

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

(CORAM: MUSSA, J.A., MWAMBEGELE, J.A., And LEVIRA, J.A.)

CIVIL REFERENCE NO. 1 OF 2016

**1. THOMAS D. KIRUMBUYO } APPLICANTS
2. ABBAS S. MHANGA }**

VERSUS

TANZANIA TELECOMMUNICATIONS CO. LTD RESPONDENT

**(Application for Reference of the Ruling of the Court of Appeal of
Tanzania at Dar es Salaam)**

(MJASIRI, KAIJAGE, MUSSA, JJ.A.)

dated the 22nd day of December, 2015

in

Civil Appeal No. 48 of 2013

RULING OF THE COURT

12th June & 4th July, 2019

LEVIRA, J.A.:

This is an application for reference preferred by the first applicant, Thomas David Kirumbuyo trying to challenge the decision of the Court (Mjasiri, Kaijage and Mussa, JJ.A). The application is made under Rule 62(1) and (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). In the said decision of the Court it transpired that, the first applicant herein lodged an appeal to the Court against the decision of the High Court (Jundu, J.K. and Mwarija and Twaib, JJ.) at Dar es salaam in Civil

Appeal No. 117 of 2004. However, the notice of appeal made reference to another person (second applicant herein).

The Court *suo motu* raised the issues of competence of the said appeal. Having taken into consideration that the purported second appellant is a deceased and that legally the first appellant could not lodge representative appeal, the Court went further to recognise the first appellant as the only appellant with *locus standi* before the Court. The Court directed that, should legal personal representatives of the second appellant (the second applicant herein) wish to be parties to the said appeal, they should regularize his *locus standi*. Aggrieved, the first applicant lodged this application to challenge the decision of the Court.

At the hearing of this application, the first applicant appeared in person, unrepresented while, the respondent was represented by Mr. George Magambo, learned advocate.

The first applicant had nothing useful to submit in regard to the application. He decided to leave the matter in Court's hand to decide.

In reply submission, Mr. Magambo only made a statement that, the application has no merits on basis of Rule 62 of the Rules. That was the end of parties' submissions as the applicant had no rejoinder to make.

Having considered the record and submissions by the parties the only issue calling for our determination is, whether the application is tenable before the Court. Without much ado, the answer to the raised issue is found under Rule 62 (1) & (2) of the Rules which provides that:

“62 (1) Where any person is dissatisfied **with the decision of a single Justice** exercising the powers conferred by Article 123 of the Constitution, he may apply informally to the Justice at the time when the decision is given or by writing to the Registrar within seven days after the decision of the Justice-

(a) N/A

(b) in any civil matter, to have any order, direction or decision of **a single Justice** varied, discharged or reversed by the Court.

(2) At the hearing by the Court of an application previously decided by **a single Justice**, no additional evidence shall be adduced except with the leave of the Court.” [Emphasis added]

It is clear from the above provision that, an application for reference is only made from a decision of a single Justice of the Court unlike in the current application where the applicant intends to challenge

the decision of a full Court; that is, three Justices. It does not even require one to have elementary legal knowledge to interpret the plain language of the above provision. In other words, the decision of the full Court cannot be challenged through a reference under Rule 62(1) and (2) of the Rules. With this short remark, we find and hold that the current application for reference is misconceived.

Consequently, the application is hereby struck out with no order as to costs.

DATED at **DAR ES SALAAM** this 18th day of June, 2019.

K. M. MUSSA
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

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


B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL