

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: KEREFU, J.A., KHAMIS, J.A. And NANGELA, J.A.)

CIVIL APPEAL NO. 199 OF 2025

**THE COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY.....APPELLANT**

VERSUS

IRVINES TANZANIA ONE STOP SHOP LIMITED.....RESPONDENT

**(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal
at Dar es Salaam)**

(Herbert, Vice Chairperson.)

**Dated the 29th day of April, 2025
in
Tax Appeal No. 105 of 2024**

RULING OF THE COURT

2nd & 8th December, 2025

KEREFU, J.A.:

The appellant, the Commissioner General, Tanzania Revenue Authority, is challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) in Tax Appeal No. 105 of 2024, in which the Tribunal dismissed Tax Appeals No. 385, 386 and 387 of 2023 originating from the Tax Revenue Appeals Board (the Board) sitting at Dar es Salaam.

On 2nd December, 2025 when the appeal came before us for hearing, the appellant was represented by Mr. Octavian Kichenje, learned Senior

State Attorney assisted by Messrs. Anold Simeo, Achileus Kalumuna and Silvester Sebastian, all learned State Attorneys. On the other side, the respondent had the legal services of Mr. Nobert Mwaifwani, learned counsel.

It is on record that, early, on 27th November, 2025, Mr. Mwaifwani had lodged a notice of preliminary objection challenging the competency of the appeal for being accompanied by an invalid certificate of delay that:

"The appeal is time barred due to a defective certificate of delay which excludes the period during which the Registrar was not preparing and delivering copies to the appellant contrary to rule 90 (1) of the Tanzania Court of Appeal Rules, which raised a question of law."

As is the rule of practice, we had to deal with the preliminary objection first, before we could embark on the merits or demerits of the appeal. Having that in mind, we invited the learned counsel for the parties to address us on the preliminary objection raised by the respondent.

Submitting in support of the preliminary objection, Mr. Mwaifwani contended that, the appeal is incompetent for being lodged out of time. He clarified that, the impugned decision sought to be challenged was delivered

on 29th April, 2025, the notice of appeal was lodged on 13th May, 2025 and the memorandum of appeal was lodged on 18th August, 2025 after lapse of almost 95 days. Relying on the provisions of rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), Mr. Mwaifwani argued that, the appeal should have been instituted within sixty (60) days after filing the notice of appeal and not otherwise. He then argued that, since the appeal herein was lodged after lapse of almost 95 days from the date of lodging the notice of appeal, it is time barred and deserves to be struck out.

The learned counsel contended further that, whereas the proviso to rule 90 (1) of the Rules empowers the Registrar to exclude, in the certificate of delay, the period from when the appellant requested for the copies of the certified documents till when the same become ready for collection, the appellant herein was not entitled to benefit from that Rule in the circumstances of this appeal. This is so, because, he argued, **first**, the appellant requested for the said documents on 14th May, 2025; **second**, the Registrar's letter informing the appellant that the documents were ready for collection was dated on 19th June, 2025; and **third**, in the certificate of delay, the Registrar erroneously excluded the dates from 14th May, 2025 to 20th June, 2025. It was his argument that, the certificate of

delay had wrongly excluded the date of 20th June, 2025 contrary to rule 90 (1) of the Rules.

Thus, the learned counsel challenged the validity of the certificate of delay issued by the Registrar found at page 818 of the record of appeal by excluding the period from 14th May, 2025 to 20th June, 2025, indicating that it was the period used to prepare the said documents. He insisted that, since the certificate of delay does not reflect the truth of the matter and it excluded the period which was not subject for exclusion, the same is invalid and cannot be relied upon by the appellant in this appeal. That, the said invalid certificate had rendered the appeal time barred, liable to be struck out. To support his proposition, he cited the case of **Registered Trustees of Social Action Trust Fund v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 414 of 2022 [2025] TZCA 102 and urged us to strike out the appeal with costs for being time barred.

In response, Mr. Kichenje resisted the preliminary objection that it was without merit. He strongly disputed the submission made by Mr. Mwaifwani by arguing that, the certificate of delay accompanying the appeal was valid and was properly issued under rule 90 (1) of the Rules. He contended that, pursuant to the proviso to rule 90 (1) of the Rules, the

time required to be excluded is the time used for preparation of the Tribunal's documents to the time of delivery of the said documents to the appellant. According to him, the certificate of delay suffices as it bears the dates when the certified copy of the High Court proceedings was requested and delivered to the appellant. To support his argument, he referred us to page 700 of the record of appeal where the appellant acknowledged to have received the Registrar's letter together with the Tribunal's documents on 20th June, 2025. That, thereafter, the appellant lodged the memorandum of appeal on 18th August, 2025.

He thus distinguished the case of the **Registered Trustees of Social Action Trust Fund** (supra) relied upon by Mr. Mwaifwani by arguing that, the facts in that case are not relevant to the current appeal. He said, in that appeal the Registrar excluded the period from 16th December, 2020 to 19th July, 2022 as the period used to prepare the requested Tribunal's documents while the Registrar's letter notifying the appellant that the said documents were ready for collection was dated 30th June, 2022. That, in that appeal, there was an additional of about 19 days from the date of notification, which is not the case herein. He also added that, in that appeal, although, the appellant requested the Tribunal's documents on 16th December, 2020, the said documents were issued by

the Registrar on 30th June, 2022 after expiry of almost 545 days, which, again, is not the case in the current appeal. On that basis, Mr. Kichenje urged us to overrule the preliminary objection with costs and proceed to hear the appeal on merit.

In a brief rejoinder, Mr. Mwaifwani reiterated his previous prayer by urging us to sustain the preliminary objection and strike out the appeal with costs.

Having considered the arguments for and against the preliminary objection advanced by the learned counsel for the parties, the issue for our consideration is on whether the appeal is properly before the Court. We shall preface our discussion under rule 90 (1) of the Rules which regulates the timelines of instituting an appeal in this Court. It categorically states that:

"90 (1) Subject to the provisions of rule 128, an appeal shall be instituted by lodging in the appropriate registry within sixty days of the date when the notice of appeal was lodged with –

- (a) a memorandum of appeal in quintuplicate;*
- (b) the record of appeal in quintuplicate;*
- (c) security for the costs of the appeal,*

save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant."

Furthermore, Form L of the 1st Schedule to the Rules which is made under rules 4, 45,45A and 90 (1) of the Rules, provides for the format of the certificate of delay and requires the Registrar to indicate in the certificate that:

*"This is to certify that the period from ... when the appellant requested for copies of proceedings, judgment, ruling and decree or order in this matter up to ...**when the appellant was notified that the documents were ready for collection**, a total number of ... days should be excluded in computing the time for instituting the appeal in the Court of Appeal.*

GIVEN under my hand and the seal of the Court this...

REGISTRAR"

[Emphasis added].

It is clear from the above cited provision that, the appellant is required to lodge an appeal within sixty (60) days from the date of filing a notice of appeal. The only exception to this requirement is where an appellant has not obtained a copy of the proceedings from the Tribunal and has applied for the same, in writing, within thirty (30) days of the impugned decision and served a copy thereof on the respondent within the said time. That, the Registrar may issue a certificate of delay excluding the period or number of days required or used to prepare and deliver the certified copy of the Tribunal's proceedings. In addition, Form L of the 1st Schedule to the Rules which is made under Rule 90 (2) of the Rules elaborates the particulars to be filled in the certificate of delay including the aggregate number of days which are being excluded. As to when and the mode of supplying certified proceedings, rule 90 (5) of the Rules gives the following direction:

"Subject to the provisions of sub rule (1), the Registrar shall ensure a copy of the proceedings is ready for delivery within ninety (90) days from the date of the appellant requested for such copy and the appellant shall take steps to collect copy upon being informed by the Registrar to do so, or within

fourteen (14) days after expiry of the ninety (90) days.”

The above Rule imposes obligation on the Registrar to; (i) ensure that the proceedings are ready for delivery within ninety (90) days from the date when the appellant applied to be supplied with the same; and (ii) notify the appellant on the readiness of the requested documents. It cements the earlier settled position that, the documents for the purpose of an appeal should be secured after the appellant has obtained the Registrar’s official notification that the requested documents are ready for collection.

In the instant appeal, there is no dispute that the decision of the Tribunal sought to be challenged was handed down on 29th April, 2025 and the notice of appeal was lodged on 13th May, 2025. It is also on record that on 14th May, 2025, the appellant wrote a letter to the Registrar requesting for certified copies of the Tribunal’s proceedings, judgment and decree for purposes of appeal. The said letter was received by the Registrar on the same date. Subsequently, the Registrar, in his letter dated 19th June, 2025, notified and delivered the said documents to the appellant. However, in the certificate of delay, the Registrar erroneously excluded the period from 14th May, 2025 when the appellant requested to be supplied with the said

documents to 20th June, 2025 when the said documents were delivered to the appellant instead of 19th June, 2025. In the circumstances, we agree with Mr. Mwaifwani that the Registrar has no powers to exclude time beyond the period used to prepare the requested documents.

This Court, has had occasions, previously, to deliberate on the applicability of the above provisions and underscored compliance with this mandatory requirement, failure of which would render the certificate of delay defective with the effect of striking out the appeal for being time barred. See, for instance, our decisions in **Khantibhai M. Patel v. Dahyabhai F. Minstry** [2003] TLR 437; **Mwalimu Amina Hamis v. National Examination Council of Tanzania & 4 Others**, Civil Application No. 20 of 2015 [2019] TZCA 248; **Registered Trustees of Social Action Trust Fund** (supra) and **Hamisi Mdida & Another v. The Registered Trustees of Islamic Foundation**, Civil Appeal No. 59 of 2020 [2020] TZCA 1918. In the latter case, the Court described the role of the Registrar in preparing the certificate of delay that:

"He must state in very dear terms that the days to be excluded in computing the period of limitation are those from the time when the appellant requested for copies of proceedings to the date

when he notified him that the documents are ready for collection". [Emphasis added].

Again, in **CRDB PLC v. True Colour Ltd and Another**, Civil Appeal No. 29 of 2019, we emphasized that:

"It is obvious that the certificate of delay is defective ...as it reckons the date of supply of the documents to the appellant as the last date in the computation of time to be excluded instead of the date of notification that the documents are ready for collection."
[Emphasis added].

Similarly, in the instant appeal, we agree with Mr. Mwaifwani that the certificate of delay is invalid as it does not reflect the truth of the matter and excluded the period which was not subject for exclusion. Therefore, the same cannot be relied upon by the appellant in this appeal. We are mindful that, in his submission, Mr. Kichenje, while relying only on the proviso to rule 90 (1) of the Rules, urged us to find that the said certificate is valid. With profound respect, we are unable to agree with him. We think, the learned Senior State Attorney took that position after reading only the proviso to rule 90 (1) of the Rules in isolation of sub-rule (2) of the same Rule which is read together with Form L of the 1st Schedule to the Rules.

In the circumstances, we sustain the preliminary objection raised by the learned counsel for the respondent. Consequently, we hereby struck out the appeal, with costs, for being time barred.

DATED at **DAR ES SALAAM** this 8th day of December, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

D. J. NANGELA
JUSTICE OF APPEAL

Ruling delivered this 8th day of December, 2025 in the presence of Mr. Sylvester Sebastian, learned State Attorneys for the Appellant, Mr. Mahmoud Mwangia, learned counsel for the Respondent via Virtual Court and Musa Amry, Court Clerk is hereby certified as a true copy of the original.



W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL