

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. CIVIL APPLICATION NO. 20 OF 2018

*(Arising from the decision of High Court of Tanzania, Shinyanga in civil appeal No. 13/2017
(Makani, J))*

IDDY IBRAHIM APPLICANT

VERSUS

REGINA S. MANENORESPONDENT

RULING

06 March, 2020

G. J. Mdemu, J.;

This is an application for leave to appeal to the Court of Appeal. In terms of Rule 46 (1) of the Court of Appeal Rules, 2009, an application for leave to appeal should be made after the notice of appeal has been lodged.


Mr. Ishengoma, when given an opportunity to address the court stated that, the notice of appeal was lodged on 30/5/2018 and it was lodged in time. The Respondent on her part stated that, the notice of appeal was not lodged thus making the application incompetent.

On this, my duty is not to question the validity of notice or that it was on time or not. These are powers of the Court of Appeal. Mine, in terms of Rule 46 (1) of the Court of Appeal Rules, 2009 is to ensure that, there was a notice of appeal lodged before this application came into being.

I was asking myself one question, that is, how do I know that there is a notice of appeal? I think, and more so, I am confident that, the only way to know that the notice has been lodged is through the depositions in the affidavit of the Applicant. My thorough perusal to the affidavit revealed no any paragraph thereto that has deposed that fact. Mr. Ishengoma, learned Advocate, has also conceded to that fact.


In that stance, it may not be legally possible to just take note of the presence of notice of appeal from the words of the learned counsel that, the notice was lodged. An affidavit, being a sworn statement of evidence/facts must, for all purposes and intent, not ignore that fact.

In view thereof, and as submitted by the Respondent, lay person as she is, the application is incompetent. That said, the same is hereby struck out. It is so ordered.


Gerson J. Mdemu
JUDGE
06/03/2020

DATED at SHINYANGA this 06th day of March, 2020.




Gerson J. Mdemu
JUDGE
06/03/2020