

TANZANIA / JUDGMENT

CIVIL APPEAL NO 98 OF 2024

AMSONS INDUSTRIES T LIMITED VS PARDEEP SING HANS AND 3 OTHERS

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM fCORAM: MKUYE. 3.A..
MWAMPASHI. 3.A. And NGWEMBE. 3 J U CIVIL APPEAL NO. 98 OF 2024 AMSONS INDUSTRIES
(T) L T D APPELLANT VERSUS PARDEEP SING
HANS 1st RESPONDENT MEREY ALLY
SALEH 2nd RESPONDENT ISLAM ALLY S A LE
H 3 rd RESPONDENT DAR ES SALAAM CEMENT CO. L T
D 4th RESPONDENT (Appeal from the decision of the High Court of
Tanzania at Dar es Salaam) (Mruma. 3.) dated the 17th day of February, 2023 in Land Case No. 34
of 2016 RULING OF THE COURT 23rd October & 1st November, 2024 NGWEMBE. JA.: This ruling
emanates from the preliminary objection raised by the first respondent contending that the
record of appeal comprise a certificate of delay which was wrongly procured and the second
ground of objection is based on time limitation. A brief recap of the genesis of this appeal traces
from the shareholding of Dar es Salaam Cement Company Ltd (4th respondent) in respect of
plots 62 - 64, in CT No. 29787 located at Mbagala Industrial Area. The first, second and third
respondents (1st, 2nd & 3rd) were shareholders and directors of the 4th respondent and the plot
in question was among the assets owned by the company. The dispute arose when the suit plots
were sold by the 2nd, 3rd and 4th respondents to the appellant without consultation or
notification to the 1st respondent as a co-shareholder. Consequently, the 1st respondent sued
them to the High Court in Land Case No. 34 of 2016, wherein he sought for nullification of the
sale and repayment of the money he had paid for shares and other dues in the company. The
decision of the High Court was in favour of the 1st respondent. Therefore, the sale and transfer of
the suit plots were nullified with several other orders in favour of the 1st respondent. The
appellant herein was aggrieved by the judgment and decree of the High Court, hence this appeal.
Prior to the lodgement of the appeal, the appellant on 22nd February, 2023 requested for certified
judgment, decree and proceedings of the High Court with a view to lodge an appeal. Equally, on
9th March, 2023, the appellant filed a notice of appeal. The learned Registrar of the High Court,
responded to the request by a letter dated 28th August, 2023 and invited the appellant to collect
the requested certified documents. The Registrar also issued a certificate of delay on the same

date. However, according to the appellant's letter dated 20th October, 2023, the proceedings of the High Court had a missing page, which was thus, requested to be supplied. The letter was followed by another letter dated 6th November 2023 requesting for a new certificate of delay with reflection that the missing page was obtained on 23rd October, 2023. Despite the indication that the appellant had received the said missing page on 23rd October, 2023, the learned Registrar of the High Court, on 17th January, 2024, issued a letter inviting the appellant to collect the said missing page together with a certificate of delay which excluded the days from 8th March, 2023 to 17th January, 2024, an aggregate of 314 days. Due to the existence of two certificates of delay, that is, one dated 28th August, 2023 and another on 17th January, 2024, the 1st respondent came up with the preliminary objection based on two points of objections, reproduced hereunder:

- a) That the certificate of delay issued to the advocates for the appellant dated 17th January 2024 was wrongly procured as there were no pending proceedings that were supplied to the appellant on that date as per the letter of the Deputy Registrar of the High Court bearing the same date of 17th January, 2024. That certificate of delay is part of the record of appeal and the supplementary record.
- b) That the appeal is incompetent as it was lodged out of time beyond the statutory period of sixty days from 26 August 2023 when the appellant was called upon to collect the necessary documents and as per the certificate of delay dated 28th August 2023. At the hearing, the appellant was represented by Messrs. Seni Songwe Malimi, Alex Gaithan Mgongotwa and James Andrew Bwana, learned advocates, Mr. Joseph Rutabingwa assisted by Mr. Evodius Rutabingwa learned advocates, entered appearance for the 1st respondent, while the 2nd, 3rd and 4th respondents did not enter appearance in Court though were served with Court summons on 2nd September, 2024 through their advocate Tan Africa Law Chambers. After a brief deliberation, the Court invoked rule 112 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules) to proceed with hearing of the preliminary objection in the absence of the rest of the respondents. Mr. Rutabingwa, argued the preliminary objection by narration as briefed above. That, the record of appeal comprises a certificate of delay which was wrongly procured and improperly issued by the learned Registrar of the High Court. He challenged the certificate of delay which was dated 17th January, 2024 and its letter that, they were wrongly procured and should be expunged. Mr. Rutabingwa justified his argument by referring the Court to the previous certificate of delay issued on 28th August, 2023 which was still subsisting. Therefore, he implored the Court to dismiss the appeal for improper records. In response, Mr. Bwana resisted the prayer by arguing that, there is only one certificate of delay issued by the learned Registrar on 17th January, 2024 which was the basis of the instant record of appeal. He contended that the certificate of delay dated 28th August, 2023 could not allow the appellant to lodge an appeal because of the missing page of the High Court's proceedings. Therefore, by necessary implication, that certificate was waived as inoperative to support the lodgement of the appeal. He insisted that the documents for Court use must be obtained from a recognized source. The authentic source of record for Court use is the High Court. Therefore, he urged the Court to find the record of appeal are only those obtained from the High Court. He insisted that the proper certificate of delay was

the one dated 17th January, 2024. He stressed that, the documents for Court use must be requested and obtained formally, in the contrary, an informal receipt of such documents cannot form part of the Court record. He thus, urged the Court to dismiss the first ground of objection for lack of merits. Submitting on the second ground, Mr. Rutabingwa referred the Court to rule 90 of the Rules that any appeal before the Court must be lodged within 60 days from the date of notice of appeal. In the contrary, he stressed that the appeal was lodged to the Court on 26th February, 2024 while the notice of appeal was filed on 9th March, 2023 and whereas the impugned judgment was delivered on 17th February, 2023. Therefore, by lodging the appeal on 26th February, 2024, the appellant delayed for an aggregate of 121 days contrary to rule 90 of the Rules. Mr. Rutabingwa implored the Court to strike out the appeal for being time barred. In reply, Mr. Bwana, vehemently resisted the objection by stressing that the appeal was lodged within 60 days counting from 17th January, 2024 to the 26th February, 2024, thus within time. He tried to impress the Court that by necessary implication the certificate of delay dated 28th August, 2023 was vacated and replaced by a proper certificate dated 17th January, 2024. Mr. Malimi supported the position of Mr. Bwana by adding that the previous certificate of delay comprised a missing page in the proceedings, thus necessitated the appellant to seek a copy of the missing page and new certificate. Secondly, he insisted that, documents for Court use must formally be requested and obtained from the court officer. Therefore, he supported the learned Registrar to have properly performed his duty of responding to the request of the appellant with a letter dated 17th January, 2024 with a certificate of delay. Thus, he urged the Court to dismiss the two grounds of objection with costs. In brief rejoinder, Mr. Rutabingwa reiterated to the prayer he made in his submission in chief and insisted that the alleged missing page was not clearly shown and the Registrar did not vacate the previous certificate of delay. In the circumstances, Mr. Rutabingwa stood to his position to implore the Court to strike out the appeal with costs. We have deeply considered the gist of the two grounds of preliminary objection in line with the rival submissions of both parties. We find the critical issue for determination is centred on the propriety of the Court record and how those records were obtained from the High Court. According to rule 3 of the Rules, record is defined to mean "the aggregate of papers relating to an appeal or application (including the pleadings, proceedings, evidence, judgments and briefs) proper to be laid before the Court on the hearing of an appeal or application. The above definition connotes that the record for the Court use must comprise pleadings, proceedings, evidence, judgements, orders and briefs properly obtained from the recognized sources. The sources of the Court record should be from the respective courts of law which tried the matter. Administratively, those records are formally sought and obtained from the Registrar of High Court as per rule 90 (1) of the Rules. We deprecate what appears to be the clandestine obtaining of court documents and we cannot give blessing to such conduct because clandestine dealings as such, are always suspicious. Similar circumstance occurred in the cases of the Board of Trustees of The National Social Security Fund v. New Kilimanjaro Bazaar Limited [2005] T.L.R. 160 and Mohsin Mohamed Taki Abdallah v. Tariq Mirza and 4 others, Civil Application No. 100 of 1999 (unreported). In the latter case, the appellant formally sought for the copy of the last

part of the proceedings, but the Registrar did not respond and did not notify the appellant that the missing part was ready for collection. The learned advocates of the appellant on their own means informally obtained the said copy from the court and they proceeded to notify the learned Registrar as was evidenced from their letter confirming to have obtained the missing documents from the court, not that it was given to them. The Court discarded the record informally obtained from the High Court. In respect to the instant appeal, it is clear that the appellant after being aggrieved with the trial court's judgment and decree, promptly requested for a certified copy of documents in a letter dated 22nd February, 2023 and the Registrar responded by a letter dated 28th August, 2023 together with a certificate of delay. As we have recapped above, one page was missing from those documents as evidenced in the letter of the appellant's advocate dated 20th October, 2023. Without disclosing how, Mr. Bwana in his letter dated 26 October, 2023 evidenced to have obtained the said missing page, thus he prayed for a certificate of delay. The same contents were repeated in the letter dated 6th November, 2023. It is also clear that the learned Registrar of the High Court delayed to respond to the letter in respect of the requested missing page and certificate of delay up to 17th January, 2024 where a formal information to the advocate for the appellant was issued on the readiness of the missing page for collection. It is also evident that on the same date, the certificate of delay was issued. In the circumstances, the documents which form the record of appeal must be only those obtained formally and from a recognized source. Any clandestinely obtained documents cannot form part of this Court's record. We therefore, conclude that the letter and the certificate of delay of 17th January, 2024 were properly obtained. This position of the law is well settled. Apart from the above cited cases, the position was also repeated in yet another case of Eveline J. Ndyetabula

v. Star General Insurance T. Limited (Civil Appeal 189 of 2019)

[2022] TZCA 538 (7 September 2022). We therefore, find no pertinent reason to depart from a well settled legal position of the law. Mr. Rutabingwa also questioned the presence of two certificates of delay, that one was obtained on 28th August, 2023 and another dated 17th January, 2024. We find that this argument lacks merits for the reason that, both certificates from the learned Registrar were accompanied with letters informing the appellant on the readiness of the documents for collection. The certificate of delay of 28th August, 2023 could not constitute a record of appeal because the documents collected were incomplete for the missing page. Therefore, we agree with Mr. Bwana that by necessary implication, both the letter and certificate of delay of the learned Registrar of 28th August, 2023 were waived and became inoperative. There was another argument that the said page was not included in the record so filed. In our considered view, we find the argument is misplaced. We need not to labour much on it. For the above reasons, we find the first ground lacks merits, hence we dismiss it. The second ground depended squarely on the answer of the first ground. Since the first ground is answered in negative, the issue of time limitation based on the certificate of delay of 28th August, 2023 has no leg to stand. Since we have already determined that the proper missing document are those obtained from the Registrar of the High Court on 17th January, 2024, therefore counting from that date to the

date of lodgment of this appeal on 17th February, 2024, by simple additional mathematics, the appeal was lodged within 60 days. We increasingly dismiss this ground. From our discussion above, we are satisfied that the appeal was lodged in Court timely and the records of appeal were obtained from a recognized source. Consequently, the two grounds of preliminary objection are dismissed for lack of merits. Costs to follow the final verdict of the appeal. DATED at DAR ES SALAAM this 31st day of October, 2024 R. K. MKUYE JUSTICE OF APPEAL A. M. MWAMPASHI JUSTICE OF APPEAL P. J. NGWEMBE JUSTICE OF APPEAL The Ruling delivered this 1st day of November, 2024 in the presence of Ms. Claudiah Nestory, learned counsel holding brief for Mr. Seni Malimi, Mr. Alex Mgongolwa and Mr. James Bwana, learned counsels for the Appellants, Mr. Evodius Rutabingwa, learned counsel for the 1st Respondent and in the absent of the 2nd, 3rd and 4th Respondents is hereby certified as a true copy of the original.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/320441/source_file/76b60e871bda56c7/CIVIL_APPEAL_NO_98_OF_2024_AMSONS_INDUSTRIES_T_LIMITED_VS_PARDEEP_SING_HANS_AND_3_OTHERS.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/amsons-industries-t-ltd-certificateofdelay-tanzlii-2024--6a3ea52d3b1caa9129826c26

Prepared on 14 October 2026 · Esheria