

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MUSTAFA, J.A., OMAR, J.A. And MAFIGANO, Ag. J.A.)

CIVIL APPEAL NO. 18 OF 1986

AUGUSTIN PHILBERT. APPELLANT

VERSUS

BENJAMIN JOSEPH. RESPONDENT

(Appeal from the decision of the
High Court of Tanzania at Mwanza)
(Katiti, J.) dated 29th day of May,
1985

in

(PC) Civil Appeal No. 20 of 1983

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The respondent Benjamin Joseph has made a preliminary objection, alleging that the notice of appeal was filed out of time, without leave. We notice that the appeal was from the judgment of Katiti, J. which was given on 29.5.85. The notice of appeal, in terms of Rule 76 of the Court of Appeal Rules, should have been filed within 14 days, but in fact the notice of appeal was filed on 20.8.85, about 80 days later. It was out of time.

Mwalusanya, J. gave leave to the appellant to appeal to this Court on 8.8.86 and in his ruling he stated that the appellant should file his notice of appeal within 14 days of the date of his ruling, which was 8.8.1986. However, with respect we think that Mwalusanya, J. was not empowered to grant any extension of time to appeal to this Court. He was of course empowered to grant a certificate of leave to appeal to this Court in terms of section 4(2)(o) of the Appellate Jurisdiction Act. But in respect of extension of time, the provisions for extension are contained in Rule 8 of the Court of Appeal Rules, and the court referred to therein is the Court of Appeal. In the circumstances the extension of time purportedly given by Mwalusanya, J. is ineffective.

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The appeal is incompetent and is dismissed. We would order costs assessed at Shs. 1,000/- to be paid to the successful respondent. The appellant had deposited Shs. 5,000/- for costs. The appellant is to be refunded Shs. 4,000/- from his deposit and Shs. 1,000/- from such deposit is to be paid to the respondent for his costs in this appeal.


DATED at MWANZA this 18th day of August, 1987.

A. MUSTAFA
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

D. F. MAFIGANO
Ag. JUSTICE OF APPEAL

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


(J. H. MSOFFE)
DEPUTY REGISTRAR.