

**IN THE COURT OF APPEAL OF TANZANIA  
AT MBEYA**

**CRIMINAL APPLICATION NO. 1 OF 2013**

**ABDALLAH SAID ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**(Application for extension of time arising from the  
Ruling of the High Court of Tanzania at Mbeya)**

**(Mrema, J.)**

**Dated the 8<sup>th</sup> day of June, 2004**

**in**

**Misc. Criminal Application No. 29 of 2003**

-----

**RULING**

**12<sup>th</sup> & 21<sup>st</sup> June, 2013**

**LUANDA, J.A.:**

The above named applicant has filed this application for extension of time so as to enable him file a notice of appeal out of time. The application has been made "under Rule 14(3) of the Appellate Jurisdiction Act, 2009 and Rule 83 of the Court of Appeal Rules, 2009."

The application was fixed to come up for hearing on 12/6/13.

A day prior to the date of hearing of the application, Ms. Scolastica Lugongo learned State Attorney who represented the

respondent/Republic filed a notice of a preliminary objection, a copy of which was served upon the applicant. The notice of preliminary objection consists two legal points namely:-

- (1) The application is defective for wrong citation of the law.
- (2) The application is defective for offending Rule 48(2) of the Tanzania Court of Appeal Rules, 2009

On the date of hearing, the Court permitted Ms. Lugongo to argue the points she had raised in the notice of preliminary objection.

Submitting on the first point, Ms. Lugongo said the applicant did not cite the appropriate provisions of law in his notice of motion. Elaborating she said the Appellate Jurisdiction Act, Cap. 141 has sections and not Rules. In any case there is no such section in the said Act.

As regards Rule 83 of the Court of Appeal Rules, 2009 (the Rules) she said, the Rules contain such Rule falling under Part V Appeals in Civil Matters but it has nothing to do with Criminal matter.

Turning to the second point, Ms. Lugongo said the applicant did not comply with Rule 48(2) of the Rules into two aspects. One, the notice of motion does not substantially conform with Form A as provided in the First Schedule to the Rules. Two, it was not signed by the applicant. In view of the above shortcomings, Ms. Lugongo prayed that the application be struck out for want of a valid notice of motion. The applicant who is a layman had nothing to contribute to the legal points raised. He prayed the Court to consider his application.

I have gone through the submissions of Ms. Lugongo. The points raised have merits. The record shows that the sections and Rules cited therein are not relevant at all. Further, the format of the notice of motion does not substantially conform with Form A as provided in the First Schedule to the Rules. Indeed, the applicant failed to comply with the mandatory requirements of Rule 48(1) and (2) of the Rules. The Rule reads:-

*48(1) Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, every application to the Court shall be by notice of motion supported by affidavit. It **shall cite the specific rule** under which it is*

*brought and state the ground for the relief sought.*

*(3) A notice **of motion** shall be **substantially in the Form A** in the First Schedule to these Rules and **shall be signed by** or on behalf of the applicant. [Emphasis supplied]*

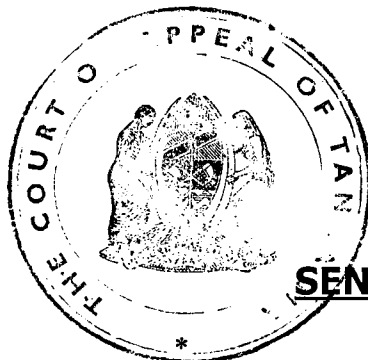
In view of the foregoing therefore, the notice of motion is incurably defective. Since there is no valid notice of motion, the purported application is incompetent. The same is hereby struck out.


Order accordingly.

**DATED** at **MBEYA** this 20<sup>th</sup> day of June, 2013.

B.M. LUANDA  
**JUSTICE OF APPEAL**

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



  
P.W. Bampikya  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**