

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: KIMARO, J.A., MUGASHA, J.A., And MZIRAY, J.A.)

CIVIL APPLICATION NO. 1 OF 2014

**CHRISTINA ALPHONCE TOMAS (As Administratrix of
the late DIDASS KASELE DECEASED).....APPLICANT**

VERSUS

SAAMOJA MASINGIJA.....RESPONDENT

**(Application for leave to appeal to the Court of Appeal of Tanzania after
refusal by the High Court)**

(Mwambegele, J.)

dated 26th November, 2013

in

Misc. Civil Application No.13 of 2013

.....

RULING OF THE COURT

21st & 22nd April, 2016

KIMARO, J.A.:-

The applicant lost an application she filed in the High Court seeking for leave to appeal to the court of appeal. Being dissatisfied with the decision of the High Court, she filed this application. The application was filed under Rule 45(b) of the Court of Appeal Rules 2009. The application is supported

by an affidavit of Masendeko Anania Ndayanse an advocate of the High Court and courts subordinate thereto save for the primary courts.

When the application came for hearing the applicant and her advocate were absent. In a letter dated 19th April, 2016 sent to this Court through a fax, Mr. M. A. Ndayanse, informed the Court that he will not be able to attend the hearing of the application because he is suffering from gouts. However no medical report is annexed to the letter to show the extent of illness and that it is one which will prevent him from appearing in Court for the hearing of the application.

Mr. Justinian Mushokorwa, learned advocate, appeared for the respondent. He requested the Court not to grant adjournment because the learned advocate for the applicant has shown some irresponsibility in dealing with the matter. He said the learned counsel for the applicant was informed through a telephone on 1st April 2016 of the date of the hearing of the application by the Registrar. He said he also took personal initiatives of finding out from the Registrar of the High Court of Sumbawanga, whether the learned advocate had received a preliminary objection he filed in Court opposing the application. The learned advocate said he took that initiative

last month. He was assured that the preliminary objection was served on Mr. Ndayanse and also his client was aware of the hearing date.

His considered opinion was that although his submissions was made orally, and the Court normally requires the evidence on service to be proved by an affidavit, he requested the Court to trust the oral submissions he made in respect of the service of the preliminary objection to the learned advocate for the applicant under rule 22(1) of the Court of Appeal Rules 2009.

The Court refused to grant the prayer for adjournment made by the learned advocate for the applicant through the letter he wrote to the Court seeking for an adjournment on ground of sickness that he is suffering from gout. The Court has always discouraged adjournments on grounds of sickness not supported by medical proof. The learned advocate is aware or ought to be aware that the Court has to have evidence to support grounds for an adjournment. We totally discourage the idea of seeking adjournments not supported by concrete proof that they are genuine applications.

For the default of appearance of the applicant, the learned advocate for the respondent requested the Court to dismiss the application with costs under Rule 63(1) of the Court of Appeal Rules 2009.

Rule 63(1) of the Court of Appeal Rules allows the Court to dismiss an application for non- appearance. As the applicant's counsel failed to show that the sickness he is suffering from is one which could have prevented him from attending the Court for the hearing of the application because there is no medical support, we dismiss the application with costs. Ordered accordingly.

DATED at MBEYA this 21st day of April 2016

N.P. KIMARO
JUSTICE OF APPEAL

S.E.A. MUGASHA
JUSTICE OF APPEAL

R.E. MZIRAY
JUSTICE OF APPEAL

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




E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL