

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO. 639 OF 2020

(Originating from Misc. Land Application No. 224 of 2019)

MOHAMED IQBAL HAJI.....1ST APPLICANT
ABBASI MOHAMED JUMA.....2ND APPLICANT

VERSUS

JOHN BINDER..... RESPONDENT

Date of Last Order: 29.11.2021
Date of Ruling 13.12.2021

RULING

V.L. MAKANI, J

The applicants herein have filed this application seeking for leave of this court to file an appeal to the Court of Appeal of Tanzania against the Ruling and Order in Misc. Land Application No. 224 of 2019 (Hon. Opiyo, J).

The application is made under section 47(2) of the Land Disputes Courts Act, CAP 216 RE 2019, section 5(1) (c) of the Appellate Jurisdiction Act CAP 141 RE 2002, Rule 45(a)(b) of the Court of

Appeal Rules as amended in 2017 and 2019 and section 95 of the Civil Procedure Code CAP 33 RE 2002.

The application is supported by the affidavits of the applicants herein. The respondent did not enter appearance even after service by way of publication in Mwananchi Newspaper of 07/09/2021.

The application was argued orally by Mr. Kibuga who adopted the contents of the affidavits filed by the applicants and the annexures in support thereof. He said paragraph 13 of the affidavits points out the issues to be determined by the Court of Appeal. He prayed for the application to be granted.

I have gone through the Chamber Summons and affidavits of the applicants and the annexures therein. The applicants have asked this court for leave to appeal to the Court of Appeal and the initial documents to show the intention to appeal is the Notice of Appeal. I have scouted the annexures filed herein, but I have not seen any Notice of Appeal. The affidavits have not even referred to the said Notice of Appeal. Rule 83(6) of the Court of Appeal Rules is explicit that:

"Where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged."

This provision is mandatory and the rationale behind is to avoid wastage of this court's time and abuse of the court's process as one cannot be said to have intention to file an appeal if there is no notice to that effect. The Court of Appeal Rules further emphasizes the importance of filing a Notice of Appeal in the first instance and in Rule 83 (4) of the Rules it is stated:

"When an appeal lies only with leave or on a certificate that a point of law is involved, it shall not be necessary to obtain the leave or the certificate before lodging the notice of appeal."

It is apparent from the above quoted provisions that the initial stage to an appeal is a Notice of Appeal even if there is a requirement for leave or certificate. Now, in the present application there is no proof that a Notice of Appeal has been filed and in the absence of such Notice the court cannot assure itself that the journey of the appeal by the applicant has commenced. One would argue the court to invoke overriding principle, but this being a basic mandatory requirement, the omission cannot be cured by the said principle.

In the result, the application is incompetent, and it is hereby struck out with costs.

It is so ordered.


V.L. MAKANI
JUDGE
13/12/2021

