

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 20 OF 2004

In the Matter of an Intended Appeal

BETWEEN

**MR. JASSON KESSY.....
APPLICANT**

AND

**MR. LISTON UIISO.....
RESPONDENT**

**(Application for striking out Notice of Appeal from
the decision of the High Court of Tanzania
at Dar es Salaam)**

(Luanda, J.)

**dated the 28th day of March, 2001
in
Civil Revision No. 33 of 2000**

R U L I N G

KAJI, J.A.:

By notice of motion filed under Rules 82, 83 (1) and 15 of the Court Rules, 1979 the applicant Jasson Kessy is moving the court for an order to strike out the Notice of Appeal filed on 2.4.2001 by the respondent Liston Uiso on the grounds that:-

- 1) The notice of appeal was not signed by the Registrar of the High Court as required by law.
- 2) The record of appeal has not been

lodged within the time required by law.

The application was strongly objected to by Mr. Fungamtama, learned counsel for the respondent, on the ground that the respondent was not served with the notice of motion as required by Rule 52 (1) of the Court Rules, 1979. In that respect Mr. Fungamtama called upon the Court to strike out the application without an order as to costs.

In reply Mr. Nyange, learned counsel for the applicant, submitted that he believed in good faith that the respondent was served with the notice of motion and the accompanying affidavit. But he conceded that he had no evidence of service.

There is no doubt that the law requires that all necessary parties must be served with the notice of motion and copies of all affidavits. Rule 52 (1) of the Court Rules provides as follows:-

“52 (1) The notice of motion and copies of all affidavits shall be served on all necessary parties not less than two clear days before the hearing.”

In the instant case there is no proof that the respondent, who is a necessary party, was served with the notice of motion with its accompanying affidavit. This was in contravention of the above Rule.

In view of this, under Rule 52 (1) of the Court Rules, 1979, I do hereby dismiss the application. I make no order as to costs.

DATED at DAR ES SALAAM this 13th day of
December, 2004.

S.N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S.M. RUMANYIKA)
DEPUTY REGISTRAR