

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

**(CORAM: MASSATI, J.A., ORIYO, J.A. And MUGASHA, J.A.)**

**CIVIL APPLICATION NO. 35 OF 2012**

**FREIGHT MERIDIAN COMPANY LIMITED ..... APPLICANT**

**VERSUS**

**DHANDHO ROAD HAULAGE (T) LIMITED..... RESPONDENT**

**(Application for striking out notice of appeal from the decision of the High  
Court of Tanzania, at Dar-es-salaam)**

**(Mruma, J.)**

**Dated the 27<sup>th</sup> day of June, 2011**

**In**

**Comm. Case No. 58 of 2008**

**.....**

**RULING OF THE COURT**

26<sup>th</sup> February & 2<sup>nd</sup> March, 2016

**MUGASHA, J.A.:**

This is an application for striking out the notice of appeal brought under rule 89 (2) of the Court of Appeal Rules, 2009. The application is sought on grounds stated in the notice of motion as follows:-

- (a) That, the Respondent herein has failed to institute the Appeal within sixty days from the date of lodging the Notice

of Appeal as prescribed under Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009; and

(b) That, the Respondent herein has failed to take proper and necessary steps to lodge the intended Appeal.

(c) For an order that the costs of and incidental to this Application abide the result of the Application.

The application is supported by the affidavit of Mr. Walter Buxton Chipeta, counsel for the applicant. To buttress the motion the applicant has filed written submissions.

The application has been challenged by the respondent through the affidavit in reply of Henry Sato Masaba. Parties have filed written submissions in support of arguments for and against the grant of the application. Having refused to adjourn the hearing of the application which has been lagging since 2012, we invoked rule 106 (6) and (19) of the Court of Appeal Rules, 2009, dispensed with oral hearing and

proceeded to determine the application on the basis of written submissions filed by the parties.

According to the notice of motion, the applicant's affidavit and written submissions, the major complaint of the applicant is that since notice was filed on 5/7/2011; the appeal ought to have been filed not later than 4<sup>th</sup> August, 2011 because all the necessary documents were ready since 15<sup>th</sup> November, 2011. However, to date, the respondent has not instituted any appeal. Thus, the applicant urged us to allow the application whose effect is to strike out the notice of appeal.

On the other hand, the respondent has deponed in paragraph 9 of the affidavit in reply that, the appeal was filed on 10<sup>th</sup> April, 2012, within required time on the basis of the certificate of delay which was issued on 3<sup>rd</sup> April, 2012. In the submissions, it is the contention of the respondent that she acted diligently and promptly filed civil appeal No. 35 of 2012.

Having carefully considered the submission of the parties the question to be answered is the propriety of the application which seeks to move the Court to strike out the notice of appeal while the appeal is pending in Court.

The supposition by the respondent on existence of pending civil appeal No. 35 of 2012, made us to check with the Court Registry and we found out that there is a pending civil appeal no. 37 of 2012 and not 35 of 2012. This application and the pending civil appeal No. 37 of 2012 all originate from commercial case no. 58 of 2008 and the parties are **DHANDHO ROAD HAULAGE (T) LIMITED vs FREIGHT MERIDIAN COMPANY LIMITED**. In this regard, we take judicial notice of existence of pending Civil Appeal No. 37 of 2012 before the Court.

In view of the aforesaid the applicant is purposeless for being overtaken by events pursuant to the filing of Civil Appeal No. 37 of 2012 on 10/4/2012. As such, issues on the delay to file the appeal raised have no forum to be determined in this application but can

properly be dealt with in Civil Appeal No. 37 of 2012. In the premises, we strike out the application because it is overtaken by events. Costs to follow event.

**DATED** at **DAR ES SALAAM** this 29<sup>th</sup> day of February, 2016.


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

K. K. ORIYO  
**JUSTICE OF APPEAL**

S.E.A. MUGASHA  
**JUSTICE OF APPEAL**

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



  
P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**