

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC. CIVIL APPLICATION NO. 12 OF 2022

*(Originating from Pc. Civil Appeal No. 59 of 2020 in the High Court of the United Republic of Tanzania,
Emanating from Civil Appeal No. 17 of 2019 in the District Court of Babati at Babati, Originating from Civil Case
No. 2 of 2018 at Gallapo Primary Court)*

DODO TEKWAY1ST APPELLANT

SIGE TEKWAY.....2ND APPELLANT

VERSUS

ISMAIL JAMA GULLED(Administrator of the
Estate of the Deceased Yusuph Gure).....**RESPONDENT**

RULING

25th October, 2022

TIGANGA, J.

When I was preparing the Ruling in respect of the main application at hand I discovered that the application was initially not attached with the Notice of appeal or a Notice of intention to appeal in other words.

Having found that, I called the parties to address me and in their respective address the applicants anonymously told the court that, they filed the Notice but unfortunately did not attach it to the application at hand. They asked to be given time so that they find it and attach the same. They insisted that, as they are intending to appeal and they gave that Notice then they asked the court to give them that opportunity so that they can rectify the omission.

Replying, Ms. Sanare, learned counsel for the respondent submitted that the requirement to attach the Notice is mandatory. Failure of which renders the application at hand incompetent. She thus, on that footing asked the court to struck out the application with costs.

Having considered all what have been said by the parties. It is the requirement in law that where a party appeals to the court of Appeal of Tanzania, and a Notice of Appeal is made a conditional precedent for the appeal, and an application neither for leave or certificate of point of law is a requirement, while filing that application the party must as a matter of law attach the copy of the notice of appeal. In the case of **Felister Magayane Vs. Mabula Genge**, Civil Application No. 28/08 of 2019 CAT, at Mwanza it was held inter alia that;

"Since no copy of a notice lodged was annexed which is a prerequisite to the determination of an application before the High court for certificate on point of law, we find the omission fatal."

Likewise, in this application as there is no Notice of Appeal annexed to the application, I find the omission to be fatal, and renders the application to be incurably defective, consequent of which it is hereby struck out.

Since the applicants are unrepresented lay persons, and they seem to be still interested to pursue their right, I struck the application with leave to refile within 14 days.

It is accordingly ordered.

DATED at **ARUSHA** this 25th day of October, 2022.



A handwritten signature in blue ink, appearing to read "J. C. Tiganga", is written over a horizontal line.

J. C. TIGANGA

JUDGE