

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

**(CORAM: NDIKA, J.A., KITUSI, J.A. And RUMANYIKA, J.A.)**

**CIVIL APPLICATION NO. 448/17 OF 2019**

**PROF. EMMANUEL KILIMA BAVU**

(Administrator of estate of the late

**EMILY BEATRICE BAVU). ..... APPLICANT**

**VERSUS**

**HILDA RWESHUNJU.....RESPONDENT**

**(Application to strike out a Notice of Appeal from the Judgment  
of the High Court of Tanzania, Land Division  
at Dar Es Salaam)**

**(Mkeha, J.)**

**dated 20<sup>th</sup> day of May, 2019**

**in**

**Cons. Land Appeal Nos. 122 & 137 of 2017**

.....

**RULING OF THE COURT**

23<sup>rd</sup> February, & 22<sup>nd</sup> April, 2022

**RUMANYIKA, J.A.:**

On 20/05/2019, in the High Court Land Division (the High Court), Professor Emmanuel Kilima Bavu (Administrator of the estate of the late Emily Beatrice Bavu) (the applicant), got a judgment and decree partly in his favour and partly in favour of Hilda Rweshunju (the respondent). The latter was unhappy. Hardly four days later, on 24/05/2019, the respondent lodged a notice of appeal (the notice) to challenge the judgment of the High Court. According to the applicant, the respondent did not take any

further essential steps in the proceedings to date which inaction prompted him to prefer the instant application, asking this Court to strike out the notice under Rule 89(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The application is supported by affidavit of the applicant.

At the hearing of this application, Mr. Egidi Mkoba, learned counsel appeared for the applicant while the respondent appeared in person.

In a nutshell, Mr. Mkoba submitted that since the respondent lodged the notice on 24/05/2019 and served it upon the applicant on 29/5/2019, the latter took no further essential steps, including seeking leave to appeal, because she could not lodge a second appeal as of right. Mr. Mkoba added that the respondent did not even apply for extension of time within which to apply for leave to appeal until late in the day when the applicant had served her with the instant notice of motion. The learned counsel therefore, asked the Court to strike out the notice.

Relying on her written submissions, the respondent submitted that her delay was not inordinate because she travelled to Zanzibar and attended to her seriously sick daughter who was bed ridden at Mnazi Mmoja Hospital all the time. She added that due to financial constraints, it

took her that long looking for legal aid to challenge the impugned judgment and decree by way of appeal, which appeal she argued, had overwhelming chances of success.

Now, upon hearing the parties' submissions, having examined the entire record of appeal, also taking into consideration of the respondent's admission of delay in applying for leave to appeal, the only point for our consideration is whether essential steps had not been taken at the time this application was made or rather whether her explanation for failure to take further essential steps is relevant to this application.

It is settled that after lodging a notice of appeal in compliance of rule 83 (1) and (2) of the Rules, the intending appellant is required to take all essential steps in furtherance of the intended proceedings. Such steps include seeking and obtaining leave to appeal, where necessary as in this case, and then instituting the intended appeal within sixty days of lodging the notice of appeal as provided under rule 90 (1) of the Rules. Where any essential step is not taken within the prescribed time, any person on whom the notice of appeal was served or ought to have been served, may seek relief under rule 89 (2) of the Rules. The said provision states so expressly 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."*[Emphasis added].

In a number of occasions where a party lodged a notice of appeal, but, as alleged here, the respondent just abandoned it in court, this Court struck out the notice under rule 89 (2) of the Rules as requested by Mr. Mkoba. See the cases of **Elias Marwa v. Inspector General of Police and Another**, Civil Application No. 11 of 2012. **John Nyakimwi v. The Registered Trustees of Catholic Diocese of Musoma**, Civil Application No. 85/08 of 2017, **Christopher Ole Memantoki v. Jun Trade, and Sellers (T) Ltd**, Civil Application No. 319/02 of 2017 (all unreported), also, **Grace Frank Ngowi v. Dr. Frank Israel Ngowi** [1984] TLR 120.

It is undisputed that the respondent lodged her notice on 24<sup>th</sup> May, 2019. In terms of Rule 90 (1) of the Rules, the respondent ought to have

filed her intended appeal within the first sixty days. However, since she duly applied for a copy of the proceedings from the High Court vide her letter dated 24<sup>th</sup> May, 2019, she was entitled to exemption of the delayed period necessary for preparation and delivery of the requested proceedings as certified by the Registrar in terms of Rule 90 (1) of the Rules.

So far as the issue of contention is concerned here, the respondent simply lodged her notice of appeal but did not apply for leave to appeal since she could not appeal as of right. In terms of Rule 45(a) of the Rules she had to apply for leave of the High Court within thirty days of the impugned decision which move she did not take. Actually, she admitted having been inactive until October, 2019, five months after the impugned decision was rendered also after was served with this application. She might have had to attend to a sick daughter and she had serious financial constraints. Nevertheless, for the purposes of this application it all counts for nothing. Any diligent litigant in the respondent's shoes therefore, would have been expected to take appropriate steps before expiry of the time and before the applicant had moved the court to strike out the notice of appeal. In our considered view, the respondent's inaction was but simply

an abandonment of her intended appeal, whose consequences she has to accept.

The application is granted with costs on account of the respondent's failure to apply for leave to appeal within the prescribed time. Under Rule 89(2) of the Rules, we strike out the respondent's notice of appeal lodged on 24/05/2019. Order accordingly.

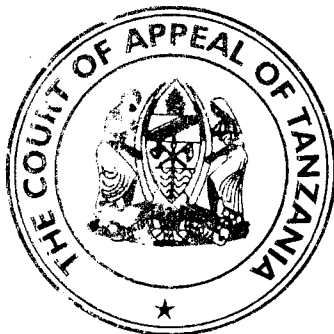
**DATED at DAR ES SALAAM** this 19<sup>th</sup> day of April, 2022.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The Ruling delivered this 22<sup>nd</sup> day of April, 2022, in the presence of Mr. Egidu Mkoba, learned counsel for the applicant and respondent present in person is hereby certified as true copy of the original.



*F. A. MTARANIA*  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**