

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

**(CORAM: KIMARO, J.A., MASSATI, J.A., And MMILLA, J.A.)**

**CONSOLIDATED CIVIL APPLICATIONS NO. 1 & 2 OF 2012**

**M/S BENANDYS COMPANY LTD ..... APPLICANT**

<b>BALOZI ABUBAKAR IBRAHIM BIBI SOPHIA IBRAHIM</b>	}	<b>VERSUS ..... RESPONDENTS</b>
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**(Application for stay of execution from the judgment of the High Court  
of Tanzania at Moshi)**

**(Mussa, J.)**

**dated the 1<sup>st</sup> day of July, 2011  
in**

**Transferred from Dar es Salaam Land Case No. 4 Of 2010**

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**RULING OF THE COURT**

**27<sup>th</sup> November & 6<sup>th</sup> December, 2013**

**MASSATI, J.A.:**

Before us, there are two applications between the same parties arising from the same proceedings; namely Moshi High Court Land Case No. 4 of 2005 which was transferred from Dar es Salaam Land Case No. 184 of 2010. The applicants in Moshi Civil Application No. 1 of 2012 were BALOZI ABUBAKAR IBRAHIM AND BIBI SOPHIA IBRAHIM and the respondent was M/S BENANDY'S COMPANY LIMITED. In Moshi Civil Application No. 2 of 2012 the applicant is M/S BENANDY'S COMPANY

LIMITED and the respondents are BALOZI ABUBAKAR IBRAHIM AND BIBI SOPHIA IBRAHIM. In view of this background, we decided to consolidate the two applications, so that they may conveniently be heard together.

In Moshi Civil Application No. 1 of 2012, the applicants have filed a Notice of Motion to apply for stay of execution of the decree under Rule 11 (2) (b) and (c) of the Court of Appeal Rules 2009 (the Rules). They were represented by Mr. Francis Stolla, learned counsel. But the respondent, who was represented by Mrs. Crescencia Rwechungura assisted by Mr. Johnson Jamhuri, learned counsel, filed a notice of preliminary objection as well as an affidavit in reply. We decided to hear the parties first on the preliminary objection.

Initially the preliminary objection had two points, but at the hearing, Mrs Rwechungura decided to abandon the first one and argued the remaining one; which was:

*"That the application for stay of execution is unmaintainable as the notice of appeal is invalid.*

Mrs. Rwechungura pointed out that under Rule 11 (2) (b) (c) of the Rules under which the application for stay was brought, the application must be accompanied by a valid notice of appeal. In the present case, the notice of appeal attached to the application refers to Land Case No. 184 of 2005 of Moshi High Court Registry. Although the case was originally filed in the Land Division of the High Court, at Dar es Salaam as Land Case No. 184 of 2005; it was subsequently transferred to Moshi Registry, where it assumed another identification as Land Case No. 4 of 2010. This is the one that was heard by Mussa, J. (as he then was) whose judgment was delivered on 31<sup>st</sup> July, 2010. So, there was no valid notice of appeal because it refers to a different case, and not the one between the parties decided by Mussa, J. (as he then was). For inspiration, she referred to us the decision of this Court in **DPP v ACP ABDALLAH ZOMBE & OTHERS**. Criminal Appeal No. 254 of 2009 (unreported). She thus asked us to find that the application was incompetent and strike it out with costs.

On his part, Mr. Stolla submitted that although Dar es Salaam Land Case No. 184 of 2005 was transferred to Moshi Registry and given a new registration number, the case remained the same. Although the notice of

appeal omitted to mention the new identity of the case it is reflected in the attached decree. He pleaded that he did not know of the case's new identity when he filed the notice of appeal until he got the decree, much later after filing the notice. Finally, it was his view that the omission did not prejudice the respondent so long as it was seized of the substance of the matter. He urged us to dismiss the preliminary objection in the interests of substantive justice in the dictates of Rule 2 of the Rules.

In rebuttal, Mrs. Rwechungura submitted that since Mr. Stolla had been in conduct of the case at the trial, he cannot be heard to say that he did not know of the new identity. The omission was due to negligence on his part which cannot be sheltered behind Rule 2 of the Rules.

Rule 11 (2) (b) of the Rules on which the application is based reads in part as follows:

*11(2) (b) "in any civil proceedings, where **a notice of appeal** has been lodged in accordance with Rule 83... the Court may upon good cause shown, order stay of execution of such decree or order."*

This has been taken to mean that a notice of appeal must accompany the Notice of Motion (See **ANAEL KYAKA v. EMMANUEL KITOI** Civil Application No. 19 of 2009 (unreported.)

A notice of appeal is lodged under Rule 83. The contents of a notice of appeal are governed by sub rules (3) and (6). Sub rule 3 reads.

*"Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the **decision** and, shall specify the part complained of, shall state the address for service of the appellant and shall state the names and addresses of all persons intended to be served with copies of the notice.*

Sub rule 6 provides:-

*"A notice of appeal shall be substantially in the Form D in the First Schedule to these Rules and shall be signed by or on behalf of the appellants."*

From these provisions, it is clear to us that for a notice of appeal to be valid it must be lodged in accordance with the provisions of Rule 83, and substantially comply with Form D in the First Schedule to the Rules. (See **WILLIAM LOITIAME V ASHERI NAFTALI** (2003) TLR 320)

**LALAGO COTTON GINNERY AND OILMILLS COMPANY LIMITED V  
LOANS AND ADVANCES REALIZATION TRUST (LART) (2004) TLR 416  
MATHIAS CHARLES KASELELE V THE REGISTERED TRUSTEES OF  
THE ARCH DIOCESE OF TANZANIA – MZA** Civil Application No. 2 of  
2012 (unreported). Reading Rule 83 (3) and (6) together with Form D it  
appears to us that a valid notice of appeal must have the following  
components:-

- (a) The title of the Court.
- (b) The names and addresses of the parties.
- (c) The decision against which it is intended to appeal
- (d) The name(s) of the justice (or resident magistrate  
(Extended jurisdiction) who made the impugned decision
- (e) Whether the decision is against the whole or part only of  
the decision
- (f) The place and date where the notice was lodged
- (g) The signature of the appellant or his advocate, and;
- (h) The signature of the Registrar

The issue that arises from the preliminary objection is whether the decision against which it is intended to appeal has been identified in the notice of appeal?

It is common ground that the case giving rise to the impugned decision was originally filed at Dar es Salaam (High Court, Land Division), as Land Case No. 184 of 2005. It is also not in dispute that the case was transferred to Moshi High Court Registry, where it assumed a new identification as Land Case No. 4 of 2010. The transfer was made under Rule 7(4) of the High Court Registries Rules, as amended from time to time; The Rule provides:-

*"The Court may at any time on application or of its own motion transfer any proceedings from one Registry to another and any proceedings so transferred and all documents shall be filed accordingly."*

In our view the effect of the sub rule is that, once case is transferred to another Registry, it changes its identity. That is why it is prescribed that henceforth all documents relating to the transferred case had to be

“filed accordingly”. Much as the substance of a transferred case may remain the same, its identity certainly changes. The system of yearly serial numbering of all cases filed in our courts is significant not only for statistical purposes, but also intended to identify each case, guide proper documentation of all papers relating to the case, and enable interested persons and members of the public to obtain access to any information relating to the case. Its role in the whole scheme of administration of justice cannot therefore be downplayed. We do not therefore agree with Mr. Stolla, that the omission was inconsequential. It was fatal because by citing Land Case No. 184 of 2005 of Moshi Registry without reference to its number the Notice of Appeal was referring to a different case. This case had already acquired a new identity as Moshi High Court Land Case No. 4 of 2010. It is, in our view, a breach of Rule 83 of the Rules, because the Notice of Appeal did not identify the decision against which it is intended to appeal. Consequently the notice of appeal is invalid.

Since the Notice of Appeal is invalid and since an application for stay of execution has to be accompanied by a valid notice of appeal, the application is incompetent.



For the above reasons, we uphold the preliminary objection and hold that the application for stay is incompetent. We accordingly strike out the application with costs.

It is ordered.

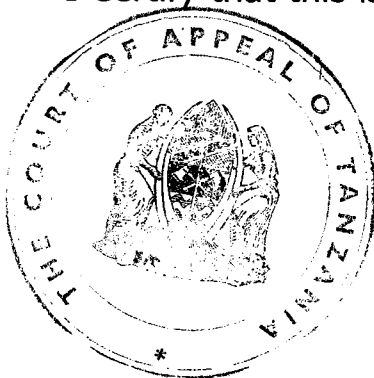
**DATED** at **ARUSHA** this 29<sup>th</sup> day of November, 2013.

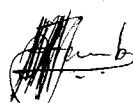
N.P. KIMARO  
**JUSTICE OF APPEAL**

S.A. MASSATI  
**JUSTICE OF APPEAL**

B.M. MMILLA  
**JUSTICE OF APPEAL**

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



  
F.J. KABWE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**