

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

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

**CIVIL APPLICATION NO. 249 'B' OF 2015**

**NATIONAL DEVELOPMENT CORPORATION .....APPLICANT  
VERSUS**

**EQUIDOR LIMITED .....RESPONDENT**

**(Application for stay of execution from the decision of the High  
Court of Tanzania at Dar es Salaam.)**

**(Jundu, J.K)**

**Dated the 30<sup>th</sup> day of September, 2015**

**in**

**in Civil Case No. 120 of 2001**

**RULING OF THE COURT**

5<sup>th</sup> & 15<sup>th</sup> April, 2016

**MBAROUK, J.A.:**

When the application was called on for hearing today, the Court wanted to satisfy itself as to whether the application is properly before it. This is for the reason that, the record shows that there are two different notices of appeal, one which was attached to the affidavit filed in support of the notice of motion and the other one was attached to the affidavit in reply filed by the respondent as the one served to him by the applicant. The Court needed to determine which was a valid notice of appeal considering the requirement under Rule 11(2) (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules) where it is a pre requisite to lodge a

valid notice of appeal in an application for stay of execution in accordance with Rule 83 of the Rules. Considering the presence of two notices of appeal, the Court asked itself which among those two notices was a valid notice of appeal, was it the one attached to the notice of motion or that which was attached to the affidavit in reply.

Initially, Mr. Majura Magafu who was assisted by Mr. Beredy Malegesi, learned advocates for the applicant submitted that both the two notices of appeal were valid, but he later changed his mind and told the Court that a valid notice of appeal is that which was attached to the affidavit in reply of the respondent. In essence, he conceded to the defect raised by the Court. Mr. Magafu also agreed that the presence of two notices of appeal in this application is confusing and violate the requirement to attach a valid notice of appeal in the notice of motion when applying for stay of execution. He then invited the Court to invoke Rule 2 and 4 (2) (a) and (b) of the Rules and allow him to amend the anomaly.

On his part, Dr. Wilbert Kapinga, learned advocate for the respondent briefly and concisely submitted that, as there is no valid notice of appeal annexed to the notice of motion as required by Rule 11(2)(b) of the Rules, that renders the application to be incompetent and liable to be struck out. Dr. Kapinga did not press for costs.

As Mr. Magafu conceded that the notice of appeal attached to the notice of motion in this application is not valid, we are of the considered opinion that, that violates the requirement under Rule 11(2) (b) of the Rules and renders the application incompetent. For that reason, we therefore accordingly strike it out with no order as to costs.

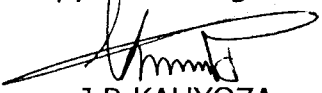
**DATED at DAR ES SALAAM** this 11<sup>th</sup> day of April, 2016.

M.S MBAROUK  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

S.S. KAIJAGE  
**JUSTICE OF APPEAL**

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

  
J.R KAHYOZA  
**REGISTRAR COURT OF APPEAL**