

IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

LIBRARY FB ATTORNEYS

(CORAM: MKUYE, J.A., GALEBA J.A. AND AGATHO J.A.)

CIVIL APPEAL NO. 375 OF 2024

IBM TANZANIA LIMITED APPELLANT

VERSUS

COMMISSIONER GENERAL (TRA) RESPONDENT

(Appeal from the Decision of the Tax Revenue Appeals Tribunal at Dar es Salaam)

(Ngimilanga, Vice Chairperson.)

**Dated the 15th day of February, 2024
in**

Tax Appeal No. 49 of 2022

.....

RULING OF THE COURT

1st & 8th December, 2025

MKUYE, J.A.:

This Ruling is in respect of the preliminary objection (PO) on a point of law raised by the respondent to the effect that:

"The appeal is incompetent for being time barred, as the appellant relied on a defective certificate of delay which improperly excluded 54 days after the appellant's letter requesting for copies of the Tribunal's proceedings, Judgment and decree was served outside the thirty (30) days mandated under rule 90 (3) of the Tanzania Court of Appeal Rules, 2009 (as amended)".

Before embarking on the merit of the PO, we find it apposite to give a brief background of the matter as follows:

In 2020, the Commissioner General (TRA), the respondent, conducted assessment of tax affairs of IBM Tanzania Limited (the appellant) for the years of income 2017 and 2018. The examination resulted into issuing adjusted assessment for VAT for the year 2017 to 2018 period in which she demanded additional VAT and interest amounting TZS. 1,747,062,804. The said assessment based on a variance noted between the appellant's sales declared in the VAT returns against the sales recorded in the Z-report in which the respondent concluded that the amount in the Z-report was higher, indicating that the sales in the VAT returns had been understated. The respondent also noted a discrepancy between the appellant's exports declared in the Z-report against its export details.

Following the assessment, the appellant filed an objection which was partly determined in favour of the appellant regarding the reconciliation of exports and hence the VAT assessment was revised to TZS 1,425,619.187.00.

The appellant's appeal to both the Tax Revenue Appeals Board (VAT Appeal No. 62 of 2021) and to the Tax Revenue Appeals Tribunal (TRAT) (Tax Appal No. 49 of 2022) were dismissed for lack of merit.

Still aggrieved, the appellant has appealed before this Court on five grounds of appeal which for a reason of the PO raised, we do not reproduce them.

At the hearing of the preliminary objection, the respondent was represented by Ms. Consolata Andrew, learned Principal State Attorney teaming up with Ms. Fatuma Abdallah, also learned Principal State Attorney together with Messrs. Mkama Musalama and Elinihaki Kabura, both learned State Attorneys. On the other side, the appellant had the services of Mr. Yohanes Konda assisted by Ms. Butogwa Mbuki, both learned advocates.

On being invited to expound the point of objection Ms. Andrew prefaced her address by arguing that the appeal was incompetent for contravening the provisions of rule 90 (3) of the Tanzania Court of Appeal Rules 2009 (the Rules). She elaborated that, although the judgment was delivered on 15/2/2024 and the letter requesting for copies of proceedings, judgment and decree (the documents) was written on 29/2/2024, it was not served on the respondent until on 2/5/2024. She argued that, such letter formed the basis for computing the dates from when the letter requesting for documents was lodged at the Tribunal and that the appellant would benefit from exclusion if only the said letter was served on the respondent within thirty days as per rule 90 (3) of the Rules. She fortified her argument by referring us to the cases of **Commissioner General**

Tanzania Revenue Authority v Serengeti Breweries, Civil Appeal No. 153 of 2025 (unreported) and **Irene Malanga v. Patrick Christopher O'dwet**, [2025] TZCA 161.

The learned Principal State Attorney elaborated further that, although rule 90 (3) of the Rules requiring the letter to be served on the respondent within 30 days was enacted on 22/3/2024, case law had prescribed the period of thirty days even before the said promulgation.

She argued further that, even the certificate of delay found at page 874 of the record of appeal, is invalid as it excludes the number of days from 29/2/2024 when the appellant applied for copies of proceedings, judgment, decree and exhibits to 23/4/2024 when the letter of notification from the Deputy Registrar written on 22/4/2024 was received by the appellant.

In reply, Mr. Konda adamantly contested to the point of PO. He argued that, the appellant filed the letter requesting for documents within time. However, the appellant cannot be faulted to have served it on the respondent beyond thirty days since that requirement by then, was not provided under the Tanzania Court of Appeal Rules, 2009. He said, such requirement was introduced in the Rules in 2024 through amendments published on 22/3/2024. He added that, as the service was meant to make

the respondent aware of the intended appeal, failure to serve her with such a letter did not prejudice her as she became aware when the impugned decision was delivered on 15/2/2024; through the notice of appeal that was served on her on 12/3/2024 after its lodgement at the Tribunal on 11/3/2024; and the appeal that was lodged on 20/6/2024 and served on her.

At any rate, in a manner that indicated his concession for serving the said letter on the respondent beyond the prescribed time, he shifted the blame to the tax consultant who initially had the conduct of the matter. When prompted by the Court to avail us with an authority for his proposition that, that was not a requirement of law, he said he had none.

Mr. Konda also implored to the Court to invoke the overriding principle and find that such requirement is a mere technicality which can be glossed over.

On the issue of invalidity of the certificate of delay, it was Ms. Mbuki's argument that the same was valid as per rule 90 of the Rules which provides for the exclusion of time from when documents were applied to the date of delivery of such documents to the appellant, which, in this case was 23/4/2024.

In rejoinder, Ms. Andrew insisted that the appellant ought to have served the letter on the respondent within 30 days from when the impugned decision was delivered.

In relation to the invocation of the overriding principle, she argued that, it cannot be applied against the mandatory requirement of the law -

See: **Irene Malaga's** case (supra) citing the case of **Mondorosi Village Council and Others and Tanzania Breweries Limited and Others**

[2018] TZCA 303. She also stressed that the certificate of delay was invalid for reckoning the date when documents were collected instead of the date when the appellant was notified that documents were ready for collection.

This is also reflected in the Form to that effect, she said. In this regard, she urged the Court to find merit on the point of PO raised and sustain it.

Having examined and considered the rival arguments on the matter, our task now is to determine whether the requirement of serving the letter requesting for copies of proceedings, judgment and decree within 30 days from the date of the judgment did not exist until rule 90 was amended.

Incidentally, the fact that the letter requesting for the documents for appeal purpose was served on 2/5/2024 which was after a lapse of 84 days from when the letter was written is not disputed by the appellant. However, the appellant is of the view that, by then, the requirement to serve it on

the respondent within thirty days was not prescribed by the law and, therefore, serving the same on 2/5/2024 was quite proper.

Admittedly, before 22/3/2024 service of the letter requesting for documents on the respondent within thirty days of the delivery of the decision sought to be challenged was not a requirement provided for under the Rules. Yet, it is crystal clear in the record of appeal that, after the impugned decision was delivered on 15/2/2024, the appellant lodged a notice of appeal on 11/3/2024 which was within time and lodged the letter requesting for the copies of requisite documents for appeal purposes on 29/2/2024. However, the same was served on the respondent on 22/5/2024 about 84 days from the date of lodging it before the Tribunal.

Much as the appellant's contention may carry some truth that, the period of thirty days was introduced in rule 90 (3) of the Rules by virtue of the Tanzania Court of Appeal (Amendment) Rules 2024 (GN No. 188 of 2024), we think, the learned counsel's argument that it was not a requirement of the law, or rather, there was no guidance in that aspect, is misplaced. We say so because, even before the amendment of the Rules, the law was quite settled way back since 1990's that the letter requesting for documents must be served on the respondent within thirty days from the date of the decision to be challenged. This stance was stated in the case of **The Principal Secretary Ministry of Defence and National**

Service v. Devram P. Valambhia [1992] T.L.R. 387, where the Court stated that:

"There must be a time limit within which the appellant is to serve the respondent with a copy of the letter to the Registrar. We think that the period of 30 days within which the appellant is required under rule 83 (1) [now rule 90 (1)] to apply to the Registrar for a copy of the proceedings should be construed to be co-extensive with the period within which the appellant has to send a copy of that letter to the respondent.

[Emphasis added].

See also: **Novatus Williams Nkwama v. TUGHE** [2022] TCA 40 and **Wood Menders Company Limited v. Xu Li Jun**, Civil Appeal No. 233 of 2020 (unreported) which were decided before the Rules were amended. For instance, in the latter case of **Wood Menders Company Limited** (supra), it was stated that:

"....it is thus a settled position of the law that for purposes of rule 90(1) and (3) of the Rules, a copy of a letter by the appellant to the Registrar applying for the copy of proceedings for appeal purposes, must be served on the respondent within thirty days of the date when the impugned decision is delivered." [Emphasis added]

In what can be construed to be the appellant's concession that the said letter was served on the respondent inordinately late, Mr. Koda invited

us to find that, such omission did not prejudice the respondent and invoke the overriding objective principle to cure the anomaly. However, with due respect to the learned counsel, we cannot buy such a proposition. This is so because, failure to serve the copy of the letter requesting for requiresite documents on the respondent within the required time is a fatal irregularity touching on limitation of time for lodging the appeal. It is among the things which cannot be glossed over under the blanket of the overriding objective principle. On this, we wish to emphasize what we stated in the case of **Mondorosi Village Council and Others** (supra) cited by the learned Principal State Attorney that, the overriding objective principle cannot be applied blindly against the mandatory provisions of the law.

It is, therefore, our finding that the requirement of serving the letter requesting for the documents did exist even before the amendments to the Rules. Thus, the appellant was required to serve it on the respondent within 30 days of the date when the impugned decision was delivered.

In relation to the issue relating to the defectiveness of certificate of delay, we did not belabour to deal with it since we find it to be inconsequential to the outcome of the point of PO already discussed above.

In the final analysis, we find that the point of PO is meritorious and we sustain it. It is clear that, failure to serve the copy of the letter

requesting for the requisite documents for appeal purposes on the respondent within thirty days from when the impugned decision was delivered, disentitled the appellant from the exclusion of number of days required for the preparation of the documents sought. In this regard, the appellant ought to lodge his appeal within sixty days from when she lodged the notice of appeal on 11/3/2024. Therefore, lodging this appeal on 20/6/2024 renders her appeal to be time barred liable to be struck out.

Consequently, the appeal at hand is time barred and is hereby struck out with costs.

DATED at **MWANZA** this 6th day of December, 2025.

R. K. MKUYE
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

U. J. AGATHO
JUSTICE OF APPEAL

Ruling delivered virtually this 8th day of December, 2025 in the presence of Ms. Butogwa Mbuki, learned counsel for the Appellant, Mr. Taragwa Michael Nyang'anyi, learned State Attorneys. and Mr. Fahmi Karemwa, Court Clerk; is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL