

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 154 OF 2005

TANZANIA POSTAL BANK.....APPLICANT

VERSUS

MUYWANGA GENERAL ENTERPRISES.....RESPONDENT

(Application to strike out notice of appeal from the
Ruling and Order of the High Court of Tanzania,
Commercial Division, at Dar es Salaam)

(Dr. Bwana, J.)

Dated the 27th day of May, 2005

In

Commercial Case NO. 8 of 2003

.....

R U L I N G

19 September, & 5th October, 2006

MSOFFE, J. A. :

This is an application to strike out "a notice of appeal" lodged by the respondent on 1/6/2005 against the ruling of the High Court (Commercial Division) dated 27/5/2005. The application is supported by an affidavit deposed by Mr. Walter Buxton Chipeta in which it is averred that the respondent has not taken essential steps to institute the intended appeal. The

application is made under Rule 82 of the Court Rules, 1979. Mr. Baravuga, learned advocate, appeared for the applicant. The respondent was served by publication in both **Nipashe** and **Daily News** newspapers but did not appear. On 19/9/2006 when the application was called on for hearing I directed the application to proceed under Rule 58(2) in the absence of the respondent.

The crucial point here is whether or not there is a valid notice of appeal capable of being struck out. In the affidavit in support of the application it is evident under paragraph 3.0 thereof that the "notice of appeal" referred to is apparently a letter dated 1/6/2005 written by Mr. Mgare, a learned advocate who was at the time representing the applicant, in which he was requesting for documents from the Registrar of the High Court (Commercial Division) for appeal purposes. In the letter Mr. Mgare stated, *inter- alia*, as follows:-

"By this letter the Decree holder is hereby notified that the Judgment debtor is intending to appeal to the Court of Appeal of Tanzania".

The question is whether the letter was a true notice of appeal under the Rules. With respect, it was not. Rule 76 sets out the general requirements of a notice of appeal. Under sub-rule (1) thereof an intended appellant must lodge a written

notice in duplicate with the Registrar of the High Court. And under sub- rule (6) notice must be substantially in the form D in the First Schedule to the Rules, and must be signed by or on behalf of the appellant. Surely, the letter is not in the format stipulated under form D. In other words, the letter is not the sort of notice envisaged by the Rules.

In the event, it will follow that there is no true notice of appeal annexed to the application which is capable of being struck out. In the absence of such notice the application has no leg to stand on. The application is accordingly struck out with no order as to costs.

For the avoidance of doubt, if there is a true notice of appeal lying somewhere the applicant is still free to file a fresh application to strike it out.

Dated at Dar es Salaam this 27th day of September

J.H. MSSOFE

JUSTICE OF APPEAL

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




S. M. RUMANYIKA
DEPUTY REGISTRAR