



IN THE EAST AFRICAN COURT OF JUSTICE
APPELLATE DIVISION
AT ARUSHA

(Coram: Liboire Nkurunziza, VP; Aaron Ringera, JA; and Geoffrey Kiryabwire,JA)

APPEAL NO. 6 OF 2015

BETWEEN

RWENGA ETIENNE AND MOSES M. MARUMBOAPPELLANTS

AND

THE SECRETARY GENERAL OF THE

EAST AFRICAN COMMUNITYRESPONDENT

[Being an appeal from the Ruling of the East African Court of Justice – First Instance Division sitting at Arusha (Application No. 8 of 2015 Arising from Reference No. 5 of 2015) before Hon. Lady Justice Monica K. Mugenyi, PJ; Hon. Isaac Lenaola, DPJ; Hon. Faustin Ntezilyayo, J; Hon. Fakihi A. Jundu, J and Hon. Audace Ngiye,J); dated 30th October 2015]

RULING OF THE COURT

When this matter came up for Scheduling Conference before us today, Dr. Anthony Kafumbe, Counsel for the Respondent, told us that he was not ready to proceed for the

reason that he had not been served with the Notice of Appeal as required under Rule 79 (1) (a) of the Rules of this Court. He also informally applied under Rules 84 (3) (a) and 81 of the Rules of this Court for the Notice of Appeal to be struck out for failure to comply with the Rules of the Court. In substantiation of his application, Dr. Kafumbe submitted that Rule 79 (1) requires an intended appellant to serve copies of the Notice of appeal within 14 day of lodging the same in the Registry on all persons directly affected by the appeal, and further to file in the Registry an affidavit of service. Counsel further indicated that it was only yesterday that he was served with a Notice of Appeal, well beyond the 14 days required under the Rules of this Court. He protested that the service had been effected without any application for extension of time under Rule 4 of the Rules of this Court. He indicated that this matter first came before us in November 2015 and the Appellant has had more than enough time to put his house in order.

Mr. Ng'arua, Counsel for the Appellant, conceded that no affidavit of service in respect of the Notice of Appeal had been served until yesterday. He prayed the Court to exercise its inherent power under Rule 1 (2) of the Rules of this Court to allow the matter to be regularized. He submitted that the said Notice of Appeal had been sent to the Secretary General by Courier and also electronically and therefore expected that this was accepted in good faith. He therefore opposed the application for striking out the Appeal.

In a short reply, Dr. Kafumbe submitted that the inherent power of the Court under Rule 1(2) should not be invoked where there are clear rules of the Court governing the matter under consideration. He referred the Court to Rule 4 which provides that the Court may for sufficient reason extend the time limited by the Rules on application by

the concerned party. He pointed out that Counsel for the Appellant had not before or after lodging the Notice of Appeal sought for extension of time to serve the Notice of Appeal out of time.

We have considered the rival submission to Counsel for the Parties. We are in entire agreement with the submissions of Counsel for the Respondent that the Notice of Appeal was not served within the time stipulated by Rule 79 of the Rules of this Court. We are further satisfied that no application for extension of time has been made under Rule 4 of the Rules of this Court. We also agree that the inherent jurisdiction of Court is not for invocation in the circumstances of this matter. That being the case we are led to the conclusion that some essential step in the proceedings, namely service of the Notice of Appeal, has not been taken within the prescribed time. We accordingly accede to the application by Counsel for the Respondent to strike out the Notice of Appeal under Rule 81.

For completeness, we, the Court have in the discharge of our duty looked at the Record of Appeal. We have observed that the same is incomplete in terms of Rule 88 (1) of the Rules of the Court in that it omits the pleadings, the affidavit and all documents put in evidence at the hearing of the application in the First Instance Division of this Court; the reasoned order and the formal order.

In the circumstances, the Record of Appeal, on this additional ground, is incompetent. The upshot of our consideration of this matter is that we order both the Notice of Appeal and the Record of Appeal to be struck out with costs to the Respondent.

Dated at Arusha this **12th** day of **February, 2016**.



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Hon. Justice Liboire Nkurunziza
VICE PRESIDENT



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Hon. Justice Aaron Ringera
JUSTICE OF APPEAL



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Hon. Justice Geoffrey Kiryabwire
JUSTICE OF APPEAL