetent.

Held:



- (i) The period to appeal starts to run from the date when the appellants lodged the notice of appeal, in the instant appeal, the notice of appeal was lodged on 16th November 2016 and the appeal was filed on 20th May, 2020.
- (ii) Since the Appellant failed to serve the letter which requested necessary documents to appeal as per proviso to Rule 90(1) of the Rules, therefore Appellant cannot seek to benefit from the exclusion of time beyond sixty days (60) from appealing. Henceforth, the instant appeal violates Rule 90(1) of the Rules for being delayed more than three (3) years.

The appeal is strike out

Statutory provisions referred to:

- (i) The Court of Appeal Rules, 2009 under rules Rule 90(1)(3), 84 (1).
- (ii) Appellate Jurisdiction Act, Cap 141 R.E. 2019 (the AJA) under section 4(4).

Case referred

- (iii) Victoria Mbowe v. Christopher Shafurael Mbowe & 10 Another, Civil Appeal No. 115 of 2012, [2016] TZCA 847 (22 July 2016, TanzLII)
- (iv) George Mwanyingili v. The Director of Public Prosecutions, Criminal Application No. 27/6 of 2019 (unreported).
- (v) Wilfred Lwakatare v. Hamis Kagasheki and another, Civil Appeal No. 118 of 2011
- (vi) National Bank of Commerce Limited and Steven R. K. Shiletwa v. Ballast Construction Company Limited, Civil Appeal No. 72 of 2017
- (vii) Juma Busiya v. Zonal Manager, South Tanzania Corporation, Civil Appeal No. 273 of 2020

1st Appellant, Abated

2nd Appellant, Absent, proceed exparte.

Mr. Jally Mongo holding the brief of Mr. Erick Nyato, for the Respondent.