

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

**(CORAM: MBAROUK, J. A., MJASIRI, J.A. And MUSSA J.A.)**

**CIVIL APPEAL NO. 46 OF 2012**

**RUTAGATINA C.L. .... APPLICANT**

**VERSUS**

**THE ADVOCATES COMMITTEE.....1<sup>ST</sup> RESPONDENT**

**CLAVERY MTINDO NGALAPA.....2<sup>ND</sup> RESPONDENT**

**(Appeal from the Decision of the Full Bench of the  
High Court of Tanzania at Dar Es Salaam**

**(MANDIA, MLAY, SHANGWA, JJJ.)**

**dated 6<sup>TH</sup> day of September, 2006**

**in**

**Civil Appeal No. 221 of 2005**

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**ORDER OF THE COURT**

**MJASIRI, J.A.:**

When the appeal was called on for hearing, it was brought to the attention of the Court that the 2<sup>nd</sup> respondent was indisposed and could not enter appearance. The information was provided through the 2<sup>nd</sup> respondent's letter dated May 14/2013, just a day before the hearing.

Mr. George Kilindu leaned Advocate for the appellant asked the Court to determine the appeal exparte in terms of Rule 106 (10) of the Court

Rules 2009 as the 2<sup>nd</sup> respondent has failed to file a reply to the written submissions filed by the appellant despite the fact that he was served.

Mr. Kilindu stated further that the second respondent does not show any interest to proceed with the appeal as a similar excuse was given by him when the the appeal was called on for hearing on August 1/2012.

Mr. Karim Rashid, learned State Attorney, on his part was of the view that the second respondent is entitled to be present during the hearing, more so, because he has notified the Court that he is indisposed.

We on our part entirely agree with counsel that it is in the interest of justice that the appeal be finalised, and that the second respondent should be given a chance to be heard.

In view of what has been stated hereinabove, hearing of the appeal is adjourned to next sessions. The second respondent is granted the last adjournment. If the second respondent is not in court on the date the

matter is set for hearing the appeal will proceed in his absence. The second respondent to be notified.

DATED at DAR ES SALAAM this 15<sup>TH</sup> day of May, 2013.

M.S. MBAROUK  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

K.M. MUSSA  
**JUSTICE OF APPEAL**

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

M.A. MALEWO  
**DEPUTY REGISTR**