

TANZANIA / JUDGMENT

bansons enterprises ltd vs mire artan 2022 tzca 777 1 december 2022

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1 December 2022

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM fCORAM: MKUYE. 3.A..
KIHWELO, J.A., And MAKUNGU, J.A.) CIVIL APPEAL NO. 26 OF 2020 BANSONS ENTERPRISES
LTD APPELLANT VERSUS MIRE
ARTANRESPONDENT (Appeal from the
Judgment and Decree of the High Court of Tanzania (Land Division) at Dar es Salaam) fM oetta,
3.) Dated the 25th day of November, 2016 in Land Case No. 167 of 2012 RULING OF THE COURT
2nd November & 1st December, 2022 MAKUNGU. J.A.: In the High Court of Tanzania, Land
Division ("the trial court") the appellant, Bansons Enterprises Ltd, lodged Land Case No. 167 of
2012 against Mr. Mire Artan, the respondent, alleging that she is a lawful owner of the land
located on Plot No. 2, Service Trade Kurasini, Dar es Salaam (the suit land). She alleged further
that the respondent without any colour of right had trespassed into it and is using as a godown
without any lawful excuse. 1 The respondent strongly refuted the claim by lodging the written
statement of defence and a counterclaim as per the record of appeal. As it were, the trial court
heard evidence of the parties and in the end, it entered judgment on 25th November, 2016 by
dismissing the main suit as well as the counter-claim and advised the parties to go to the Ministry
of Lands to have the matter sorted out. The appellant has thus come before this Court by way of
appeal which was lodged on 10th February, 2020. The appellant's dissatisfaction is vividly
demonstrated by two grounds of appeal contained in the memorandum of appeal. However, for
the reason which shall come to light shortly, we do not intend to reproduce the respective
grounds of appeal herein. The appeal was called on for hearing on 2nd November, 2022 in the
presence of Mr. Joseph Rutabingwa assisted by Mr. Thomas Brash, both learned counsel for the
appellant and Mr. Gabriel Simon Mnyele learned counsel for the respondent. At the very outset,
before we commenced the hearing of the appeal, Mr. Mnyele sought leave of the Court to raise a
point of law on the competence of the appeal. After we heard the appellant's counsel 2
concerning the request, we granted Mr. Mnyele the requisite leave to address the Court on a point
of law. The learned counsel informed us that having gone through the record of appeal he
observed that a letter of notification from the Registrar of the High Court to the appellant is
missing in the record. He strongly submitted that in the absence of that letter from the Registrar
informing the appellant that the requested copy of the proceedings was ready for collection,
there is no basis upon which a valid certificate of delay could have been prepared and issued. He

contended that because of the absence of the letter, even the certificate of delay is defective and cannot be used to exclude anytime used by the Registrar for preparation and delivery of the copy of the proceedings. To bolster his argument, he referred us to the decision of this Court in the case of Absa Bank Tanzania Limited and Another v. Hjordis Fammestad, Civil Appeal No. 30 of 2020 (unreported). He finally prayed that the present appeal ought to be struck out with costs. In his response, Mr. Rutabingwa first informed the Court that the point raised was a surprise to him as there was no prior notice given as required by the Tanzania Court of Appeal Rules, 2009, (the Rules). Whilst admitting the missing of that letter on the record of appeal, the learned advocate argued that the appeal was instituted within time after excluding the time as certified by the Deputy Registrar for the preparation of the copies of documents requested and delivered to the appellant. He argued further that the appeal cannot suffer due to that omission because the dates are indicated in the certificate of delay. However, he made an informal application under Rule 96 (7) of the Rules to be allowed to file a supplementary record to include the missing letter. To bolster his argument, he cited the case of Haider Mohamed Hussein Rashid and Another v. Akbar Habib Hassanali, Civil Appeal No. 101 of 2021 (unreported). He urged the Court to find that the prayer to strike out the appeal with costs is baseless and dismiss it with costs. We have considered the oral arguments for and against the point of law raised. With respect, we agree with learned advocate for the appellant and we find no merit in the submission of the learned advocate for the respondent. This is because the decision referred to by the learned advocate for the respondent in support of his point is no longer good law in the light of the provisions of Rule 96 (7) of the Rules introduced in the Court's Rules through Tanzania Court of Appeal (Amendment) Rules 2019 (G.N. NO. 344 of 2019) with a view to giving effect to the overriding objective engraved 4 under section 3A of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019]. Sub-rule (7) of Rule 96 reads: "(7) where the case is called on for hearing, the Court is of opinion that document referred to in Rule 96(1) and (2) is omitted from the record of appeal, it may on its own motion or upon an informal application grant leave to the appellant to lodge a supplementary record of appeal." It means that, according to the above sub-rule, where any relevant document is omitted from the record of appeal there are two options at the hearing of the case, either on the Court's own motion or upon informal application, the appellant may be granted leave to file a supplementary record of appeal which includes the missing document. In this case, we agree with the parties that the letter of notification from the Registrar of the High Court to the appellant was not included in the record of appeal. However, it is our considered view that, much as the said letter may not be necessary for the determination of the appeal at hand, the options prescribed under sub-rule (7) above could still be invoked to salvage the appeal. 5 In the case of Puma Energy Tanzania Limited v. Ruby Roadways (T) Limited, Civil Appeal No. 3 of 2018 (unreported), the Court was confronted with a scenario where the appellant omitted to include some documents in the record of appeal. Upon application to the Court, it allowed the appellant to supply the missing documents by way of a supplementary record. In the matter at hand, we think, the omission is not fatal to the appeal in view of the remedy provided for under Rule 96 (7) of the Rules. In which case, we are of the finding that the anomaly raised does not vitiate the appeal. In the final event, we do not agree with Mr. Mnyele's proposition to strike out the appeal on that omission since it is our considered view that it is curable and most importantly it has not

occasioned any injustice to the respondent. We thus, under Rule 96 (7) of the Rules, order that, the appellant should file a supplementary record of appeal which will include the letter of notification from the Registrar of the High Court to the appellant. We further direct that, the said letter should be lodged within twenty one days from the date when this Ruling is delivered. In the meantime, the appeal stands 6 adjourned to the next convenient session of the Court on a date to be fixed by the Registrar. DATED at DAR ES SALAAM this 23rd day of November, 2022. R. K. MKUYE JUSTICE OF APPEAL P. F. KIHWELO JUSTICE OF APPEAL

0. 0. MAKUNGU JUSTICE OF APPEAL This Ruling delivered at Arusha via video conference this 1st day of December, 2022 in the presence of Ms. Ida Lugakingira, counsel for the Applicants and Mr. Gabriel Mnyele, counsel for the Respondents, is hereby certified as a true copy of the original. 7

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/bansons-enterprises-ltd-v-mire-artan-appealrecordcompleteness-tzca-2022--6a3ea52b3b1caa912982493e

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