



Court of Appeal Clarifies on the Rules of Procedure and the Parameters of the Right to be Heard

Recently, the Court of Appeal of Tanzania (the Court) delivered its ruling in Civil Application No. 70/01 of 2022 and dismissed an application for rehearing of a case that was initially heard *ex parte* (Civil Appeal No. 209 of 2019). In this ruling, the Court extensively interprets the provisions of rule 84(2) of the Court of Appeal Rules, 2009 (the Rules) and provides a guidance regarding the service of a notice of appeal on a person affected by the appeal.

Background of the Case

The Applicant in Civil Application No. 70/01 of 2022 was a Plaintiff before the High Court (Commercial Division) in a commercial case in which judgment was entered against the Respondent. Being dissatisfied, the Respondent, who was represented by Advocates, lodged a notice of appeal before the High Court and the Applicant was served with a copy of the said notice. Subsequently, the Respondent instituted the appeal and served a memorandum and record of appeal on the Applicant's former advocates followed by written submissions ahead of the hearing of the appeal. The appeal was called for hearing and neither the Applicant nor his advocate entered appearance.

Satisfied with the evidence through an affidavit of the court process server, the Court proceeded with hearing of the appeal in the absence of the Applicant in terms of rule 112(2) of the Rules. As a result, the Court pronounced its judgment in favour of the Respondent, hence the Applicant's application for rehearing. In support of the application for rehearing, the Applicant testified that he never instructed former advocates to represent the Applicant in the appeal because the law firms did not inform the Applicant of the institution of any appeal. Also, he stated that, for quite some time, he was outside the country for medical treatment. Further, he stated that upon his return, he became aware of the Respondent's appeal at the Court through a newspaper publication. As a result, the Applicant engaged a new advocate to follow up the status of the matter at the Court.

Subsequently, the newly engaged advocate conducted court file perusal through which he discovered that neither address for service was ever filed on the Applicant's behalf nor did the former advocates file any written submissions in reply against the appeal for the Court's consideration at the hearing. Also, it was established that no notice of delivery of judgment was served upon the Applicant.

For further information on legal updates please contact:

info@ecraattorneys.co.tz

About ECRA Attorneys

ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

ECRA Attorneys Address

10th Floor-Left Wing, Mwangi Tower,
Komanya Street, Kijitonyama,
Dar es Salaam, Tanzania
T: +255 743 024 396 | +255 714 949 604
E: info@ecraattorneys.co.tz
W: www.ecraattorneys.co.tz

Disclaimer

This legal update's contents, along with any attachments, are private, confidential, and meant only for the use of the person or organization to which they are directed. They may also be privileged or otherwise protected from disclosure. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of ECRA ATTORNEYS.

©ECRA Attorneys 2023. All rights reserved





ECRA
ATTORNEYS

LEGAL NEWS

6 May 2024



Arguments Raised by the Parties

On the one hand, the Applicant argued that it is mandatory to serve the other party with a copy of notice of appeal within 14 days as required by the Rules and resort to service at the address used in the High Court is optional. Consequently, the Applicant insisted that no proper service was done, hence a rehearing of the case was the only available remedy under the law. On the other hand, the Respondent argued that the law imposes no duty on the Appellant to serve the Respondent with a notice of appeal where such Respondent was represented by an advocate in the High Court and has not given a different address. Based on the foregoing, the Respondent prayed for the Court to dismiss the application with costs.

Determination of Issues and Decision of the Court

For the Court to determine the case, two issues were raised, namely: (i) whether the Applicant was aware of the hearing of the appeal; and if so, (ii) whether the Applicant was prevented by sufficient cause from appearing.

In its ruling, the Court held that, in terms of rule 84 of the Rules, it is not mandatory to serve the Respondent in person with a copy of notice of appeal. Also, resort to service at the address used in the High Court is optional. Further, the Court observed that while one may agree with the Applicant that an intended Appellant may serve a copy of a notice of appeal directly, the same rule permits service of such copy at the address used by the Respondent in the proceedings in the High Court including that of an advocate who represented him in the case.

Based on the foregoing, the Court observed that nothing in rule 84 of the Rules imposes an absolute duty to an intended Appellant to serve the Respondent directly to the exclusion of the advocate whom he had retained at the High Court along with the failure of the Applicant to satisfy the Court that he was indeed not aware of the pendency of the appeal or the date of its hearing as contended. Additionally, the Court was of the view that the notice of hearing was indeed served on the former advocate who defaulted appearance resulting in the Court proceeding with hearing of the appeal *ex parte* in terms of rule 112(2) of the Rules. Since no sufficient cause was shown to move the Court to exercise its discretion under rule 112(2) of the Rules for a rehearing of the appeal, the application was dismissed with costs.

Copy of this Legal News can be accessed by [clicking here](#)

Copy of the Ruling of the Court can be accessed by [clicking here](#)

For further information on legal updates please contact:

info@ecraattorneys.co.tz

About ECRA Attorneys

ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

ECRA Attorneys Address

10th Floor-Left Wing, Mwanga Tower,
Komanya Street, Kijitonyama,
Dar es Salaam, Tanzania

T: +255 743 024 396 | +255 714 949 604

E: info@ecraattorneys.co.tz

W: www.ecraattorneys.co.tz

Disclaimer

This legal update's contents, along with any attachments, are private, confidential, and meant only for the use of the person or organization to which they are directed. They may also be privileged or otherwise protected from disclosure. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of ECRA ATTORNEYS.

©ECRA Attorneys 2023. All rights reserved

