

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

MISC. LAND APPLICATION NO. 58 OF 2020

(Arising from Land Appeal No. 5/2020 of the High Court – Kigoma, original Land Application No. 29 of 2014 from District Land and Housing Tribunal before Waziri M.H – Chairman)

MELESIANA KAGUNGU..... APPLICANT

VERSUS

ASHERY BALELA KIHUMBI.....1ST RESPONDENT

ENOCK KASOMO.....2ND RESPONDENT

R U L I N G

9th Feb. & 4th March, 2021

I.C. MUGETA, J.

The applicant has applied for leave to appeal to the Court of Appeal. The 1st respondent has raised an objection that the application is incompetent as the applicant despite filing the notice of intension to appeal did not serve it to the 1st respondent which is a violation of rule 84 (1) of the Court of Appeal Rules which requires such service to be effected within fourteen days from the date of its filing.



The notice of appeal was filed on 9/11/2020. On 23/11/2020, the 1st respondent was served with the chamber summons of this application. The applicant alleges that the notice was included in the chamber summons which fact is disputed by the 1st respondent.

There is no evidence on record upon which I can decide whether the notice was included together with the chamber summons as both parties just allege. However, since the 1st respondent acknowledge receipt of the chamber summons, for the sake of justice, I shall presume that the notice of appeal was included as alleged by the applicant. The fourteen days within which it ought to have been served had expired though. On that account, the issue for my determination becomes whether such delay makes this application incompetent.

Mr. Sogomba has submitted that it does because even a single day of delay must be accounted for and in this case there is no accounting. With respect to the learned counsel, the principle on accounting for each day of the delay applies in application for extension of time. This is an application for leave to appeal. The case of **Moshi Rashid Magorwa v. Fikara Issa**, Misc. Land Application No. 20/2017, High Court – Tabora (unreported) which he cited to me to support his argument where it was held that failure to issue notice

of appeal and serve the other with a copy makes the application for leave to appeal incompetent is distinguishable because in that case there was no evidence that either the notice of intention to appeal had been filed or that it was served to that the other party which is not the case here. It is my view that since in this case the notice of appeal was filed and I have presumed that it was served to the 1st respondent, then the objection is without merits. In the event, I hold that the application is competent. I overrule the objection. Costs in the course.




I.C. Mugeta

Judge

4/3/2021

Court: Ruling delivered in chambers in the presence of all parties and Mr. Damas S. Sogomba for the 1st respondent.

Sgd: I.C. Mugeta

Judge

4/3/2021