

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: LEVIRA, J.A., GALEBA, J.A. And ISMAIL, J.A.)**

**CIVIL APPEAL NO. 302 OF 2022**

**JUBILEE INSURANCE COMPANY OF TANZANIA LIMITED ..... APPELLANT**

**VERSUS**

**COMMISSIONER GENERAL**

**TANZANIA REVENUE AUTHORITY ..... RESPONDENT**

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

**(Ngimilanga, Vice-Chairman.)**

**dated the 20<sup>th</sup> day of August, 2021**

**in**

**Tax Appeal No. 92A of 2020**

**.....**

**RULING OF THE COURT**

19<sup>th</sup> & 21<sup>st</sup> February, 2025

**ISMAIL, J.A.:**

At stake in this ruling is the competence or otherwise of the appeal instituted in this Court, against the decision of the Tax Revenue Appeals Tribunal (the Tribunal), in which the appellant lost her battle to ward-off the tax obligation which was imposed by the respondent. The obligation followed the appellant's decision to split her activities by creating a life assurance arm distinct from the general insurance arm of the business.

The respondent claimed that withholding tax was due and payable out of this transaction. It is this decision that rattled the appellant hence the instant appeal.

When the matter came for hearing, the Court invited the counsel for the parties to address it on the competence of the appeal in view of the certificate of delay issued by the Registrar of the Tribunal on 2<sup>nd</sup> May, 2022, while the appellant was invited to collect copies of the proceedings on 7<sup>th</sup> March, 2022.

Mr. Norbert Mwaifwani, learned counsel for the appellant, who addressed us first, submitted that the exclusion that covered the period up to 2<sup>nd</sup> May, 2022, when the appellant was finally furnished with copies of exhibits was quite in order. He argued that, copies of the proceedings which were furnished on 7<sup>th</sup> March, 2022, fell short of what the appellant requested on 24<sup>th</sup> August, 2021, since the exhibits were left out. He contended that the appellant enlisted the assistance of the Registrar of the Tax Revenue Appeals Board after being rebuffed by the Registrar of the Tribunal when they requested for the missing documents. Mr. Mwaifwani submitted that, it is when the missing documents were furnished on 2<sup>nd</sup> May, 2022, that this is when they requested the Registrar

of the Tribunal to issue a Certificate that covered the entire period up to 2<sup>nd</sup> May, 2022. The learned counsel saw nothing untoward against the Certificate, insisting that the appeal filed on 30<sup>th</sup> June, 2022 was timeous.

Ms. Consolatha Andrew, learned Principal State Attorney for the respondent, did not subscribe to her counterpart's contention. She submitted that, since the copies of the requested documents were furnished on 7<sup>th</sup> March, 2022, the subsequently issued certificate was invalid as it included days used by the Board to prepare and handle exhibits to the appellant contrary to rule 90 (1) of the Rules. Ms. Andrew argued that the Certificate must only relate to what the Tribunal did. She contended that the appellant's only recourse, in the circumstance, was to move the Tribunal, not the Board, to address the shortfall. Ms. Andrew urged us to strike out the appeal for being incompetent.

These rival arguments bring out a narrow question which is whether the Certificate of delay is valid and the appeal is competent. It is common knowledge that, exclusion of the days during which the appellant was waiting for being furnished copies of the proceedings is governed by the provisions of rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). Under this provision, exclusion of the days is done by the Registrar

of the High Court or, as is the case here, the Registrar of the Tribunal. The exclusion is in respect of the time from which the appellant requests for copies of the proceedings to the date on which such copies are furnished. This is the time utilized in preparation and delivery of the documents. We underscored this position in **The Editor, The Guardian Newspaper & Another v. Yono Auction Mart & Company Limited**, Civil Appeal No. 5 of 2016 (unreported) wherein, we held as follows:

*"A valid certificate of delay is one issued after preparation and delivery of the requested copy of the proceedings of the High Court. That entails the Registrar to certify and exclude days from the date when the proceedings were requested to the day when the same were delivered."*

Notably, the foregoing position cemented what the Court propounded in **Paulina Samson Ndawavya v. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (unreported), in which we guided on the sequence of events and procedure to be conformed to, as follows:

*"The procedure is that, once the copies have been prepared, the Registrar informs the appellant to collect them from the Registry. The Registrar then proceeds to issue the Certificate."*

We hold the view that exclusion of the days came to a stop when the appellant was called to collect the proceedings, and time for instituting the appeal started ticking against the appellant. This happened on 7<sup>th</sup> March, 2022, meaning that the Certificate issued by the Registrar ought to have excluded days up to 7<sup>th</sup> March, 2022 and not beyond. If the appellant felt that the documents issued to her were incomplete, the available option was to write a letter to the Registrar of the Tribunal to request for the missing documents. This would net off the days during which the missing documents were being prepared. This, she did not do, and the appellant felt comfortable dealing with the Registrar of the Board who did not have a role to play under the Rules.

We not only consider the decision to be strange and irregular but also a transgression of rule 90 (1) of the Rules when he netted-off time for activities in respect of which he was neither involved nor supposed to be aware of. We need to emphasize that, the powers of the Registrar under the Rules were never intended to be exercised to cover activities which were not performed or sanctioned by him. It follows, therefore, that the Certificate that sought to exclude more days than necessary has its validity limited to only up to 7<sup>th</sup> March, 2022, the date on which the said

documents were furnished to the appellant by the Registrar of the Tribunal. This is so because there is nothing on record suggesting that the Registrar of the Tribunal was doing between 7<sup>th</sup> March and 2<sup>nd</sup> May, 2022.

Having limited the scope of the said Certificate to days up to 7<sup>th</sup> March, 2022, the question that arises is: what has become of the competence of the appeal filed on 30<sup>th</sup> June, 2022? Mr. Mwaifwani contended that the appeal is timeous and, therefore, competent. Ms. Andrew is strenuously of the opposed view and she has invited us to adjudge it incompetent and strike it out. We are in agreement with her for, her argument sits well with what the Court has underscored many a time. In **Paulina Samson Ndawavya** (supra), for instance, we held as hereunder:

*"...As for computation of time, it is from the date when the appellant becomes aware that the copies are ready for collection that time starts to run."*

Thus, having collected the documents on 7<sup>th</sup> March, 2022, the appellant had, in terms of rule 90 (1) of the Rules, up to 6<sup>th</sup> May, 2022, to lodge her appeal in this Court. By filing it on 30<sup>th</sup> June, 2022, the

appellant was late by a whopping 54 days. Needless to say, the appeal was hopelessly time-barred and incompetent.

In consequence of the foregoing, we strike out the appeal. We make no order as to costs.

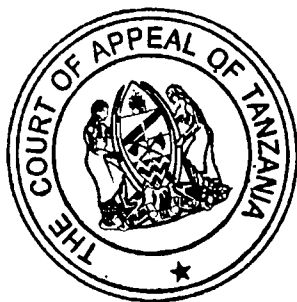
**DATED at DODOMA** this 20<sup>th</sup> day of February, 2025


M. C. LEVIRA  
**JUSTICE OF APPEAL**

Z. N. GALEBA  
**JUSTICE OF APPEAL**

M. K. ISMAIL  
**JUSTICE OF APPEAL**

The Ruling delivered this 21<sup>st</sup> day of February, 2025 in the presence of Mr. Noel Adam Mosha, learned counsel for the Applicant via video facility from Dar es Salaam and Mr. Yohana Ndila, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.



  
O. H. KINGWELE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**