

TANZANIA / JUDGMENT

juma hassan mohamed vs tabu ally ngalanda 2024 tzca 163 5 march 2024

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5 March 2024

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IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM fCO RAM : KOROSSO. J.A. KITUSI. J.A And KHAMIS. J.A,) CIVIL APPEAL NO. 118 OF 2021 JUMA HASSAN M O H A M E DAPPELLANT VERSUS TABU ALLY N G ALAN D A RESPONDENT (Appeal from the judgment and decree of the High Court of Tanzania, Land Division, at Dar es Salaam) f Rente, 3 .) dated the 17th day of October, 2016 in Land Appeal No. 72 of 2015 RULING OF THE COURT 19th February, & March, 2024 KHAMIS. J.A.: Juma Hassan Mohamed @ Mnara, hereinafter the appellant, is aggrieved by the judgment and decree of the High Court of Tanzania, Land Division, in Land Appeal No. 72 of 2015 [Kente, J] rendered on 17th October, 2016. Based on three grounds of appeal contained in the memorandum of appeal lodged on 9th April, 2021, he sought one prayer, to have the impugned judgment be quashed and set aside. The background to the dispute is that, Tabu Ally Ngalanda, the respondent herein, instituted Land Application No. 280 of 2013 in the District Land and Housing Tribunal for Temeke alleging that, the appellant, a near relative, trespassed onto and unlawfully occupied her house, on unsurveyed parcel of land registered under residential licence no. TMK/KEK/MWG B 13/8, located at Keko Mwanga "B", Temeke, Dar es Salaam. She averred that, the house was given to her in consideration of natural love and affection by her late uncle, Hassan Mohamed Mnara in the year 2006. In the written statement of defence and the subsequent counter claim, the appellant claimed to be the lawful owner of the disputed house allegedly having acquired it from his deceased father, Hassan Mohamed Mnara on 16th May, 2001. Upon trial, the tribunal declared the respondent as the lawful owner of the house. The appellant unsuccessfully appealed to the High Court hence this second appeal. When the appeal was set before us for hearing, both parties appeared in person, unrepresented. Before the hearing started in earnest, we invited parties to address us on a legal issue regarding competency of the certificate of delay. Parties were directed to comment on whether it was appropriate to have two certificates of delay issued by the Deputy Registrar on two different dates. The appellant sought adjournment on two different occasions in order to seek clarification from his legal consultant on the issue raised by the Court. Accordingly, hearing of the appeal was adjourned on 12th and 16th February, 2024 to enable him ascertain status of the certificate of delay. When hearing resumed on 19th February, 2024, both parties re - appeared in person, unrepresented. At the outset, the appellant rose to inform the Court that, the two certificates of delay were validly

issued owing to mistakes by the Deputy Registrar on the first certificate and that, a string of correspondence between him and the Deputy Registrar attested to that fact. He contended that, the said series of events rendered the first certificate inoperative. As such, he did not concede on the incompetency of the certificate. Instead, he prayed to proceed with hearing of the appeal. When invited to address the Court on this point, the respondent strongly submitted that, in view of the incompetent certificate of delay, the appeal is time barred and urged us to dismiss it with costs. On rejoinder, the appellant reiterated his earlier assertions and laid blame on the Court for issuing a defective certificate. He contended that, it is not just to penalise him for an omission solely committed by the Court. In that direction, he sought assistance from the Court to have the appeal spared. Since this ruling is predicated on presence of two competing certificates of delay, we are of the view that, before addressing the parties' competing arguments, it is necessary to comment on the importance of a certificate of delay in the context of the Tanzania Court of Appeal Rules, 2009 [the Rules]. The requirement and importance of a certificate of delay are stated under rule 90 (1) (c) of the Tanzania Court of Appeal Rules, 2009 [the Rules]. The rule empowers the Deputy Registrar of the High Court to certify and exclude the number of days required for the preparation and delivery of copies of the proceedings, judgment and decree in computation of the time within which to lodge an appeal. It further provides that, such an exclusion is to be reckoned from the date of applying for copies of the proceedings so long as the application was timely made within thirty days from the date of the decision. Rule 90 (1) of the Rules provides that, the appellant is not entitled to rely on a certificate of delay unless his application for copies of the proceedings was in writing and a copy thereof was served on the respondent. In *National Social Security Fund v. New Kilimanjaro Bazaar Limited* [2005] TLR 160, this Court accentuated the eminence of a certificate of delay, thus: "A certificate of delay under rule 83(1) [now rule 90(1)] of the Court rules is a vital document in the process of instituting an appeal. It comes into play after the normal period of sixty days for filing an appeal has expired. We are of the view that there must be strict compliance with the rule". In *Evelyn S. Ndyetabula v. Star General Insurance (T) Limited*, [2022] 77CA 538 [7 September, 2022], we addressed the need of accuracy in a certificate of delay, thus: "...with due respect to the learned counsel, it is not correct to say that whatever the Registrar writes in the certificate is correct. This is because, it is only the date when the appellant applied for the copy of proceedings and the date when he is notified that the same is ready for collection are the ones which are supposed to be indicated in the certificate..." Further, in *Tanzania Telecommunications Company Ltd v. Stanley S. MwabuSambo*, [2021] TZCA 272 [30 June, 2021], we crystallised that: "From the foregoing analysis, we are of the settled position that an erroneous certificate of delay cannot be relied upon by the appellant in computation of the time within which to lodge the appeal". When confronted with a similar controversy in the case of *North Mara Gold Mine Limited v. Sinda Nyamboge Ntora*, [2022] TZCA 258, [9 May, 2022], this Court adverted that: "Even in the wake of the overriding objective principle, the error of having more than one certificate of delay in the record of appeal with no plausible explanation from the appellant, cannot be glossed over as a mere technicality, because it touches on the timeliness of the appeal itself. Nor, in our view, is this a fit case for us to grant the appellant leave to present a proper certificate of delay. We took a similar position in one of our previous decisions in the case of *The District Executive Director Kiiwa*

District Council v. Bogeta Engineering Limited[2019] TLR 271..." In the present case, the record of appeal contains two different certificates of delay. The first certificate featuring at page 137 of the record is dated 10th December, 2017 and certifies that, the period from 24th October, 2016 when copies of proceedings, judgment and decree in Miscellaneous Land Appeal No. 72 of 2015 were applied for to 12th December, 2017 when the requested documents were ready for collection by the parties, are to be excluded in computation of the period for filing an appeal. The second certificate flaunted at page 139 of the record is dated 9th February, 2021. It manifests that, the period from 24th October, 2016 when the appellant requested for copies of the proceedings, judgment and decree to 9th February, 2021 when he was notified of the availability of the documents for collection [1569 days] should be excluded in computing the time for instituting an application for leave to appeal in the Court of Appeal. Our comprehension of rule 90 (1) of the Rules is that, an appeal is to be lodged in the registry of this Court within sixty days of the date when the notice of appeal was lodged. In a case where the appellant wrote a letter requesting for copies of the proceedings within 30 days of the date of the decision and that letter was timely served on the respondent [see rules 90 (1) (c) and 90 (3)], the Deputy Registrar is entitled to issue a certificate of delay excluding the period necessary for preparation of the requisite documents. In the instant matter, the appellant issued a notice of appeal on 10th November, 2016 as exhibited at pages 92 - 93 of the records. The memorandum of appeal seen at page 7 of the record was presented for filing on 9th April, 2021. At pages 121 - 129 of the record, several correspondences between the appellant and the Deputy Registrar were attached. However, glaringly missing is a letter dated 24th October, 2016 in which the appellant allegedly requested for copies of the proceedings. Therefore, we are unable to ascertain whether he timely made that application as contended, or at all. Upon close scrutiny of the two certificates, we noted that, the second certificate did not in any manner cancel the first certificate or suggest that it was erroneously issued as alleged by the appellant. Further, the certificate featuring at page 139 of the record certified that 1569 days were excluded in computation of the time for instituting the "application for leave in the Court of Appeal." We are of settled mind that, the wording of this document is equally erroneous and contradicts rule 90 (1) (c) of the Rules which sets out that, the requisite period is excluded for purposes of instituting an appeal and not an application for leave to appeal. s In the circumstances, we are certain that, there is no competent certificate of delay to make this appeal valid in the eyes of the law. On that account, we strike it out with costs. It is so ordered. DATED at DAR ES SALAAM this 4th day of March, 2024. W. B. KOROSSO JUSTICE OF APPEAL I. P. KITUSI JUSTICE OF APPEAL A. S. KHAMIS JUSTICE OF APPEAL The ruling delivered this 5th day of March, 2024 in the presence of the appellant in person and in the presence of the respondent in person, is hereby certified as a true copy of the original. R. W. CHAUNGU DEPUTY REGISTRAR COURT OF APPEAL 9

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