

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 105 OF 2002

In the Matter of an Intended Appeal

BETWEEN

SAID OMARY MWINGO..... APPLICANT

AND

YUSUFU OMARY MAPANDE..... RESPONDENT

**(Application for striking out Notice of Appeal
from the decision of the High Court of
Tanzania at Dar es Salaam)**

(Ihema, J.)

dated the 8th day of June, 2001

in

(PC) Civil Appeal No. 135 of 1999

**-----
R U L I N G**

MSOFFE, J.A.:

This is an application for striking out a Notice of Appeal lodged on 19/6/2001 against the decision of the High Court, Ihema, J. in (PC) Civil Appeal No. 135/99.

At the hearing of the application the applicant chose not to address the court at length. All he said was that he was relying on the contents of the affidavit filed in support of the application.

On the other hand the respondent, at first, appeared to be opposing the application. On reflection, he changed his

mind and submitted that he was no longer opposing it.

The record shows that the judgment in (PC) Civil Appeal No. 135/99 was given on 8/6/2001. The notice of appeal was lodged on 19/6/2001 i.e. within time. The record is also clear that the respondent applied for copies of proceedings and judgment on 12/6/2001. On 11/3/2002 the District Registrar informed him that the above documents were ready for collection on payment of the necessary court fees. Thereafter, the respondent did not take any further action.

An appeal against the above mentioned judgment requires a certificate on a point of law in line with the express provisions of **S. 5_(2) (c) of The Appellate Jurisdiction Act, 1979**. To date, no such certificate was ever applied for and granted. Thus, an essential step envisaged under **Rule 82** has not been taken.

Due to the respondent's failure to take an essential step, it will follow that the application has merit and it is accordingly granted. The Notice of Appeal filed on 19/6/2001 is struck out with costs.

DATED at DAR ES SALAAM this 23rd day of February, 2005.

JUSTICE OF APPEAL