

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

CRIMINAL APPLICATION NO. 1 OF 2013

ABEL MWAMWEZIAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Application for Extension of time from the Judgment of the
Court of Appeal of Tanzania at Mbeya**

(Lubuva, Nsekela, Mbarouk, JJJ.A)

**Dated the 30th day of May, 2008
in
Criminal Appeal No. 78 of 2007**

.....

RULING

12th & 25TH JUNE 2013

LUANDA, J.A:

On 30/5/2008 the Court dismissed the appellant's appeal for lack of merits. It means the conviction for murder and sentence of death by hanging meted out to the appellant by the trial High Court (Mrema, J) was upheld.

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 gave 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]*

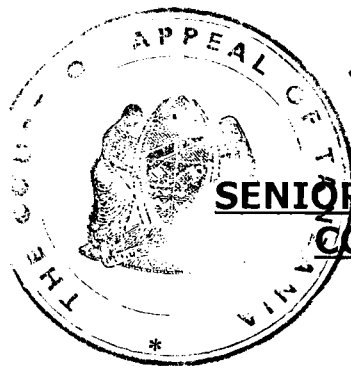

In view of the foregoing therefore, the notice of motion is incurably defective. Since there is no valid notice of motion, the purported application is incompetent. The same is hereby struck out.

Order accordingly.

DATED at **MBEYA** this 20th 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