

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

(CORAM: MWARIJA, J.A., MWANDAMBO, J.A., And MASHAKA, J.A.:)

CIVIL APPLICATION NO. 100/11/2020

1. JACKSON B. RUMENYERA
2. SALIMA YOHANA
3. CATHERINE BANGULA
4. JOHN HEGUYE
5. HAMIS JUMA
6. JUMA HAMISI
7. PENINA D. NTIKWIZA
8. OLIVA RICHARD
9. ISHUMAEL SHEDRACK
10. HILDA YUSUF
11. ABDALLAH MSOKELA
12. SADA KURUBUNE
13. MWAJUMA RUSIZI
14. PRISCA EZEKIEL
15. SIWAZURI YUSUF
16. EMMANUEL THOMAS
17. ZUENA HAMIS

..... APPLICANTS

VERSUS

**THE REGISTERED TRUSTEES OF THE
ROMAN CATHOLIC DIOCESE OF KIGOMA.....RESPONDENT**

**(Application to strike out a Notice of Appeal from the judgment of the High
Court of Tanzania at Tabora)**

(Rumanyika, J.)

dated the 8th day of February, 2014

in

Land Case Appeal No. 56 of 2011

.....

RULING OF THE COURT

28th March & 1st April, 2022

MASHAKA, J.A.:

The applicants are moving the Court to strike out a notice of appeal lodged by the respondent against the judgment of the High Court of

Tanzania at Tabora in Land Case Appeal No. 56 of 2011 delivered on the 8th February, 2014. The ground upon which the applicants rely in their notice of motion is that the respondent has failed to take essential steps in the appeal within the prescribed time and thus the notice of appeal should be struck out under rule 89 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

Paras 3 and 4 of the affidavit annexed to the notice of motion gave particulars of the steps which the respondent has failed to take within the prescribed time to wit, failure to seek leave to appeal as an essential step in the appeal.

At the hearing of the application, Mr. Mussa Kassim, learned advocate represented the applicants while the respondent had the services of Mr. Mugaya Kaitila Mtaki, learned advocate.

Submitting in support of the application, Mr. Kassim argued that no essential steps have been taken by the respondent to appeal to the Court within the prescribed time

Mr. Kassim argued that after having sought and obtained extension of time to lodge notice of appeal in Misc. Land Application No. 104 of 2016 the respondent lodged the said notice on 31/08/2017 in the Court against

the decision of the High Court Land Case Appeal No. 56 of 2011. However, the learned advocate for the applicants submitted that the intended appeal required leave in accordance with section 47 (2) of the Land Disputes Courts Act [Cap 216 R.E 2019] (the LDCA) but the respondent did not apply for such leave from the High Court. He elaborated that the respondent having applied for the leave through Misc. Land Application No. 88 of 2017 at the High Court which was struck out on 10/08/2018 for being incompetent, the respondent had not made any application for extension of time to lodge her application for leave to appeal as of the date of the filing of the instant application. Mr. Kassim clarified that the letter written by the respondent to the Deputy Registrar (the DR) carried no weight, for rule 49 (3) of the Rules specifies the documents which are to accompany an application for leave to appeal. He referred us to page 12 of the record, showing that in the ruling, copies of judgment and decree were obtained on the 02/04/2014 and relied upon by the respondents (the applicants in the application) in their counter - affidavit supporting Misc. Land Case Application No. 56 of 2011. He urged the Court to grant the prayer to strike out the notice of appeal with costs.

The respondent opposes the application through an affidavit in reply deposed by Mr. Mugaya Kaitila Mtaki, learned advocate. According to the affidavit, the respondent's advocate had not received a complete record of copies of documents he had requested from the Deputy Registrar, High Court despite repeated follow up and hence the failure to institute the appeal. In addition, the deponent avers that he had received instructions from the respondent that the matter was being settled amicably which slowed down his efforts to pursue the DR for supply of the copies of requisite documents.

In his reply, Mr. Mtaki contended that the essential steps envisaged by the law are steps which require action after being supplied with copies of the documents by the DR and the requirement of securing leave is not the only step contrary to the submissions by the applicants' advocate. On being prompted by the Court on whether had the DR supplied all the requested documents, could he have lodged the appeal, Mr. Mtaki conceded that the respondent could not have lodged the appeal for lack of leave to appeal to the Court. He conceded too that after he was informed by the respondent that they were about to conclude an out of court settlement, they relaxed and had not taken any more steps. He concluded

that the application was premature as their efforts to sort the matter out of court was on going and implored the Court to dismiss the application but with order as to costs.

In his rejoining submissions, Mr. Kassim maintained that the respondent knew the relevance and importance of seeking leave as an essential step as they did so in Misc. Land Application No. 88 of 2017 which was struck out for being incompetent. On the efforts for an out of court settlement, Mr. Kassim contended that the information is unsupported and one sided, and even if there were any such efforts placed before the applicants for such a settlement, he would not have brought the application before the Court. He reiterated his prayer to the Court to grant the application with costs.

Taking into consideration the notice of motion, supporting affidavit and submissions for and against the application, the issue for determination before us is whether the respondent failed to take essential steps after lodging her notice of appeal on 31/08/2017. The applicants moved the Court under Rule 89(2) of the Rules which states that: -

"Subject to the provisions of sub rule (1), any other person on whom a notice of appeal was served or

ought to have been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice of appeal or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time."

In the light of the above provision of the law, an applicant had to show; one, that the appeal has not been instituted within the prescribed time or two, some essential step in the proceedings have not been taken or have not been taken within the prescribed time. As to which steps ought to be taken by the intended appellant in the appeal, in **Asmin Rashidi v. Boko Omari** [1997] T.L.R. 146, the Court stated that: -

"The essential steps in the prosecution of an appeal as envisaged by Rule 83 (now Rule 89 (2)) were steps which advanced the hearing of the appeal and not explanations for delays. One of the essential steps in the instant case was to apply for leave to appeal against the ruling of the court of 25 April 1996 for there was no automatic right of appeal against the ruling".

See also; **Atlantic Electric Ltd v. Morogoro Region Cooperative Union** [1993] TLR 12, **Olivia Kisinja Mdetete v. Hilda Mkinga**, Civil Application No. 4 of 2011, **Martin D. Kumaliya & 117 Others v. Iron Steel Ltd**, Civil Application No. 70/18 of 2018, **Yunus Kashakala v. Anthony Haji**, Civil Application No. 106/01 of 2018 (all unreported). The applicants' contention in this application is that an application for leave to appeal has not been made to the High Court warranting the striking out of the notice of appeal. There is no dispute that the respondent failed to apply for leave to appeal in terms of section 47(2) of the LDCA which requires any person appealing against the decision of the High Court in the exercise of its revisional or appellate jurisdiction to apply for leave before the High Court or the Court of Appeal.

For that reason, the respondent cannot appeal without having obtained leave to appeal to the Court. The respondent's affidavit in reply has failed to explain on the essential step to apply for leave to appeal to the Court as mandatorily required and instead, it makes explanations for the delay in instituting the appeal which are not relevant to the grounds relied upon by the applicants.

In the circumstances, with respect to Mr. Mtaki, we hold that the failure to seek and obtain leave to appeal to the Court amounted to failure to take one of the essential steps in the appeal.

In the event, having held that one essential step in the appeal has not been taken within the prescribed time, we find merit in the application. Consequently, in terms of rule 89 (2) of the Rules, we strike out the notice of appeal lodged on 31/08/2017 with costs.


DATED at **TABORA** this 1st day of April, 2022.


A.G. MWARIJA
JUSTICE OF APPEAL

L.J.S. MWANDAMBO
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

The Judgment delivered this 1st day of April, 2022 in the presence of Mr. Musa Kassim, counsel for the Applicants and Mr. Mgaya Mtaki, counsel for the Respondent, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL