

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

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

CIVIL APPLICATION NO. 479/03 OF 2018

CHARLES MASUNE.....APPLICANT

VERSUS

JUMA MARE.....RESPONDENT

**(Application for striking out the notice of appeal from the decision
of the High Court of Tanzania at Dodoma)**

(Mohamed, J.)

dated the 22nd day of February, 2018

in

Misc. Land Application No. 112 of 2015

RULING OF THE COURT

20th & 30th September, 2019

MUSSA, J.A.:

The respondent was the unsuccessful party in the High Court Land Application No. 112 of 2015 which was decided in the applicant's favour on the 22nd February, 2018 (Mohamed, J.).

Dissatisfied, on 16th March, 2018 the respondent lodged a Notice of Appeal through Njulumi and Company, Advocates. As it were, a

copy of the Notice was served on Rweyongeza and Company, Advocates who happened to be the applicant's counsel.

Thereafter, the respondent dawdled along and took no further step. There is not even an indication that the respondent requested for copies of the proceedings and the decision desired to be impugned so as to entitle himself to a certificate of delay from the Registrar.

Against this backdrop, the applicant presently seeks, by Notice of Motion, an Order of the Court to the following effect: -

"The Notice of Appeal filed by the Respondent on the 16 day of March, 2018 be struck out with costs on grounds that the Respondent has failed to take essential steps in the proceedings."

The Notice of Motion is predicated under Rule 89(2) of the Tanzania Court of Appeal Rules, 2009 as recently amended by GN No. 344 of 2019 (the Rules) and is supported by an affidavit of Mr. Deus Nyabiri, a learned Advocate of the applicant. In addition, the applicant has also lodged written submissions as well as a list of authorities in

support of the application. From the other end, the respondent has not raised any response whatsoever.

When the application was placed before us for hearing, the applicant was represented by the already named Mr. Nyabiri, whereas the respondent was fending for himself, unrepresented.

Mr. Nyabiri commenced his submissions by adopting the Notice of Motion, the affidavit in support, the written submissions and the list of authorities. He then contended that the application is well constituted and unassailed by either an affidavit in reply or written submissions and, therefore, urged us to allow it with costs.

As already hinted, the respondent did not lodge any written submissions but, in view of the provisions of Rule 106(10)(b), we allowed him to make an oral submission but, in his short address, the respondent simply informed us that upon filing the Notice of Appeal, he thought that such was all he was required to do to mount the appeal.

Having heard the submissions from both sides we think it apt to observe that unlike a Criminal Appeal which is instituted by a Notice of

Appeal, in terms of Rule 90(1) of the Rules, a civil appeal is actually instituted by lodging, in the appropriate registry, a memorandum of appeal in quintuplicate, a record of appeal in quintuplicate and; security for costs of the appeal within sixty days of the date when the Notice of Appeal was lodged. If, on account being a lay person the respondent thought he was home and dry upon lodging the Notice of Appeal, it is quite understandable but, as the matter presently stands, his inaction and failure to lodge the mentioned documents was fatal to the desired appeal.

In the absence of a certificate of delay from the Registrar, we take the position that, the respondent was obliged to lodge the record appeal as well as the accompanying documents within 60 days from the 16th March, 2018 when he lodged the Notice of Appeal. He did not do so within the prescribed time and, that being so, pursuant to Rule 91(a) of the Rules, she is deemed to have withdrawn the Notice of Appeal.

The application is, so to speak, well deserved and we, accordingly, grant it and the respondent's Notice of Appeal is hereby struck out with costs. It is so ordered.

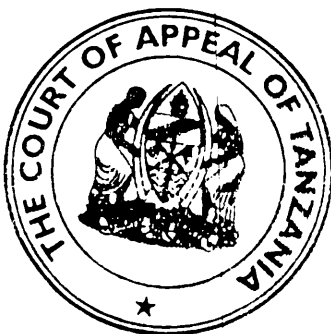
DATED at DODOMA this 27th day of September, 2019.

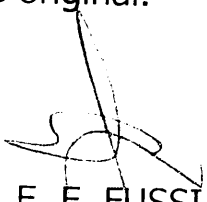
K. M. MUSSA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The Judgment delivered on this 30th day of September, 2019 in the presence of Mr. Deus Nyabiri, learned counsel for the Applicant whereas, Mr. Deus Nyabiri holding brief of the respondent is hereby certified as a true copy of the original.




E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL