

TANZANIA / JUDGMENT

20100419 TZCA Dar es Salaam

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19 April 2010

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I'N THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (CORAM: MBAROUK, J, A, LUANDA, J, A, And MANDIA, J, A.) CIVIL REFERENCE NO. 20 OF 2008 HASSAN JAMBIA APPLICANT VERSUS TANZANIA ELECTRIC CO ~ RESPONDENT (Reference from the Ruling of the Court of Appeal of Tanzania at Dar es Salaam) (Mjasiri, J.A) dated the 10th day of October, 2008 in Civil Application No. 97 of 2008 RULING OF THE COURT 23 rd March, & 19th April, 2010 MBAROUK, J.A. On 10.10.2008, the applicant's application in Civil Application No. 97 of 2008 was dismissed before a single Judge (Mjasiri, J.A). The application was made under Rule 82 of the Court of Appeal Rules, 1979. Dissatisfied with the decision of the single Judge, the applicant has instituted this reference on 21.10.2008. At the hearing, Mr. Godfrey Ukwong'a, learned advocate for the applicant submitted that their major area of complain is to the effect . . , 2 that, the single Judge erred when she dismissed their application. The thrust of Mr. Ukwong'a's point of complaint is that, the Respondent has not taken the essential steps in the proceedings. According to Mr. Ukwong'a, the Notice of Appeal makes reference to a "ruling" of Mihayo, J. and not a "judgment". Furthermore, he submitted that a letter to the Registrar requesting for copies of the proceedings is making reference to a "civil application" not a "Civil Appeal." He contended that, making reference to a "ruling" instead of a "judgment" and an "application" instead of an "appeal" is very confusing and misleading to the court. In support of his submission, Mr. Ukwong'a cited the case of Atlantic Electric Limited v. Morogoro Region Cooperative Union (1984) Limited [1993] TLR 12 and Asumen Rashid v Boko Omari [1997] TLR 146. He then urged the Court to find that there is no proper Notice of Appeal against the judgment of Mihayo, J., also no proper letter of applying copies of proceedings was filed. He associated those errors as the essential steps not taken by the Respondent in filing his appeal under Rule 82 of the Court of Appeal Rules, 1979. 3 Mr. Ukwong'a then prayed for the reference to be allowed with costs. On his part, Mr. Jamhuri Johnson, learned advocate for the Respondent, submitted that he does not see any problem with the findings of the single Judge. He said, the omissions found in the Notice of Appeal cannot warrant the striking out of the Notice of Appeal, because they were covered in the respondent's counter affidavit dated 22.8.2008. Whereas the errors found in the letter applying for copies of proceedings are mere typographical errors. He urged us to invoke Rule 3(2) (b) of the Court of Appeal Rules, 1979 to cure the error. Even though Mr. Johnson has not clearly stated, but it seems he distinguished the cases cited by Mr. Ukwong'a. As to the decision in Atlantic Electric Limited (supra).Mr. Johnson said it was properly decided according to the facts in that case. The same applies to the case of

Asumen Rashid (supra). 4 Mr. Johnson further submitted that all the requirements in Rule 82 of the Court of Appeal Rules, 1979 have been complied with. In the event, he prayed for the dismissal of this Reference. Taking the background to this Reference, the applicant moved this Court before a single Judge to invoke Rule 82 of the Court of Appeal Rules, 1979 (the Rules) to strike out the Notice of Appeal filed by the Respondent for not taking necessary steps towards instituting the appeal. Whereas Rule 82 states as follows:- "A person on whom a notice of appeal has been served may at any time either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time." 5 Our interpretation to Rule 82 of the Rules is that, there are two main grounds for striking out the notice of appeal under that Rule, namely:-

- (1) That no appeal lies;
- (2) That some essential step in the proceedings has not been taken or has not been taken within the prescribed time. As clearly stated in the ruling of a single Judge that no sufficient ground has been advanced to justify the exercise of this Court's power to invoke Rule 82 to strike out the Notice of Appeal filed by the Respondent. To substantiate her decision, the single Judge stated the following in her ruling: "In this case the Respondent, who was dissatisfied with the High Court decision sought to appeal to this Court and duly lodged a Notice of Appeal in time. It also wrote in time to the Registrar of the High Court to be furnished with a copy of the proceedings, the letter was duly copied to the applicant. The said letter made reference to a 6 Judgment. The reference to the application was only in the caption. Leave to appeal to the High Court was also made." The question to ask ourselves is whether the grounds stated in Rule 82 of the Rules leading to the striking out of the Notice of Appeal surface in this Reference. As on the first ground that no appeal lies, there is no doubt that Mihayo, J. decision/judgment is appellable. We are of the considered opinion that the 1st ground stated in Rule 82 does not apply in this case leading to the Respondent's Notice of Appeal to be struck out. Secondly, as on whether some essential step in the proceedings has not been taken, we are of the opinion that both parties in this Reference agree that essential step to file the Notice of Appeal has been taken by the Respondent. However, what is in dispute is the error found in the Notice of Appeal as stated earlier. This Court defined the term "failure to take essential step" in an appeal in the case of CRDB Bank Limited V.G.M. Kilindu, Civil Application No. 81 of 2005 (unreported) by stating that: 7 "Essential steps are mainly those which are aimed at eventually meeting the requirements of Rule 89. Any step towards that end, like compliance with Rule 77 and 83 Just to mention a few rules, would be essential step in the proceedings. " We are of the opinion that the errors specified by Mr. Ukwong'a did not in anyway affect the essential steps in the proceedings as defined in the case of CRDB Bank Limited (supra). Reference to the word "ruling" instead of "judgment" found in the Notice of Appeal was a mere slip of the pen, and cannot in any way be taken as non compliance to Rule 82 of the Rules. The Notice of Appeal refers to a decision which all the parties are aware of being the judgment of Mihayo, J. in High Court Civil Appeal No. 6 of 2004. Even the Respondent's letter to the Registrar applying for copies of proceedings makes reference to

the judgment, save for the title referred to in that letter. Apart from all that, the Notice of Appeal and the letter to the Registrar show that the parties are the same and even the case number is the same. All in all, we are of the considered 8 opinion that no miscarriage of justice has been occasioned on the part of the applicant. We see nothing convincing to show that the respondent has failed to take any of the essential steps stated in Rule 82 of the Court of Appeal Rules, 1979 and defined in the case of CRDB Bank Limited (supra). In the event, and for the foregoing reasons, we see no basis to disturb the decision of the learned single Judge. In the upshot, we accordingly dismiss the reference with costs. DATED at DAR ES SALAAM this 26th day of March, 2010 M.S. MBAROUK JUSTICE OF APPEAL B.M. LUANDA JUSTICE OF APPEAL W.S. MANDIA JUSTICE OF APPEAL hat this is a true copy of the original. ' _ I CJ=~· (J.S. Mgetta) I DEPUTY REGISTRAR

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Prepared on 23 October 2026 · Esheria