IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RAMADHANI, Ag. C.J., MFALILA, J.A., And LUGAKINGIRA, J.A.)

CIVIL APPEAL NO. 12 OF 1997

BETWEEN

FELIX TUMBO KISIMA ..... APPELLANT

AND

TANZANIA TELECOMMUNICATION CO. LTD.
AS A SUCCESSOR TO
TANZANIA POSTS AND TELECOMMUNICATIONS
CORPORATION ..... RESPONDENT

(Appeal from the Judgement of the High Court of Tanzania at Dar es Salaam)

(Kyando, J.)

dated the 24th April, 1994

in

Civil Case No. 177 of 1986

RULING OF THE COURT

MFALILA, J.A.:

The appellant Felix Tumbo Kisima, launched this appeal against Tanzania Telecommunication Company Limited as successor to his erstwhile employers the defunct Tanzania Posts and Telecommunications Corporation. The appeal relates to the judgement of the High Court of Tanzania at Dar es Salaam in Civil Case No. 177 of 1986 in which the appellant's suit for wrongful termination of his services against the Tanzania Posts and Telecommunications Corporation was dismissed with costs.

Before to-day's hearing, the respondent, filed a notice of preliminary objection against the appeal on two grounds. Firstly, that the appeal is incompetent because the appellant has not to-date served the respondent with copies of the memorandum and record of appeal.

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Secondly, that no leave of this honourable Court was soug.
granted to join the Tanzania Telecommunications Company as a p
in this appeal. And at the hearing of this appeal, Mr. Mujulizi
learned counsel for the respondent, argued in support of the
preliminary objection that the respondent was not served with the
notice of appeal, rather the notice was served on its predecessor
the defunct corporation and that, therefore, it should have been
served under Rule 80 after the completion of the formalities of
making it a party to the appeal under Rule 85 (2). Mr. Mujulizi
added that because the respondent was not served with the notice of
appeal, it did not comply with Rule 79, consequently it was not served
with the memorandum and record of appeal under Rule 90 which made
this appeal incompetent. Secondly Mr. Mujulizi argued that the
respondent as successor to the original respondent could only be
made a party to the proceedings with the leave of the Court under
Rule 85 (2). Accordingly he prayed that the appeal be struck out for
being incompetent.

In reply Mr. Ngalo learned counsel for the appellant, conceded
the correctness of the grounds of the respondent's preliminary
objection, but he asked this Court to give him a chance to rectify
the shortcomings cited so that the hearing of the appeal can proceed
on merits.

We are obviously in sympathy with the predicament in which
Mr. Ngalo finds himself, but this is the most we can do. All the
rules with which he failed to comply are mandatory provisions. He
was required to serve before or within seven days of lodging the
memorandum and record of appeal copies of these documents on the
respondent. He was also required to seek and get leave of the Court

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before making the respondent a party in this appeal. Non compliance with these provisions makes this appeal incompetent hence there is nothing before us which we can order to be rectified.

Accordingly we uphold the preliminary objection and order that this appeal be struck out for incompetence. We also make an order for costs in favour of the respondent.

DATED AT DAR ES SALAAM THIS 23rd DAY OF November, 1998.

A.S.L. RAMADHANI
Ag. CHIEF JUSTICE

L. M. MFALILA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(A.G. MWARIJA)
DEPUTY REGISTRAR