

IN THE COURT OF APPEAL OF TANZANIA

AT MOSHI

(CORAM: JUMA, C.J., NDIKA, J.A. And MAKUNGU, J.A.)

CIVIL APPLICATION NO. 269/05 OF 2019

LIFE PROMOTERS SOCIETY TANZANIA.....APPLICANT

VERSUS

HIPPOLITUS PAMPIL NJAU.....RESPONDENT

**(Application for striking out notice of appeal from the Judgment of
the High Court of Tanzania, (Land Division) at Moshi)**

(Fikirini, J.)

dated the 12th day of November, 2015

in

Land Case No. 5 of 2014

RULING OF THE COURT

20th & 26th September, 2022

MAKUNGU, J.A.:

By notice of motion under rule 89(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant is seeking an order of the Court to strike out notice of appeal lodged by the respondent on 1st October, 2018 after obtaining extension of time to file the notice of appeal out of time on 17th September, 2018 on the ground that the respondent failed to lodge the appeal in this Court within the prescribed time.

When the application was called for hearing on 20th September, 2022, Ms. Genoveva N. Kato, learned advocate, represented the applicant whereas the respondent though duly served with the notice of hearing through Legal Solution & Co. Advocates on 6/9/2022, did not enter appearance. Thus, the hearing of the application proceeded in the absence of the respondent under rule 63(2) of the Rules.

Submitting in support of the application, Ms. Kato commenced her submission by fully adopting the contents of the notice of motion, the supporting affidavit and the applicant's list of authorities. She then submitted that the respondent intended to appeal against the decision in Land Case No. 5 of 2014 dated on 12th November, 2015. Consequently, the respondent on 1st October, 2018 lodged a notice of appeal and the same was served on the applicant on the same date as shown in annexure LP2.

Ms. Kato submitted further that the respondent on the same date wrote a letter to the High Court Registrar to be supplied with the copies of proceedings, judgment and decree for purposes of appeal and on 26th November, 2018 he was notified that the

requested documents were ready for collection and a certificate of delay issued which excluded 57 days from 1st October, 2018 when the respondent requested them up to 26th November, 2018 when the same were supplied to him. She argued that the respondent was required to lodge his appeal on 22/3/2019 and when this application was filed on 18/4/2019 the respondent was out of time for 26 days. It is clear from these circumstances the provisions of rule 90(1) of the Rules will not benefit or save the respondent, she added. She invited the Court to grant the application and strike out the notice of appeal with costs.

On the other hand, the respondent did not file an affidavit in reply to contest the application. Hence the averments in the applicant's affidavit supporting the notice of motion are uncontested.

To begin with, we are in full agreement with Ms. Kato's submission that the respondent has failed to lodge the intended appeal within sixty (60) days from the date of filing of the notice of appeal as required by the law.

The present application was lodged on 18/4/2019 while the notice of appeal was lodged on 1/10/2018. It is our view that the respondent has no interest or intention to pursue his appeal taking into account the period from 1/10/2018 when the notice of appeal was lodged to date.

We note that the certificate of delay issued on 26th November, 2018 was mistakenly handed out by the Registrar. It was in total contravention of the dictates of the provisions of rule 90(1) of the Rules. The respondent was required to apply for necessary copy of documents within 30 days from the date of judgment. In this case the letter requesting the documents was written more than 3 years from the date of judgment. It is therefore invalid. It means, therefore, that the intended appeal ought to have been lodged within sixty days from 1/10/2018 when the notice of appeal was filed. The said limitation period expired on or about 30/11/2018. Since by that time no appeal was lodged, the respondent is out of time to institute the intended appeal. He has failed to take an essential step of lodging his appeal.

In the circumstances, the application is granted and the notice of appeal is hereby struck out with costs.

It is so ordered.

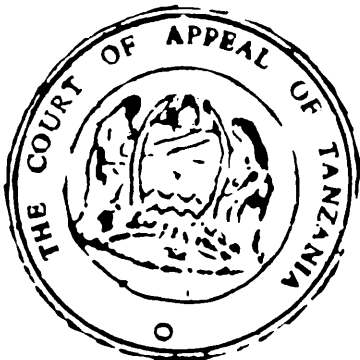
DATED at **MOSHI** this 23rd day of September, 2022.

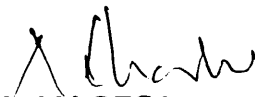
I. H. JUMA
CHIEF JUSTICE

G. A. M. NDIKA
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

This Ruling delivered this 26th day of September, 2022 in the presence of Madam Grace John Mwashala, chairman of the Applicant society for the Applicant and Respondent is absent, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL