

THE SCOPE OF THE PRINCIPLE OF OVERRIDING OBJECTIVE

INTRODUCTION

An overriding objective or oxygen principle requires the court to avoid technicalities in dispensing justice. The source of this principle is Article 107 (2) (e) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time which requires the court at a time of delivering decisions to dispense justice without being tied up with technicalities provisions which may distract dispensation of justice.

The said principle was introduced in our jurisdiction via the Written Laws (Miscellaneous Amendments) (No. 3) of 2018 (Act No. 18 of 2018). The overriding objective is to facilitate the just, expeditious, proportionate and affordable resolution of disputes.

THE SCOPE OF THE PRINCIPLE

The overriding objective principle in Tanzania jurisprudence, was not meant to allow parties to circumvent the mandatory rules of the court.

In the recent decision of the Court of Appeal at Mwanza, Jacob Bushiri versus Mwanza City Council & 2 others Civil Appeal No. 36 of 2019 in this Appeal, the Appellant, having duly lodged his notice of appeal on 12th November, 2012 together with his letter seeking the High Court to supply a copy of certified decree and proceedings, which letter was not included in the record of Appeal. The letter appeared to have been copied to the respondents but it was not served to them.

The Court of Appeal, on its own motion, requested the parties to address on the effect and consequences of failure by the Appellant to serve the said letter to the respondents.

In addressing the question which was raised by the court, it was submitted by the Counsel for the second and third Respondent that, in terms of Rule 90 of the Tanzania Court of Appeal Rules, (here in after referred to as “the Rule”) the Appeal is out of time. In stressing on it, the Counsel for the first Respondent argued that, the rule provide exception which entitles the Appellant, to exclusion of such time as the Registrar may certify as long as two conditions are met:-

1. A request of a certified copy of decree and proceedings in the High Court; and
2. Service of that letter of request to the respondents.

In this case the second condition was not fulfilled by the Appellant hence the appeal is incompetent.

In his response, the Advocate for Appellant conceded on the irregularity by his failure to effect service of the said letter to the respondent, however, he went on telling the court that, the irregularity is curable as it does not go to the root of the Appeal. It is curable under the overriding objective principle and sought to file a supplementary record to rectify the anomalies.

After a short rejoinder by the counsels for the respondents, the Court of Appeal held that, the institution of appeal within sixty days is jurisdictional issue and mandatory requirement which cannot be salvaged overriding objective principle which was not meant to allow parties to circumvent to mandatory rules of the court, which have the effect of going to the foundation of the case.



Generally, while overriding objective principle is a vehicle, for attainment of substantive justice, it will not help the parties to circumvent the mandatory rules of the court.

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