

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 194/16 OF 2020**

**FIRST NATIONAL BANK TANZANIA LIMITED.....APPLICANT**

**VERSUS**

**HUSSEIN AHMED SALWAR t/a  
PUGU HARDWARE (2000) .....1<sup>ST</sup> RESPONDENT**

**AHMED HUSSEIN ABDULKARIM.....2<sup>ND</sup> RESPONDENT**

**(Arising from the decision of the High Court of Tanzania  
(Commercial Division), at Dar es Salaam)**

**(Fikirini, J.)**

**dated the 22<sup>nd</sup> day of April, 2020  
in  
Commercial Case No. 57 of 2019**

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**RULING**

19<sup>th</sup> June, 2020

**MWANDAMBO, J.A.:**

First National Bank Tanzania Limited, the applicant herein, has preferred the instant application by way of notice of motion under rule 84 (1) of the Tanzania Court of Appeal Rules (the Rules) for a direction dispensing with service of a copy of the notice of appeal to the respondents. The affidavit of Joseph Kipeche, learned advocate annexed to the notice of motion, support the application.

What prompted the applicant filing this application is fairly simple. The applicant sued the respondent before the High Court (Commercial Division) sitting at Dar es Salaam in Commercial Case No. 57 of 2019. As the respondent defaulted in filing a written statement of defence, the applicant moved the High Court to make a default judgment in terms of rule 22(1) of the High Court (Commercial Division) Procedure Rules, GN No. 250 of 2012. The High Court delivered the default judgment on 22<sup>nd</sup> April, 2020 against the applicant. It dismissed the suit for want of proof of the claim before it. Aggrieved, the applicant lodged a notice of appeal in terms of rule 83 (1) and (2) of the Rules.

Due to the uncertainty of the respondent's whereabouts, the applicant did not serve a copy of the notice of appeal on the respondent within the prescribed time as required by rule 84 (1) of the Rules. By reason of the foregoing, the applicant has lodged the application seeking an order dispensing with the requirement to serve the copy on the respondent. That rule empowers the Court upon an ex parte application to direct that a copy of notice of a appeal need not be effected on any respondent who took no part in the proceeding before the High Court.

Considering that the direction under rule 84 (1) has to be made in an ex parte application, there was no service of the notice of motion on the respondent and that explains why no affidavit in reply was filed. Under the circumstances, I will determine the application on the basis of the averments in the founding affidavit.

At the hearing, Mr. Joseph Kipeche, the learned advocate who appeared for the applicant to adopt the contents of his written submissions he had filed earlier without any oral arguments. I have examined the contents of the affidavit and the annexures thereto particularly the default judgment and I am satisfied that indeed, the respondent took no part in the proceedings before the High Court. As the judgment will show, the attempt to serve the respondent physically were unsuccessful and hence substituted service by publication which yet again, ended in vain. That being the case, it would have been intractable and an exercise in futility trying to effect service on the respondent who is at large.

I am thus satisfied that the applicant has met the condition under rule 84 (1) of the Rules for dispensing with service on the respondent and in the event, I cannot, but grant the application and direct that

service need not be effected on the respondent as prayed in the notice of motion.


Considering the nature of the application, I make no order to costs.

It is so ordered.

**DATED** at **DAR ES SALAAM** this 19<sup>th</sup> day of June, 2020.

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

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



E. G. MRANGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**