21ST CENTURY FOOD AND PACKAGING LTD *v.* TANZANIA SUGAR PRODUCERS ASSOCIATION AND TWO OTHERS

COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM

(Ramadhani, Mroso and Nsekela, JJ.A.)

CIVIL APPEAL No. 91 OF 2003

(Appeal from the decision of the High Court of Tanzania (Commercial Division), at Dar es Salaam, Kalegeya, J., dated 6 November 2003, in Commercial Case No. 85 of 2003)

Civil Practice and Procedure – Appeals – Appeals to the Court of Appeal – Lodging the Record and Memorandum of Appeal– Record and Memorandum of Appeal not endorsed by the Registrar to signify their lodgment – Effect thereof – Rules 15, 83(1) and 86(3) of the Court of Appeal Rules 1979.

During the hearing of the appeal, a preliminary point was raised to the effect that the appeal was incompetent on the ground that the Record of Appeal and the Memorandum of Appeal contravened rule 86(3) and Form "F" of the First Schedule to the Court of Appeal Rules 1979, in that the documents lodged were not endorsed by the Registrar to signify that they were so lodged. In so submitting, learned counsel for the respondent relied on the decision of the court in *Atlantic Electric Ltd v. Morogoro Region Cooperative Union (1984) Ltd* (1). The Memorandum of Appeal had otherwise been filed in accordance with rules 83(1) and 86 as well as Form "F" in the appropriate registry, but it had been signed or endorsed by a person who was not the Registrar.

Held: (i) Rule 86(3) of the Court of Appeal Rules 1979 dealing with Memorandum of Appeal is, *mutatis mutandis*, a replica of rule 76(6) of those rules, dealing with a Notice of Appeal; thus rule 86 and Form "F" are to a Memorandum of Appeal what rule 76 and Form "F" are to a Notice of Appeal ;

(ii) In the *Atlantic Electric* the Notice of Appeal was neither signed nor dated and it was struck out for violating rule 15 and not rule 76 and Form "D" of the Court of Appeal Rules 1979;

(iii) "The court" in the rules means the "Court of Appeal" and not the High Court; so, the signature block in Form "D" ought to be "Registrar of the High Court" and for the avoidance of doubt Form "D" needs to be amended accordingly;

(iv) The use of the word "cause" in rule 15 of the Court Rules means that a person upon whom the duty is cast must see to it that the work specified is done; it is thus the duty of the Registrar or the Registrar of the High Court to see to it that the dating and endorsement are done as required by the rules and failure to do so attracts the blame on those authorities and not on the appellantor whoever lodges the document;

(v) If a provision imposes a duty on an authority to cause something to be done, it is upon that authority to see to it that the obligation is performed as required; as rule 15 of the Court of Appeal Rules 1979 imposes a duty on the Registrar or the Registrar of the High Court to see to it that documents lodged in their respective registries are endorsed as appropriate, if that duty is not carried out properly, then it is the Registrar or the Registrar of the High Court, as the case may be, who is to blame and not the parties lodging the documents;

(vi) As (1) rules 76 and 86 deal with how a Notice of Appeal and a Memorandum of Appeal, respectively, should be and should contain (2) the lodging of a document is distinct from the endorsement of a document, though the two are closely related, and (3) the lodging of a Notice of Appeal is dealt with by tule 76(1) while that of a Memorandum of Appeal is dealt with by rule 83(1), the endorsement of such documents that are lodged under the respective rules is done under tule 15 by the Registrar or the Registrar of the High Court, as the case may be; therefore, any transgression against rule 15 is committed by those authorities and cannot be imputed on an advocate or on an appellant;

(vii) All previous decisions which treated notices of appeal or memoranda of appeals as invalid simply because they were not signed or endorsed by the Registrar or the Registrar of the High Court under rules 76 and 86 of the Court of Appeal Rules 1979 are departed from because in those cases, had rule 15 been cited to the court, the cases would have been decided differently;

(viii) It was erroneous to treat rule15 as imposing a duty on the Registrar to "cause" a document "to be lodged" while the rule only requires the Registrar to "cause" a document "to be endorsed"; lodging and endorsing are not one and the same thing;

(ix) There is no reason why the functions of the Registrar [under rule 15] should be performed personally by him or her; they can be delegated unless specifically prevented from doing so by the rule concerned.

Preliminary objection overruled

Cases referred to:

(1) *Atlantic Electric Ltd. v. Mrorgoro Region Cooperative Union (1984),* [1993] T.L.R. 12

(2) *William Loitiame v. Asheri Naftali,* [2003] T.L.R.

(3) *Jacksom Reuben Maro v. Hubert Sebastian*, CAT, Civil Appeal Number 8 of 2002 (unreported)

(4) *Tanzania Revenue Authority v. Al Naeem Enterprises Ltd.*, Civil Appeal Number 29 of 2002 (unreported)

(5) *Kelly's Directories Ltd. v. Gavin and Lloyds*, [1902] 1 Ch 631

(6) *Nokes and another v. Corporation of Islington*, [1904] 1 KB 615

(7) *Sopp v. Long*, [1970] 1 QB 518

(8) *Remat Nanji Ahmed v. R.* [1959] EA 804

(9) *Shave v. Rosner*, [1959] EA 810

Statutory provisions referred to:

(1) Court of Appeal Rules 1979, rules 15, 83(1), 76(6), 76, 86 and 86(3)

(2) Weights and Measures Act 1963, section 24(1)

(3) Traffic Ordinance Chapter 168

(4) Banking and Financial Institutions Act 1991

Dr Lamwai, for the Appellant

Ms Jessie Mnguto, for the Respondents

A

RULING

(Dated 25 February 2004)

B **Ramadhani, J.A.:** The first respondent, Tanzania Sugar Producers Association, raised a preliminary objection through their learned advocate, Ms Jessie Mnguto, saying that the appellant's Record of Appeal and the Memorandum of Appeal contravene rule 86(3) and
C Form "F" of the First Schedule of the Court of Appeal Rules 1979.

Dr Masumbuko Lamwai, learned counsel for the appellant, readily conceded that shortcoming and informally applied to be allowed to file fresh documents since the sixty days prescribed by rule 83 have
D not expired. Ms Mnguto wanted to have her piece of cake and eat it at the same time. She did not object to that application. However, she would not withdraw her objection because she was instructed by her client to raise it. As the court could not pretend that the preliminary
E objection does not exist, it had to hear the parties so as to determine the preliminary objection one way or the other.

Ms Mnguto submitted that the Memorandum of Appeal contravenes rule 86 and Form 'F' in that it was not endorsed by the Registrar to
F signify that it was lodged. The learned advocate relied on the decision of this Court in *Atlantic Electric Ltd. v. Morogoro Region Cooperative Union* (1). Ms Mnguto asked the court to strike out the appeal with costs.

G In reply Dr Lamwai said that the Memorandum of Appeal is exactly as prescribed by rule 86 and Form 'F' and, so, it is in order. He went on to say that the appellant has also complied with rule 83(1) which requires an appeal to be instituted by lodging the Memorandum of
H Appeal and the other documents in the appropriate registry. Dr Lamwai pointed out that the endorsement of documents lodged with the Registry, including a Memorandum of Appeal, is a distinct requirement under rule 15.

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Dr Lamwai conceded that the Memorandum of Appeal has been signed by a person who is not the Registrar. But that violation, he argued, has nothing to do with the appellant whose sole obligation was to lodge the document in the appropriate registry. Dr Lamwai prayed that the preliminary objection be dismissed with costs.

On behalf of respondents second and third was Ms. Sahel, learned State Attorney, who had nothing to add.

In *Atlantic,* cited by Ms Mnguto, a single Justice of Appeal struck out a Notice of Appeal because, *inter alia,* it was not signed by the Registrar of the High Court as required by rule 15. There are two observations we want to make regarding that authority. One, our understanding of that ruling is that the Notice of Appeal was not dated and was not signed at all. It was not the case that it was signed by a wrong person. We say so because the learned Justice of Appeal said in paragraph 'E' on page 19:

> Then the date when the Notice of Appeal was lodged is not shown and lastly there is no signature of the Registrar.

Two, the Notice of Appeal was struck out for violating rule 15, that is, the rule regarding lodging of a Notice of Appeal and not for violating rule 76 and Form 'D' which provide how a Notice of Appeal should be, and that it should be signed by or on behalf of the appellant. Suffice it is to say here that we are satisfied that *Atlantic* does not support the contention by Ms Mnguto.

Nevertheless, the contention of Ms Mnguto is that the Memorandum of Appeal contravenes rule 86 and Form 'F' because it was not signed by the Registrar to indicate that it was lodged. Now, rule 86(3), dealing with Memorandum of Appeal is, *mutatis mutandis,* a replica of rule 76(6) dealing with Notice of Appeal. Thus rule 86 and Form 'F' are to a Memorandum of Appeal what rule 76 and Form 'D' are to a Notice of Appeal.

Rule 76(6) provides as follows:

A Rule 76(1) provides:

> A Notice of Appeal shall be substantially in the Form D in the First Schedule to these rules and shall be signed by or on behalf of the appellant.

Rule 86(3), on the other hand, provides:

B
> A Memorandum of Appeal shall be substantially in the Form F in the First Schedule to these rules and signed by or on behalf of the appellant.

Form D to rule 76, among other details, indicates who should receive and acknowledge receipt of a Notice of Appeal :

C
> To: The Registrar of the High Court of Tanzania at...
>
> Lodged in the High Court of Tanzania at ...
>
> This ... day of ..., 19...

D
> ...
>
> Registrar

The above quoted is the portion which is required by rule 15 to be
E dated and signed by the Registrar of the High Court when a Notice of Appeal is lodged. This is what was not done in *Atlantic* and, as already said, the Notice of Appeal was struck out.

The end of Form F, too, like Form D, mutatis mutandis:

F
> To: The Honourable the judges of the Court of Appeal of Tanzania.
>
> Copies to be served on ...
>
> Lodged in the Registry/Sub-Registry at ...

G
> On the ... day of ..., 19...
>
> ...
>
> Registrar

H
Let us digress a bit. Form D is properly addressed to The Registrar of the High Court. However, the signature block is simply titled "Registrar". That, in our opinion, is wrong. The title "Registrar" is
I defined in rule 2 as follows:

> "Registrar" means the registrar of the court, and includes a deputy registrar of the court;

"The Court" in the rules means "The Court of Appeal" and not the High Court. So, the signature block in Form D ought to be: "The Registrar of the High Court". For the avoidance of doubt, we recommend to the Honourable the Chief Justice to have Form D amended.

To go back to the matter at hand, these two sub-rules are practically dealing with similar situations and so, the decisions on rule 76(6) on Notices of Appeal can, *mutatis mutandis,* be used in dealing with rule 86(3) on Memorandam of Appeal. Probably Ms Mnguto should have sought to rely on these decisions on lodging of a Notice of Appeal under rule 76 to support her contention that a Memorandum of Appeal can only be validly lodged under rule 86 if a Memorandum of Appeal is endorsed by the Registrar as defined under rule 2.

This court has made a number of decisions to the effect that a Notice of Appeal which has been signed on behalf of the Registrar of the High Court, contravenes rule 76(6) and Form D and is, therefore, invalid. Such decisions include *William Loitiame v. Asheri Naftali* (2) and also *Jackson Reuben Maro v. Hubert Sebastian* (3).

This court reiterated those decisions in *Tanzania Revenue Authority v. Al Naeem Enterprises Ltd.* (4) and went a step further. In that decision sub-rule (1) of rule 76 was cited (this is like rule 83(1) dealing with institution of appeal). That sub-rule provides as follows:

> Any person who desires to appeal to the court shall lodge a written notice in duplicate with the Registrar of the High Court.

The court said:

> The rule provides a specific requirement lodging a notice with the Registrar of the High Court. A document is said to have been lodged when it has been paid for and endorsed. The endorsement, from the clear words of this sub-rule, has to be done by the Registrar of the High Court, which expression, per rule 2(1), includes, "a district and a deputy registrar of the court". There is no room for any one else to sign.

Dr Lamwai, on the other hand, contends that rule 86, and by necessary implication, rule 76 deals with the form and the lodging of a Memorandum of Appeal and a Notice of Appeal , respectively. He argues that the endorsement on a Notice of Appeal and a Memorandum of Appeal is the subject of rule 15 which provides:

> Whenever any document is lodged in the Registry or in a sub-registry or the registry of the High Court under or in accordance with these rules, the Registrar or deputy registrar or the Registrar of the High Court, as the case may be, shall forthwith cause it to be endorsed, showing the date and the time when it was lodged.

It is obvious to us that rule 15 deals with all documents, including notices of Appeal and Memoranda of Appeal. Apart from that, a close reading and analysis of this rule reveal that there are two scenarios: One, there is the lodging of a document, and Dr Lamwai submits that is done under rule 86(1) [or 76(1) for a Notice of Appeal]. Two, there is the endorsement stage of a document which is done under rule 15. The two scenarios are distinct, though related.

In *Tanzania Revenue Authority v. All Naeem Enterprises Ltd.* (4) as already seen above, this court rolled the two scenarios in one when it said:

> The rule [rule 76] provides a specific requirement of lodging a notice with the registrar of the High Court. *A document is said to have been lodged when it has been paid for and endorsed.* The endorsement, from the clear words of this sub-rule, has to be done by the Registrar of the High Court ... [emphasis supplied]

If it is correct that "[a] document is said to have been lodged when it has been paid for and endorsed" why does rule 15 talk of "*whenever any document is lodged* in the Registry or .... in High Court, as the case may be, *shall forthwith cause it to be endorsed,* showing the date and the time when it was lodged" [Emphasis Supplied]. Surely, the two rules cannot co-exist unless the two functions are distinct and separate. If both roles are performed under rule 76 (or rule 86) then rule 15 is superfluous and ought to be deleted.

As already said, Dr Lamwai submits that rules 76 and 86 deal with the lodging of a Notice of Appeal and a Memorandum of Appeal respectively and that rule 15 is concerned with the endorsement of all documents lodged with the Registrar of the High Court and the Registrar as the case may be. Rule 15, as already seen, requires the Registrar or the Registrar of the High Court to "cause [a document] to be endorsed, showing the date and the time when it was lodged".

In ordinary English language "to lodge", according to **Chambers 20th Century Dictionary,** Edited by E.M. Kirkpatrick, is "to place: to deposit: to infix: to vest: to settle:" To "lodge" a document is defined (2 ed), at page 1115, as "to file or leave them with the appropriate official". As pointed out by Dr Lamwai the lodging of a document is the duty of an appellant. What happens after the lodging is the concern of rule 15 and is the responsibility of the appropriate official.

Rule 15 demands the Registrar to "forthwith cause [the document] to be endorsed, showing the date and the time when it was lodged". But what is to "cause" something to be done?

Our research has revealed a number of statutes using that phraseology and equally a number of decisions on whether someone has caused something to be done.

In *Kelly's Directories Ltd. v. Gavin and Lloyds* (5) Gavin published a book and contracted with Lloyds to print it. Due to pressure of work, Lloyds partly performed the contract but consented that Gavin finds another printer to finish the work. However, the finished book bore on the title-page the statement "Printed at Lloyds". Unknown to Lloyds, piracy occurred in the portion not printed by them. Some passages were copied from a book of Kelly's and so infringed their copyright. The court was satisfied that Gavin and Lloyds were not partners or co-adventurers in the publication of the book and that the printers of the pirated matter were agents of Gavin and not of Lloyds and so, Lloyds could not be said to have "caused" the pirated portion of the book to be printed within the meaning of section 15 of the Copyright Act 1842. Vaughan Williams L.J. opined at page 635 that:

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> If a man who has a right to print a book stands back and allows some one else to do the printing, I do not think it can be said that he "causes" the book to be printed.

B The argument that Lloyds by allowing their name to appear on the title-page adopted the printing of the whole book was rejected. There was a separate contractual relationship between Gavin and the subsequent printer. Lloyds did not have a duty under which they could have been said to have caused the pirated work to be written.

C

In *Nokes and another v. Corporation of Islington* (6) a by-law of a borough required every landlord of a lodging-house to "cause" every part of the premises to be cleaned, and ceiling and interior walls to be lime-washed, in the first week of April of every year. D Nokes and another were sued for not complying with the by-law. At 622 Lord Alverstone, C.J. said:

> The use of the word 'cause' partly creates the difficulty, if the word E could be construed to mean "take reasonable steps" the same difficulty will not arise; but I think it means more than that – it means that a person upon whom the duty is cast must see that the work specified is done.

It would follow then that it is the duty of the Registrar or the Registrar F of the High Court to see to it that the dating and the endorsement are done as required by the rules. If that is not done, it is the Registrar or the Registrar of the High Court, as the case may be, who is to bear the blame. The appellantor whoever lodges the document cannot G be made a scapegoat.

In *Sopp v. Long* (7) "L" was a licensee of a number of railway station refreshment rooms. A barmaid in one of the rooms sold a short measure of whisky to a customer. "L" was convicted of "causing" H to be delivered a short measure contrary to the Weights and Measures Act 1963. His appeal was allowed but his conviction was restored by the Queen's Bench Division. The relevant parts of section 24(1) provide:

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> ...any person who, in selling or purporting to sell any goods by... measurement..., delivers or causes to be delivered to the buyer a lesser quantity than that purported to be sold or than corresponds with the price charged shall be guilty of an offence ...

Lord Edmund Davies, L.J. then posed a question at page 525:

> It is the law, then, that under section 24 of the Act of 1963 there can be no causing to deliver a short measure pursuant to an act of sale unless the person charged with such an offence has knowledge, or has previously authorized, that a short measure is to be sold?

He went on to say:

> ... it is necessary to have in mind the words of the particular statute when one is dealing with the exact connotation of such a phrase as 'causing' this, that, or the other to be done.

It was observed at page 526 that "Only the licensee can sell-that is common ground-and he alone sold. Being absent from the premises he sold through his servant, the barmaid; by every sale he 'conduced through her, he thereby 'caused' to be delivered that which was sold; that that he did, whether that which was delivered was a short measure or a full measure".

It appears to us that the decision sets the principle that if a provision imposes a duty on an authority to cause something to be done, it is up to that authority to see to it that the obligation is performed as required and the blame is squarely on that authority and no one else. Thus rule 15 imposes a duty on the Registrar or the Registrar of the High Court. If the duty is not carried out properly then it is the Registrar or the Registrar of the High Court who is to blame and not, in our opinion, the appellant.

Coming home there is *Remat Nanji Ahmed v. R.* (8) an appeal from a magistrate's court where the appellant was convicted with four counts of "causing a motor vehicle to be used" with defective steering, defective brakes, defective tyres, and when not in proper

A mechanical repair contrary to diverse sections of the Traffic Ordinance (Chapter 168) (Tanganyika Laws.) The appellant was the sole owner of a firm which was run by her husband. The appellant's son normally used the firm's vehicle on the firm's business. At the material time
B the vehicle was being driven by the son. The appellant denied causing the defective vehicle to be on the road.

Biron, Ag. J. said at page 810:

C Leaving aside the question of authorities, I fail to see why, when a defective vehicle is driven by a servant in the contravention of the law in the ordinary course of his employment and duties, the liability of his master, in so far as the knowledge of the defects is concerned, should be affected by the
D form of the charge preferred against the master and owner of the vehicle, that is to say, if he were charged with "using" or "permitting" the use of the vehicle, he would be liable, but not if he were charged with "causing" the vehicle to be so used. In fact in the case of master and servant or an employee, the expression "cause" is more appropriate than "permit". As
E indicated by Lord Godddard, C.J. in *Shave v. Rosner* (9) at page 281:

I think that, when one finds those two expressions 'causes' or 'permits' in contrast or in juxtaposition, 'permit' means giving leave and license to somebody to use the vehicle, and 'cause' involves a person, who has
F authority to do so, ordering or directing another person to use it. If I allow a friend of mine to use my motor-car, I am permitting him to use it. If I tell my chauffeur to bring my car round and drive me to the courts, I am causing the car to be used.

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On due consideration of the authorities I do not consider myself precluded from holding that where an employee uses or drives his master's vehicle in a defective state in contravention of some regulation, in so far as the
H knowledge of the master of such defect is concerned, no distinction need be, or should be made between "permitting" and "causing".

Thus whether the Registrar or the Registrar of the High Court is or is not aware that the documents have been signed on his behalf, he
I has "caused" them to be signed. He/she is liable of the accusation

of whether or not the documents have been properly endorsed. The liability is not of the person lodging the documents. An advocate or an appellant could not insist on the registrar to sign a document.

We find, therefore: one, rules 76 and 86 basically deal with how a Notice of Appeal and a Memorandum of Appeal, respectively, should be and what they should contain. Two, the lodging of a document is distinct from the endorsement of a document though the two are closely related. Three, the lodging of a Notice of Appeal is dealt with by rule 76(1) while that of a Memorandum of Appeal is the subject matter of rule 83(1). Four, the endorsement of documents that have been lodged under the respective rules is done under rule 15 by the Registrar or the Registrar of the High Court, as the case may be. So, any transgression against rule 15 is committed by those authorities and cannot be imputed on an advocate or an appellant.

We therefore, are of the considered opinion that we ought to depart, and we so do, from all the previous decisions treating Notices of Appeal or Memoranda of Appeal as invalid because they were not signed by the Registrar or the Registrar or the High Court under rules 76 and 86. We do so because, we believe, that had rule 15 been cited to them, our learned brothers would have decided as we hereby do.

It is equally clear to us from the authorities we have cited that to "cause" something to be done, does not mean that a statutory authority must do that thing personally. On the contrary, as Lord Goddard, C.J. in *Shave v. Rosner* (9) said to "cause" involves a person, who has authority to do so, ordering or directing another person to use it. This, again, is a departure from the previous decisions of this court that the endorsement has to be personally by the Registrar or the Registrar of the High Court as defined in rule 2.

Besides the cited authorities, can we honestly expect that endorsements could always be done personally by the Registrar or the Registrar of the High Court? In the case of the seat of this court, for instance, are the documents only to be signed by one of three

persons: the Registrar or the Senior Deputy Registrar or the Deputy Registrar? Are we not going to choke and bog down the process of appeal?

The Honourable Chief Justice, for example, has many powers in the appellate jurisdiction. However, the rules in their wisdom have foreseen the impossibility of the Chief Justice to be in a position to act personally in all instances. Hence rule 2(1) defines the Chief Justice in these terms:

> ...means the Chief Justice of the Court of Appeal of the United Republic of Tanzania and, in relation to the hearing of any appeal or to the delivery of judgment on an appeal, includes the presiding judge of the court as constituted for the appeal.

It is our considered opinion that if the function's of the Chief Justice do not always have to be performed personally by the Chief Justice, there is no reason why the functions of the Registrar must always be executed personally by the Registrar or his deputies unless it is provided so explicitly by the rule concerned. We are of the considered opinion that the Registrar should indicate by administrative directions which of the Registry Officers would act under rule 15, and possibly other rules which have not been dealt with in this ruling.

However, we must hasten to point out, and as we have indicated above, that the previous decisions of this court on the points discussed here were made without the court being directed to rule 15. Admittedly, the rule was cited by Mr Aggrey Teemba, learned advocate for the appellant, in *Tanzania Revenue Authority v. Al Naeem Enterprises Ltd.* (4).

> We agree with Mr Teemba that the rule requires the Registrar or the Registrar of the High Court presented with a document to *"cause it to be lodged"*. We agree again that the clause *"cause it to be lodged"* does not mean that *the document has to be lodged by the Registrar himself or herself.* It is our considered opinion that rule 15 is a general rule for lodging any document. However, as for the lodging of a Notice of

Appeal , there is a specific rule, that is, rule 76. Sub-rule (1) provides as follows.

> The rule provides a specific requirement of lodging a notice with the Registrar of the High Court. A document is said to have been lodged when it has been paid for and endorsed. The endorsement, from the clear words of this sub-rule, has to be done by the Registrar of the High Court, which expression, per rule 2(1), includes, "a district and a deputy registrar of that court". There is no room for any one else to sign [emphasis supplied].

This court made an oversight in treating rule 15 as imposing a duty on the Registrar to "cause" a document "to be lodged". Rule 15 requires the Registrar to "cause" a document "to be endorsed". That oversight caused this court to come to the conclusion it did and continued the mixing up of the lodging function of the appellant with the endorsement role of the Registrar and treating them as one and the same thing.

We, therefore, dismiss the preliminary objection with costs.