

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

(CORAM: MSOFFE, J.A., ORIYO, J.A., And MMILLA, J.A.)

MZA CIVIL APPLICATION NO. 14 OF 2014

- 1. JUMA OMARY**
- 2. GODFREY ERIKO**
- 3. EDWARD PETER**
- 4. RESTITUTA LUOGA**
- 5. ROBERT ODILO**
- 6. ZEBIDA NDEGE**
- 7. IBRAHIM RICHARD**

..... **APPLICANTS**

VERSUS

THE DIRECTOR, MWANZA FISHING INDUSTRY.....RESPONDENT

**(Application for striking out the notice of appeal from the decision of the
High Court of Tanzania at Mwanza)**

(Nyangarika, J.)

dated the 24th day of December, 2009

in

Civil Appeal No. 7 of 2009

RULING OF THE COURT

22nd & 24th October, 2014

MSOFFE, J.A.:

This is a short application in which the applicants are asking the Court to invoke Rule 89(2) of the Tanzania Court of Appeal Rules, 2009 and strike out the notice of appeal filed by the respondent on 4/10/2010 against the decision of Nyangarika J. dated 21/9/2010. The application is premised on the basis that ever since leave to appeal was granted by the High Court (De-Mello, J.) on 7/1/2014 the respondent has not been keen and diligent to

follow up his earlier letter dated 18/10/2010 asking to be supplied with copies of proceedings for appeal purposes. In the submission of Mr. Jerome Muna, learned advocate for the applicant, the respondent ought to have taken further steps to remind the District Registrar to supply them with the proceedings they had requested. On the other hand, Mr. Anthony Nasimire, learned advocate for the respondent, was of the view that as far as they were concerned they had no statutory duty to chase the District Registrar to supply them with the proceedings.

It is common ground that ever since 18/10/2010 when the respondent applied for copies of proceedings they are yet to be supplied with the same for purposes of pursuing the intended appeal. According to Mr. Muna, prudence demanded that they follow up the said proceedings with the office of the District Registrar. With respect, we agree with him. But that is the farthest we can go along with him. As Mr. Nasimire submitted, correctly in our view, much as prudence demanded so, they had no statutory duty to do so. On this, we are supported by this Court's decision by a single judge in **Transcontinental Forwarders Ltd. V Tanganyika Motors Ltd** [1997] TLR 328 at page 330 that:-

...reminding the Registry after applying for a copy of the proceedings, etc, and copying the request to the other party may indeed be practical and realistic thing to do but it is not a requirement. Once Rule 83 is complied with the intended applicant is **home and dry**.

(Emphasis supplied.)

The above view was also articulated by a single judge of this Court in **Olan Uganda Limited (suing through its Attorney United Youth Shipping C. Limited) v Tanzania Ports Authority**, Civil Application No. 138 of 2009 (unreported).

In the event, much as we sympathize with the applicants, it is unfortunate we are not in a position to allow the application. Rather, we will, and we hereby do, dismiss it with a direction to the District Registrar to ensure that the respondent is supplied with the proceedings as soon as possible. Each party shall bear its own costs.

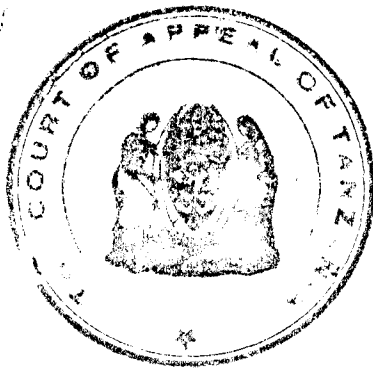
DATED at MWANZA this 24th day of October, 2014.

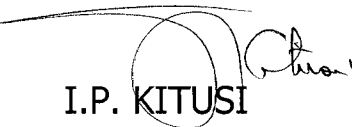
J.H. MSOFFE
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

B.M. MMILLA
JUSTICE OF APPEAL

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




I.P. KITUSI
CHIEF REGISTRAR
COURT OF APPEAL