

A SYNOPSIS OF THE PROCEDURES FOR CIVIL APPEALS TO THE COURT OF APPEAL OF TANZANIA: PRACTICAL PERSPECTIVES

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1.0 Introduction

An Appeal may be defined as “the judicial examination of the decision by a Higher court of the decision of an inferior court” (Chamber’s 21st century Dictionary (1997, Edn.) p. 59²

The court of appeal of Tanzania is established under Article 117 of the Constitution³, it is the highest Court of the land in terms of hierarchy of judiciary in Tanzania⁴. This is the court of final appeal. The law governing the procedures before the Court of Appeal is the Appellate Jurisdiction Act⁵, and The Tanzania Court of Appeal (Amendments) Rules 2019 which came into force on 26 April 2019⁶.

This paper gives a synopsis of the procedures to be undertaken for civil appeals to the Court of appeal of Tanzania a practical perspective. It covers appeals in Land, Labour and normal civil suits. Procedures, necessary documents and timing for each step will be discussed. At the end a discussion will be triggered on challenges faced on the field (a practical perspective).

2.0 Appeals in Civil Suits

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² A BENCH BOOK FOR JUDGES IN TANZANIA, Published by Judiciary of Tanzania with the support of the World Bank , January, 2019, p 43

³ The united Republic of Tanzania, The Constitution of the United Republic of Tanzania 1977

⁴ Followed by the High Court, the Resident Magistrate Court, the District court and The Primary Court

⁵ Cap 141 R.E 2019

⁶ GN No 344 of 2019

Appeals to the Court of Appeal may be preferred by a party who is dissatisfied by the decision of the High Court exercising original jurisdiction or revisional jurisdiction or from the decision of the subordinate court exercising extended jurisdiction. This is conferred by section 4 of the Appellate Jurisdiction Act (The Act)⁷. Section 5 of the Act provides for matters that can be appealed against to the Court of Appeal.

2.1 The Tanzania Court Appeal Rules 2019 (The Rules)

The amendment is aimed at facilitating just, expeditious, proportionate and affordable justice. Some important amendments by The Rules include;

- Electronic filing formally introduced at the Court [Rule 12(2)
- Statutorily prescribed forms relating to stay of execution and certificate of delay introduced [Stay of Execution (Form J), and certificate of delay (Form K) the first schedule of the Rules.]
- Oxygen principle expressly reflected in the Rules, and it demands the Court to avoid technicalities in dispensation of justice [Rule 2 and Section 3A and 3B Cap 114]
- Circumstances for parties to obtain adjournment tightened [Rule 38A (2) (3) (4) and (5)]
Incompetency of the record of appeal no longer a ground for striking out an appeal
- The obligation of a party to follow up collection of proceedings after making an application now crystallized [(Rule 96 (6)- additional record of appeal, 96(7) supplementary record of appeal]
- Respondent can file submissions opposing the appeal even where the Appellant fails to file his [Rule 106 (2), Rule 106 (11) time for oral submission] Rule 106 (13) the Court is vested with a discretion to waive the requirements of Rule 106

2.2 Important considerations before filing documents to the Court of Appeal

- Rule 12 -Form of document for use in proceedings of the Court
 - (1) A paper of durable quality

⁷ Ibid Fn 5

- (2) Electronic filing
 - (3) Binding in a book form with a cover of stout (heavy/solid) paper and title of the appeal shall appear on the cover
 - (4) Numbering of pages
- Rule 15-Hours for lodging documents; from 9 O'clock in the forenoon to 1 O'clock in the afternoon

2.3 Steps to observe and Time line for an appeal

There are various steps that must be observed before you lodge an appeal to the Court of appeal. These are covered by part V of the rules. In practice it is important to observe these steps as they chronologically appear⁸;

- i. **Filing of Notice of appeal to the High Court;** this notice must be filed within 30 days from the date when the aggrieved decision was made⁹. This is provided for under Rule 83 of the Court of Appeal rules.
 - a. The notice should be filed in duplicate with the Registrar of the High Court¹⁰
 - b. The notice shall be substantially in the Form D in the 1st Schedule of the Rules and must be signed by or on behalf of the appellant¹¹
 - c. The notice shall state whether the intended appeal is against the whole decision or part of it and shall state address for service of the appellant and the names and addresses of all persons intended to be served with the notice¹²
 - d. A copy of judgment or decision of the High Court is not necessary to be accompany a notice of appeal where the intended appeal is against the decision or judgment of the High Court¹³

⁸ This is the authors personal observation

⁹ Rule 83 (2) of the Rules

¹⁰ Ibid Rule 83(1)

¹¹ Ibid Rule 83(6)

¹² Ibid Rule 83(3)

¹³ Ibid Rule 83(5)

- e. Where the notice appeal deviates from the form the Court may order amendment either suo-motuo or upon application¹⁴
 - f. The notice appeal shall be served to the respondent before or within 14 days after it is lodged, copies must be served on all persons who seem to be directly affected by the appeal Rule 84 of the Rules. When a person who is supposed to be served with the notice has not given any subsequent address for service A notice may be served on an address that was given in the proceedings in the High Court Rule 84 (2)
 - g. The Respondent is required to lodge notice of full and sufficient address for service in the appropriate registry within fourteen days after a notice of appeal is served on him and within a further 14 days serve a copy of the notice of address for service on every other person named in the notice of appeal as a person intended to be served Rule 86 (1) (a) (b) of the Rules. The particulars of address are provided under Rule 86A
- ii. Filing of letter to the Registrar requesting for the copy of Decree and proceedings;** the letters must be filed to the registrar within 30 days from the date when the decision was made. This is provided for under Rule 90(1) of the Rules
- a. The letter must be served to the respondent Rule 90(3)
 - b. The Registrar shall issue certificate of delay in the Form L specified in the 1st schedule of the Rules. After issuance of the certificate, in computing time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar as being required for the preparation and delivery of the copy to the appellant Rule 90(1) of the Rules
 - c. The Registrar is mandated to issue copy of the proceedings within 90 days from the date they were requested and the appellant must collect the proceedings after he is informed or within 14 days after expiry of the 90 days Rule 90(5) of the Rules

¹⁴ Ibid Rule 83(7)

- iii. **Application for leave to Appeal;** Section 5(1) (b) of the Appellate Jurisdiction Cap 141 detects that appeals shall lie to the Court of Appeal with leave of the High Court or of the Court of the Appeal. Leave to the High Court may either be made informally **when the decision against which it is desired to appeal is given** or by chamber summons within 30 days of the decision Rule 45 (a)
- a. If the High Court refuses leave a party may apply to the Court of Appeal within 14 days of the refusal and the application must be supported by an affidavit (Rule 45 (b) read together with Rule 49
- b. In an Application for leave the court must determine whether or not the decision sought to be appealed against raises legal points which are worth consideration of the Court of Appeal. See *Coca Cola Kwanza Ltd v Charles Mpunga & 103 Others*¹⁵ Mwarija J.A
- iv. **Lodging of an appeal: Rule 90 of the Rules**
- a. A memorandum of appeal in quintuplicate within 60 days from the day of lodgment of the Notice of appeal; contents of the memorandum of appeal are provided for under Rule 93, grounds of objection shall be numbered consecutively and it shall be substantially in the form F in the first Schedule of the Rules¹⁶ and must be signed by or on behalf of the appellant
- b. The record of appeal in quintuplicate; contents of the record of appeal are contained under Rule 96 of the Rules.
- c. The appellant shall within 7 days after lodging the memorandum and record of appeal serve the copies of them on each respondent who has given address of service as per Rule 86
- v. **Filing of Written submission** ; the appellant must within 60 days after lodging the record of appeal or filing a notice of motion file written submission in support of the

¹⁵ Civil Application No. 393/01/0f 2017

¹⁶ Rule 93(3) of the Rules

- appeal Rule 106 (1) of the Rules and serve the respondent within 14 days from the date of filing Rule 106 (6)
- a. When the appellant fails to file the written submission within the prescribed time, the respondent may file his written submission Rule 106(2). Rule 106 (3) provides for the contents of the written submission
 - b. If the written submission are filed the Respondent shall file his reply within 30 days upon receipt of the submissions Rule 106 (7) and serve the appellant within 14 days Rule 106(8)
- vi. **Hearing of the appeal;** after time for filing submission expires the registrar shall fix a date of hearing and notify the parties Rule 106 (10). The Registrar shall give notice of at least 14 days notice of hearing
- a. When written submissions are filed parties shall be required to present oral arguments to clarify their written submission
 - b. When no written submissions are file present oral arguments in support of or in opposition to appeal Rule 106 (10), time limited for oral arguments is limited to not more than 30 mins Rule 106(11)
 - c. Before hearing the appeal Rule 34- list authorities and copies of judgment to be referred must be filed
- vii. **Preliminary objection:** Rule 107 is to the effect that, any party intending to rely on a preliminary objection shall give the other party clear 3 days notice setting out the grounds of objection such as the specific law, principle or decision relied upon and file five copies of the notice with the Registrar
- a. Objections must be on points of law that if sustained may dispose of the appeal Rule 107 (2). The respondent raising a preliminary objection must provide necessary particulars to enable the Court and the other party to grasp the nature and scope of the objection Rule 107(3)

3.0 Appeal on labour matters

Appeals for labour matters emanating from the High Court, whether exercising original jurisdiction or revisional jurisdiction are covered by Section 57 of the Labour Institutions Act¹⁷. One peculiar requirement laid down under Section 57 of Cap 300 is that appeals to the court of appeal lies only on points of Law. However the peculiar character of labour appeals to the Court of Appeal is that, there is no requirement for leave prior to filing appeal. This issue was discussed in **REMIGIOUS MUGANGA VS BARRICK BULYANHULU GOLD MINE**¹⁸ where at page 9 the Court was of the view that, Section 57 of the Labour Institutions Act allows a party, who is aggrieved by any appealable decision arising from the proceedings of the Labour Court, to appeal without recourse to the provisions of Section 5(1) (c) of the Appellate Jurisdiction Act.

Where there is a point of fact involved the option of the aggrieved party is to prefer review before the Court of Appeal. This was discussed in **MUHIMBILI NATIONAL HOSPITAL VERSUS COSTANTINE VICTOR JOHN**¹⁹ , where at page 5 the court was of the view that, since by virtue of the provisions of Section 57 of the Act, the applicant is barred from appealing against the findings of the Labour Court on matters of fact, the available remedy for it was to invoke revisional powers of the court.

What happens when there are mixed points of fact and law in an appeal? The cure can be found in **REMIGIOUS MUGANGA VS BARRICK BULYANHULU GOLD MINE (Supra)** where the Court sorted out the points of facts and decided on the point of Law. However in Practice when you wish to challenge the decision of the Labour Court on both points of fact and Law the proposed route would be via invoking the revisional powers of the Court.

Procedures for appeal, documents to be lodged and time lines applicable are *mutatis mutandis* with those of civil suits discussed in a previous part of this presentation.

4.0 Appeals in Land matters

¹⁷ Cap 300 R.E 2019

¹⁸ Civil appeal no.47 of 2017 Unreported

¹⁹ Civil Application No. 44 of 2013 Unreported

The law governing appeals in land matters are the Land disputes Courts Act²⁰ and The Appellate Jurisdiction Act²¹ and the Tanzania Court of Appeal Rules²². A party who is aggrieved by the decision of the High court is categorized under three limbs;

- a. An appeal from the High Court when exercising its original jurisdiction. This is covered by section 47(1) of Cap 216. The appellant shall appeal to the court of appeal as the matter of right without the need to seek for leave and in accordance with the provision of The Appellate Jurisdiction Act and The Tanzania Court of Appeal Rules
- b. An appeal from the Decision of the High Court when exercising revisional Jurisdiction or appellate jurisdiction, the appellant shall be required to seek leave of the High Court or Court of Appeal in accordance with requirements of The Appellate Jurisdiction Act and The Tanzania Court of Appeal Rules this is provided for by Section 47(2) of Cap 216 R.E 2019.
- c. Where an appeal originates from the Ward Tribunal The appellant shall be required to seek for Certificate from the High Court certifying that there is point of law involved in the appeal this is provided for under section 47 (3) of Cap 216.

Save for the peculiar requirements identified procedures for appeal, documents to be lodged and time lines applicable are *mutatis muntandis* with those of civil suits discussed in a previous part of this presentation. Section 48 of Cap 216 vests the jurisdiction to the Court of appeal for appeals emanating from the High Court Land Division and the applicability of the Appellate Jurisdiction Act.

4.0 Conclusion

²⁰ Cap 216 R.E 2019

²¹ Cap 141 R.E 2019

²² GN No 344 of 2019

Since its amendment the Court of Appeal Rules have to greater extent served its purpose of facilitating just, expeditious, proportionate and affordable justice. It now the duty of the legal fraternity to master the rules, adhere with the requirements of the rules and act with highest level of professionalism and efficiency in handling appeals to the Court of Appeal. The presentation is just a synopsis and a tip in a huge iceberg about the rules and procedures for appealing to the Court of Appeal of Tanzania.

THE BRAIN TEASER IS NOW: WHAT ARE THE CHALLENGES THAT YOU FACE IN MASTERING THE PROCEDURES FOR APPEALING TO THE COURT OF APPEAL