

**IN THE HIGH COURT OF TANZANIA**  
**( LAND DIVISION )**  
**AT DAR ES SALAAM**  
**LAND CASE NO. 207 OF 2007**

**FIDA JUMANNE.....APPLICANT**

**AND**

**HAJI SALIM HEMED.....1<sup>ST</sup> RESPONDENT/D.HOLDER**

**VIDANZI JUMANNE.....2<sup>ND</sup> RESPONDENT/D.HOLDER**

**JUMANNE.....3<sup>RD</sup> RESPONDENT/D.HOLDER**

**MASHAVU JUMANNE.....4<sup>TH</sup> RESPONDENT/D.HOLDER**

**AZIZA JUMANNE.....5<sup>TH</sup> RESPONDENT/D.HOLDER**

**RULING**

**LONGWAY, J.**

On the 18<sup>th</sup> March, 2008, this court by reason that the claim by the Plaintiff who is now the Applicant was based on issues of probate administration, it was struck out with costs, unfortunately in his absence and that of his counsel. Come the 1<sup>st</sup> April, 2008, the Applicant filed a chamber summons under **section 47 (1)&(3) of the Land Disputes Courts Act {Cap.216 R.E.2002}**, **section 5(1) of the Appellate Jurisdiction Act { Cap.**

**141 R.E.2002 } and Rule 43 (a) of the Court of Appeal Rules {**  
**Cap.141R.E.2002 }** praying for leave to appeal to the Court of Appeal of Tanzania against this court's order of the 18<sup>th</sup> March,2008, with costs. Mr. Elisa Abel Msuya learned advocate filed supporting affidavit reasoning that the Respondents preliminary objection on jurisdiction was heard in the Applicant's absence.

The Applicant, through counsel had filed a Notice of Appeal on the 8<sup>th</sup> April, 2008 which was objected to by the Respondents for being out of time and thereby that not justifying the prayers in the application. Replying to Respondents, the Applicant claimed that the notice of appeal had been filed in time on the 31<sup>st</sup> March,2008 as per exchequer receipt No.30297788, of even date, the Annexure TMA -1, but delayed by the Registrar to the 8<sup>th</sup> April, 2008. However, on the 21<sup>st</sup> August, 2008 the notice of appeal was withdrawn. On the 12<sup>th</sup> August,2008 learned counsel Mr. Nyangusu for the Applicant had sought that the chamber summons be argued by way of written submissions. The late Mr. Maira then representing the 1<sup>st</sup> Respondent agreed, so submissions were scheduled vis:

**"Order: Applicant's submissions on or before**  
**4/09/08, Respondent's on or before 4 /10/08, Rejoinder if any 17/10/08.**  
**Ruling on notice.**

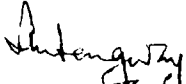
**Signed**

**M.H.C.S.Longway**

**12/08/08 "**

None of the parties complied with the order for filing submissions circumstances which would in my considered view imply that the parties have abandoned their right to prosecute respective arguments: see **Maria Rugarabamu vs National Housing Corporation, Civil Appeal No. 32/1996 (Dar es salaam, unreported)**. A practice held by the court in like situations.

From the premises therefore, I dismiss the application entirely with costs.

  
**M.H.C.S. Longway.**

**Judge**

**27/10/2009**