

20 March 2018



Court of Appeal relaxes technicalities in criminal cases

- **Convicts appeal was incompetent for want of proceedings**
- **Would have normally resulted in appeal being struck out**
- **Court holds records of proceedings to be reconstructed**
- **States that Courts must try to hold the scales of justice evenly between parties**

The Court of Appeal has issued another landmark decision in a recent criminal appeal in what seems to be a first step for the Court trying to move away from technicalities and focus on substantive justice.

Authored by His Lordship the Chief Justice, Professor Ibrahim Juma, the milestone decision in the case of Robert Madololyo v The Republic stops short of striking out an incompetent criminal appeal for want of proper records of appeal before the Court. The bench also comprised of Her Ladyship Mjasiri, JA, and Her Ladyship Mugasha, JA.

In this appeal, the learned State Attorney rose up to inform the Court that the 'entire records of proceedings of the trial District Court and those of the High Court at Tabora are both missing from the records of appeal.' The learned State Attorney further submitted that the Deputy Registrar of the High Court, the custodian of the records, had also sworn an affidavit that such records were indeed missing. What would have ordinarily happened is for the Court to rule the appeal incompetent and strike it out.

The Court ventured into jurisdiction from other African countries on similar situations where records of proceedings were not available to lodge or continue to hear an appeal, and practically asked itself 'what is the way forward?'

What distinguishes this ruling from the rest of Tanzanian legal jurisprudence is that the Court did not mechanically strike out the appeal, instead stating that different modalities of reconstructions of Court records in such situations must be considered.

In its ruling the Court stated that 'it seems to us that the defining paraphrase for our purpose is "The Courts must try to hold the scales of justice evenly between the parties." This implies that there is no one general rule on the way forward when Courts face missing record of proceedings and, every case involving missing record, should invariably be determined on the basis of its own circumstances.'

Apart from denying to strike out the appeal, the Court ordered a reconstruction of the records of proceedings. The Court held that the scales of justice demand that in such reconstruction, the Deputy Registrar must get cooperation from the Appellant himself, the Resident Magistrate in Charge, office of the Director of Public Prosecution, Police investigation files and the Prison Department who 'should come forward and supply all the case documents in their respective possession or custody.'

The Appeal survived and the Court ordered an adjournment to allow the Deputy Registrar to reconstruct the record of appeal and for the matter to be fixed for hearing at the earliest possible date in the Court sessions in 2019.

The welcome decision is one of the first steps taken by the Court of Appeal, which is plagued with jurisprudence on technicalities, to consider substantive justice over procedural technical issues, as is the case in other jurisdictions. Many cases have sadly been struck out by Courts in Tanzania because of issues related to dates (errors by the lower Court itself), minor slip of the pen errors, missing documents (even if not directly relevant), defective jurats, misspelt judges names, delay in service of documents, wrong or non-citation of relevant provisions of the law, wrong font type, wrong font size, wrong spacing between lines, non-usage of legal paper amongst others.

For further information on legal updates please contact:

Fayaz Bhojani
Managing Partner
M: +255 784 322751
E: fbhojani@fbattorneys.co.tz

Feizin Amlani
Head, Corporate Affairs
M: +255 688 253509
E: famlani@fbattorneys.co.tz

About FB Attorneys

FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 2 by Chambers and Partners General Business Law.

FB Attorneys
8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
F: +255 22 2135996
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

Disclaimer

Information found in this legal update and any attachments are confidential and may be privileged or otherwise protected from disclosure, and intended solely for the use of the individual or entity to whom it is addressed to. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of FB ATTORNEYS.

© FB Attorneys 2018. All rights reserved.



A member of **LEXAfrica**