HALFANI SUDI *v.* ABIEZA CHICHILI

COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(Ramadhani, Lubuva and Samatta, JJ.A.)

CIVIL REFERENCE No. 11 OF 1996

(From the decision of a single judge of the Court of Appeal, Mnzavas, J.A. dated 22 August 1996 in Civil Application No.65 of 1996)

Civil Practice and Procedure – Appeals – Essential steps to institute an appeal – Appeal not instituted one year after obtaining copy of record of trial court proceedings – Whether essential step not taken

Civil Practice and Procedure – Court record – Presumption that court record represents what happened – Whether court record can be impeached

A single judge of the Court of Appeal struck out a notice of appeal filed by the applicant because of failure to take en essential step to institute the appeal. The applicant's advocate collected copies of the record of proceedings on 1 August 1995 and by 22 August 1996 no appeal had been instituted, while r.82 of the Court of Appeal Rules 1979 requires an appeal to be lodged within 60 days of getting the record. In the reference before the Court of Appeal the advocate for the Appellant sought to impeach the court record.

Held:

(i) A court record is a serious document; it should not be lightly impeached;

(ii) There is always a presumption that a court record accurately represents what happened.

Reference dismissed

Cases referred to:

(1) *Shabir F. A. Jessa v. Rajkumar Deogra,* CAT – Civil Reference No. 12 of 1994 (unreported)

(2) *Paulo Osinya v. R,* [1959] E.A. 353

RULING OF THE COURT

(Delivered 9 April 1998)

Ramadhani, J.A.: The applicant filed a notice of appeal on 23rd December, 1994 but it was struck out by MNZAVAS, J.A. on 22nd August, 1996, upon the application of the respondent under Rule 82 on the ground that an essential step had not been taken. The learned single judge found that copies of the record of appeal were paid for and collected by the applicant on 1st August, 1995, but the appeal had not been instituted within the prescribed sixty days.

The applicant before us was represented by Mr. Semgalawe, learned advocate, who represented him before the single judge and in the High Court. Mr. Semgalawe filed his own affidavit and made further submissions in Court. The learned advocate made three denunciations: First, that he did not receive any letter from the Registrar of the High Court informing him that copies of the record were ready for collection, second that he did not pay for the record and lastly that he did not collect the record. Therefore, he argued that the applicant is not late to institute his appeal. In short Mr. Semgalawe is challenging the correctness of the court records. He further pointed out that under the Judicature and Application of Laws Ordinance the fees payable for typing a page is Shs. 50/= and wondered whether the typing of proceedings of a case from the Primary Court, District Court and the High Court will only cost Shs. 2,450/= as shown on the receipt. He argued that probably the fees paid were only for typing the judgment of the high Court.

On behalf of the respondent was Mr. Mbezi, learned counsel. His bone of contention was that the onus of proof is on the applicant who alleges that the court records are not correct and that that had not been carried out. The learned advocate also pointed out that the High Court judgement was only three pages and so, it could not cost Shs. 2,450/=.

In any case, he argued that that amount of money at the rate of Shs. 50/- per page paid for the typing of 49 pages and that that is a pretty thick record.

We perused through the file and we noticed that there are two receipts of Shs. 2,450/= each one No.00412047 of 1/8/95 issued to Mr. Semgalawe and another No.00412075 of 3/8/95 issued to Abieza Chichili. We asked Mr. Mbezi why the respondent wanted, a copy of the judgment.

He said that he did not know as he took up this brief just for the application before MNZAVAS, J.A. Be that as it may, what is abundantly clear from the records is that Mr. Semgalawe was issued with the copies of the record of proceedings against receipt No.00412047 of 1/8/95 and, therefore, according to Rule 83, the appeal was required to be instituted within sixty days from 1/8/95 but that was not done.

Of course, we are pretty much aware of what Mr. Semgalawe kept on saying that he had asked the learned single judge for an inquiry to be conducted but that request was barren of results. Then he came up with an interesting possible explanation of what might have happened. He suspected that somebody, with instructions from the respondent, colluded with some court staff and fabricated the letter saying that the records were ready for collection, paid the fees pretending that it was Mr. Semgalawe doing so, drafted the certificate declaring how much time was used to prepare the records and sent it to the Registrar for his signature. All this was done with the aim of preparing suitable scenario for making this application for striking out the notice of appeal. That is possible but in order for us to impeach court records, we need something more than mere theories of possibilities. Mr. Sengalawe, himself, admitted that it were the applicant who had the burden of proof.

We entirely agree with our learned brother, MNZAVAS, J.A. and the authorities he relied on which are loud and clear that "A court record is a serious document. It should not be lightly impeached": *Shabir F.A. Jessa v. Rajkumar Deogra, (1)*, and that "There is always the presumption that a court record accurately represents what happened": *Paulo Osinya v. R. (2)*. In this matter, we are of the opinion that the evidence placed before us has not rebutted this presumption.

A We do not want to open up a Pandora's box whereby any appellant will come up with a claim that he had not received a letter from the Registrar saying that the records were ready for collection and that he did not pay for the records. Therefore the reference is dismissed with costs.

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