

CONSEQUENCES OF FAILURE TO TAKE ESSENTIAL STEPS AFTER LODGING A NOTICE OF APPEAL

Prelude

Any appeal to the Court of Appeal of Tanzania is preceded by a notice of appeal which has to be filed within thirty (30) days from the date of the judgment.

After filing the notice of appeal, the Court of Appeal Rules requires the intended Appellant to lodge a Memorandum and Record of Appeal within sixty (60) days. The Record of Appeal has to include certified copy of the judgment, decree, proceedings, and exhibits.

The greatest hurdle faced by most Appellants is getting copies of the aforementioned documents timely so as to prepare the record of appeal due to backlogs at the High Court, which in turn leads to the lapse of the mandated sixty (60) days' period.

In this updater, I will briefly discuss the consequences of failure to take essential steps after lodging a notice of appeal in light of the recent decision of Court of Appeal in **Civil Application No. 475/01 of 2020 between Beatrice Mbilinyi vs. Ahmed Mabkhut Shabiby (Unreported)**.

The Facts in Brief

The Applicant (Beatrice Mbilinyi) filed a notice of motion under Rule 89 (1) (*sic*) of the Tanzania Court of Appeal Rules, 2009 ('The Rules') *as amended from time to time* seeking for a Court order to strike out a notice of appeal lodged by the Respondent on 07th November 2018.

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The reasons advanced by the Applicant were that the Respondent had failed to take essential steps towards filing his intended memorandum of appeal from 07th November 2018, when the notice of appeal was lodged together with a letter requesting for a copy of the proceedings. The Applicant further stated that, she had not been served with the memorandum of appeal, entailing the Respondent's failure to lodge the appeal within the prescribed time.

The Respondent countered the Applicant's argument by stating that he failed to lodge the appeal because the Registrar of the High Court neither supplied him with the requested necessary documents nor did he inform him when the documents were ready for collection.

During the hearing of the application, the issue which was framed for determination by the Court was, "*whether the Respondent had not taken essential steps following the lodgement of the notice of appeal*".

In its ruling the Court held that, the Respondent *as the intended Appellant* had failed to take essential steps towards lodging his appeal. The Court granted the application with costs and consequently, in terms of Rule 89 (2) of the Rules, it proceeded to strike out with costs the Respondent's notice of appeal lodged on 07th November 2018.

The Court's decision was largely influenced by amendment of Rule 90 of the Tanzania Court of Appeal Rules by G.N No. 362 of 2017 as the notice of appeal was filed on 07th November 2018. In the said amendment, the intended Appellant was duty bound to take steps to collect a copy of proceedings on being informed by the Registrar to do so, or after expiry of ninety (90) days.

A Look at the Amendment(s) of the Court of Appeal Rules

Prior to divulging the amendments made on the rules, it is worth noting that the rules only required an intended Appellant to lodge a notice of appeal on time, write a letter to the Registrar asking for the necessary documents and then serve them on the Respondent on time.

Once he had done the above, he was home scot-free, as he was not duty bound to make any follow ups unless he opted to or to remind the Registrar to supply him with the proceedings.

It was the latter's duty to inform him that the documents of the proceedings are ready for collection. See the case of **Transcontinental Forwarders Limited vs. Tanganyika Motors Limited [1997] TLR 328**.

The 2017 amendment

As it was held in **Beatrice Mbilinyi's** case which the Court of Appeal relied on, it was through the enactment of G.N No. 362 of 2017, where Rule 90 of the Court of Appeal Rules was amended, and the Registrar was directed to ensure a copy of the proceedings are served on the Appellant within ninety (90) days from the date the Appellant filed the request for such copies, and that the Appellant shall take steps to collect the same on being informed by the Registrar to do so or after the expiry of ninety (90) days. There was no time frame to make follow up after expiry of ninety (90) days, though the intended Appellant was expected to act within a reasonable time.

The 2019 amendment

Through G.N No. 344 of 2019, Rule 90 was amended to direct the Registrar to ensure that a copy of the proceedings is ready for collection/delivery within ninety (90) days from the date the Appellant requested for such copies.

The amendment went on to require an intended Appellant take steps to collect the copy of the proceedings upon being informed by the Registrar to do so, or within fourteen (14) days after the expiry of the ninety (90) days.

The key change here was the provision on the time frame for making follow-up(s) after expiry of the said ninety (90) days i.e. fourteen (14) days.

What intended appellants should do

Following the amendments of the Rules, the intended Appellant is now duty bound to make follow up(s) and or to incessantly remind the Registrar to furnish him with the proceedings within fourteen (14) days after the lapse of ninety (90) days from the date of requesting the same.

Concluding Remarks

Litigants who have already filed or will file notices of Appeal to the Court of Appeal should be alerted that, failure to take essential steps towards lodging their intended appeal may have fatal and irreparable consequences.

Failure to lodge an appeal timely in most cases poses a lucrative opportunity for the adverse party (Respondent) to file an application to strike out the notice of appeal and once stricken, one can no longer proceed with an appeal.

Although the law does not provide for a time frame upon which the Respondent may file the said application, it is usually done after the lapse of fourteen (14) days - following the expiry of ninety (90) days from when the notice of appeal and letter requesting for certified copy of proceedings was lodged.

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