

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

CIVIL APPLICATION NO. 177/11 OF 2017

(CORAM: MBAROUK, J.A., MUGASHA, J.A. And MWAMBEGELE, J.A.)

DISMAS K.B. FRANCIS APPLICANT

VERSUS

TABORA MUNICIPAL DIRECTOR RESPONDENT

**(Application for leave to amend a notice of appeal in the High
Court of Tanzania at Tabora)**

(Songoro, J.)

dated the 13th day of February, 2014

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Misc. Civil Application No. 55 of 2012

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RULING OF THE COURT

25th & 29th September, 2017

MBAROUK, J.A.:

By way of notice of motion made under Rules 48(1), 50(1) and 111 of the Tanzania Court of Appeal Rules, 2009, the applicant, Dismas K.B. Francis is seeking the order of this Court to grant him leave to amend a notice of appeal on the ground that the date of judgment on the notice of appeal was accidentally mis-quoted and the Honourable judge's name was inadvertently misspelled. In

support of the notice of motion the affidavit sworn by Dismas Kassabhano Buguzi Francis, the applicant was attached therewith.

According to the affidavit in support of the notice of motion, the applicant gave his grounds for his application to be granted in the following relevant paragraphs as follows:-

"2. That I had applied for the leave to appeal to the Court of Appeal of Tanzania through Application number 4 of 2014 on being granted leave so to do out of time through Application number 55 of 2012.

3. Leave sought in Application No. 4 of 2014 was denied, an act that called for seeking such leave from the Court of Appeal of Tanzania. But I learnt to be lacking copy of an order that granted leave to file Notice of Appeal out of time, hence my letter asking for it, which was

replied by a letter inviting me to collect the same.

- 4. I filed a Notice of Appeal to the Court of Appeal of Tanzania on the 27th day of February, 2014 on being granted leave to do so out of time.*
- 5. That in the said Notice of Appeal, Hon. J.E.C. Masanche, J. was mistakenly misspelled as Hon. J.F.C. Masanche, J. but also the date of judgment in Civil Appeal No. 31 of 1997 was accidentally referred to as 19th day of February, 1998 instead of 11th day of March, 1998, hence this Application for leave to amend the said Notice of Appeal.*
- 6. That the intended Appeal has overwhelming chances of success, and errors made in the Notice of Appeal were accidental, it would be equitable if leave to amend the said Notice is*

granted so that the Appeal could stand a chance to be heard and determined."

In this application, the applicant defended for himself, whereas the respondent was represented by Mr. Juma Masanja, learned Senior State Attorney.

At the hearing, the applicant basically repeated what has been stated in his sworn affidavit quoted hereinabove and prayed to adopt them as part of his submission. The same contents were also seen in his written submissions in support of the application made under Rule 106(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). He finally prayed for his application to be granted as prayed, because the errors were purely accidental.

On his part, the learned Senior State Attorney started by opposing the application, because no sufficient reasons were given to grant it. Mr. Masanja added that, without a copy of a judgment of the High Court been attached and seen by the Court, the claim raised by the applicant cannot be sufficiently substantiated or justified. He said, a copy of a notice of appeal attached to the

application which is sought to be amended is not enough to sufficiently justify the applicant's claim. In support of his argument, Mr. Masanja cited to us the case of **The Registered Trustees of Archdiocese of Dar es Salaam v. The Chairman Bunju Village Government and Eleven Others**, Civil Appeal No. 147 of 2005 (unreported). He further submitted that in the case he has cited, it was held that an affidavit is evidence, hence the applicant in this application should have attached a copy of the High Court judgment which would have shown the correct name of the judge and the actual date when the judgment was delivered. For that reason, Mr. Masanja urged us to dismiss the application.

In his rejoinder, the applicant simply reiterated what he submitted earlier on, and urged us to allow his application so that he can amend his notice of appeal.

Rule 111 of the Rules, reads as follows:-

"The Court may at any time allow amendment of any notice of appeal or notice of cross-appeal or

memorandum of appeal, as the case may be, or any other part of the record of appeal, on such terms as it thinks fit."

In this cited Rule, it seems no strings have been attached for the Court to grant amendment of a document sought to be amended. However, we think it is prudent for the document sought to be amended to be attached in the affidavit in support of the notice of motion and that has been done by the applicant.

In this application, the applicant is seeking leave to amend the notice of appeal to correct the name of a judge and the date of the decision of the High Court sought to be appealed against. The applicant has attached the incorrect notice of appeal sought to be amended. We are of the view that such an incorrect notice of appeal sought to be amended suffices for us to be acquainted with what is sought by the applicant. Unlike Rule 10 of the Rules where the applicant is required to show good cause, Rule 111 of the Rules does not attach any strings to grant leave to amend.

In the circumstances, and for the reasons stated above, we grant the applicant's application as prayed. The applicant has to file the notice of appeal with the amendments made within fourteen (14) days from the date of the delivery of this Ruling.

It is so ordered.

DATED at **TABORA** this 28th day of September, 2017.

M.S. MBAROUK
JUSTICE OF APPEAL

S.E.A. MUGASHA
JUSTICE OF APPEAL

J.C.M. MWAMBEGELE
JUSTICE OF APPEAL

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


A.H. Msumi
DEPUTY REGISTRAR
COURT OF APPEAL