

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

**(CORAM: JUMA, C.J., NDIKA, J.A. And LEVIRA, J.A.)**

**CIVIL APPLICATION NO. 563/02 OF 2020**

**ROSE IGNATIO ..... APPLICANT**

**VERSUS**

**ANNA ELISA ..... RESPONDENT**

**(Application from the Judgment and Decree of the High Court of Tanzania**

**at Arusha)**

**(Moshi, J.)**

**dated the 9<sup>th</sup> day of August, 2018**

**in**

**Land Appeal No. 5 of 2017**

.....

**RULING OF THE COURT**

*20<sup>th</sup> & 22<sup>nd</sup> February, 2023*

**LEVIRA, J.A.:**

The applicant, Rose Ignatio by way of notice of motion preferred under Rule 89 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules) has moved the Court to strike out a notice of appeal filed by the respondent on 21<sup>st</sup> August, 2018 against the decision of the High Court in Land Appeal No. 5 of 2017. The ground on which the notice of motion was filed is that the respondent has not taken some essential steps to institute the intended appeal. The notice of motion is supported by an affidavit duly deposed by the applicant's advocate, one Ephraim A.

Koisenge. The respondent did not file affidavit in reply to oppose this application.

It can be gathered from the record that the parties herein had a dispute over ownership of the land estimated to be twelve acres situated at Ilkiushin Village, Olturument Ward (the dispute land). The dispute also involved another person (the respondent's husband) who is not a party to this application. The respondent sued the applicant and that other person before Arusha District Land and Housing Tribunal (the DLHT) vide Application No. 25 of 2012 claiming that she owns the dispute land, as she was given it traditionally by her husband and a clan elder in the year 1964.

However, it is also on record that sometime in the subsistence of their marriage, the applicant's husband attempted to sell the said land but the respondent opposed the sale. Nevertheless, eventually he succeeded to sell it to the applicant herein. Upon a full trial, the DLHT found that the respondent had failed to prove her claim on a balance of probabilities and thus dismissed the application. Aggrieved, she unsuccessfully appealed to the High Court in Land Appeal No. 5 of 2017. Undauntedly, she intends to challenge the decision of the High Court

through an appeal. Therefore, on 21<sup>st</sup> August, 2018 she filed the notice of appeal subject of the present application.

At the hearing of this application, the applicant was represented by her advocate Mr. Ephraim Koisenge, whereas, the respondent appeared in person unrepresented.

Before the hearing of the application could commence in earnest, the respondent rose and prayed for adjournment of hearing on the ground that she came to respond to the notice of hearing she received but was not ready for the hearing. Being unrepresented, understandably, she narrated that she has been sick all along and at the same time taking care of an old man of more than 120 years old. She as well registered her ignorance of law while contending that, she has no advocate to represent her. Despite a short dialogue with the Court on the apparent nature and age of the application, she still pressed for this matter to be adjourned without indicating what action she is going to take thereafter.

The prayer for adjournment by the respondent was objected to by Mr. Koisenge as he was not sure whether the respondent would manage to salvage the notice of appeal even after the adjournment.

Having reflected on the respondent's prayer for adjournment, we were satisfied that it was evidently without any justification. It has so far been three years since the application was lodged and served on the respondent. Apart from not filing any affidavit in reply to resist the matter, the respondent has failed to state what steps she intends to take in resisting the application should the hearing be adjourned as prayed. In the premises, we declined the adjournment prayed for as there was no good cause to do so under Rule 59 of the Rules.

Submitting in support of the application, Mr. Koisenge stated that the decision of the High Court subject of the intended appeal was delivered on 9<sup>th</sup> August, 2018 and the notice of appeal subject of the present application was lodged on 21<sup>st</sup> August, 2018 together with the letter to the Registrar of the High Court requesting for copies of proceeding and the judgment of the High Court for appeal purposes. He went on to state that since when the respondent filed the notice of appeal, she has not taken any essential step towards filling the intended appeal. According to him, since this matter originated from the DLHT the respondent ought to have applied for leave to appeal, but she neither applied for leave nor sought extension of time to seek and obtain leave. Besides, he said, the documents applied for appeal

purposes by the respondent to the Registrar were ready for collection on 1<sup>st</sup> September, 2018, but she did not collect them. In the circumstances, he was of the view that the respondent is no longer interested to pursue the intended appeal. Therefore, he urged us to strike out the respondent's notice of appeal.

In reply, the respondent admitted that she has not taken any step since when she lodged her notice of appeal. However, she beseeched the Court's indulgence to salvage her notice.

Rule 89 (2) of the Rules under which this application is brought provides as follows:

*"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]*

The above provision is quite clear that failure to take essential step to institute the intended appeal has a resultant effect to striking out of the notice of appeal. Now the question is whether the respondent took any essential step to institute the intended appeal having filed the notice of appeal on 21<sup>st</sup> August, 2018. The answer to this question is not far-fetched. In terms of Rule 90 (1) of the Rules, an appeal is required to be filed within 60 days of lodging the notice of appeal. This means that the respondent ought to have lodged the intended appeal by 21<sup>st</sup> October, 2018, but in vain.

Apart from that, since the matter at hand originated from the DLHT as per the record, the respondent ought to have sought and obtained leave of the High Court to appeal to the Court in terms of section 47 (2) of the Land Disputes Court Act, Cap. 216 R.E. 2019. This section reads:

*"A person who is aggrieved by the **decision of the High Court** in the exercise of its revisional or **appellate jurisdiction** may, with **leave of the High Court** or Court of Appeal, appeal to the Court of Appeal."*

*[Emphasis added]*

Now that it is undisputed fact that the respondent did not seek and obtain leave to appeal to the Court in terms of the above provision, it amounts to failure to take essential step to prosecute the intended appeal. In **International Commercial Bank (T) Ltd v. Agil Islam and Two Others**, Civil Application No. 175 of 2008 (unreported) the Court held that:

*"By failing to apply for leave from the High Court, the respondent has not taken an essential step in the appellate process. He is therefore in breach of rule 82 of the Court of Appeal rules "(now Rule 89 of the Rules)". The application is therefore granted. The notice of appeal filed by the respondent on 3<sup>rd</sup> July, 2007 is struck out."*

The same position was underscored by the Court in numerous decisions including; **Mafungu Leonard Majura and 12 Others v. Tanesco Limited**, Civil Application No. 76 of 2015 and **Ezekiel Fanuel Mushi v. NBC Ltd**, Civil Application No. 4 of 2015 (both unreported).

In the circumstances of this case where the respondent has failed not only to apply for leave to appeal to the Court, but also to collect documents which she applied for appeal purposes from the Registrar of the High Court, we cannot avoid the conclusion that she has failed to take essential steps to institute the intended appeal. Consequently, we

grant the application. The respondent's notice of appeal filed on 21<sup>st</sup> August, 2018 is hereby struck out. Having considered the circumstances of this case, we make no order as to costs.

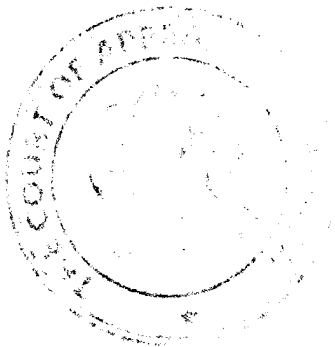
**DATED** at **ARUSHA** this 21<sup>st</sup> day of February, 2023.

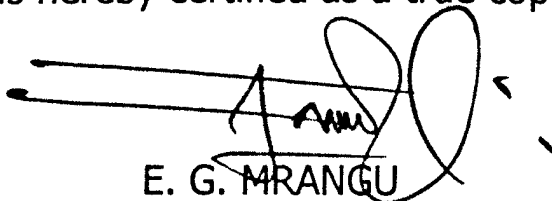
I. H. JUMA  
**CHIEF JUSTICE**

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

M. C. LEVIRA  
**JUSTICE OF APPEAL**

The Ruling delivered this 22<sup>nd</sup> day of February, 2023 in the presence of Mr. Victor Jonas Bernard holding brief for Mr. Ephraim Koisenge, learned counsel for the applicant and the respondent who appeared in person, is hereby certified as a true copy of the original.



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