

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

(CORAM: JUMA, C.J., MWARIJA, J.A. And MZIRAY, J.A.)

CIVIL APPLICATION NO. 590/03 OF 2017

**KONDOA PAINTERS AND
DECORATION TRUST FUND.....APPLICANT**

VERSUS

KONDOA DISTRICT COUNCIL.....RESPONDENT

**(Appeal from the decision of High Court of Tanzania
at Dodoma)**

(Hon. Awadh, J.)

dated the 18th day of May, 2017

in

Civil Appeal No. 5 of 2016

RULING OF THE COURT

3rd July, & 5th July, 2018

JUMA, C.J.:

On the 11th October 2017, KONDOA PAINTERS AND DECORATION TRUST FUND (the applicant) filed the instant notice of motion which is brought under Rule 89 (2) of the Tanzania Court of Appeal Rules, 2009 (hereinafter referred as the Rules). The applicant is seeking to strike out the Notice of Appeal which the respondent, KONDOA DISTRICT COUNCIL, filed on 6th June, 2017.

The application is supported by the affidavit of John Chorai, the Principal Officer of the applicant Trust Fund.

The background to this application traces back to the decision of the High Court (DC) Civil Appeal No. 5 of 2016 at Dodoma where the applicant, was the appellant while the respondent was the respondent in that (DC) Civil Appeal No. 5 of 2016. On 18th May, 2017 the High Court decided that appeal in favour of the applicant awarding, by the applicant Tshs. 3,000,000/= as damages. The respondent herein was dissatisfied and filed a Notice of Appeal to this Court on 6th June, 2017.

According to the supporting affidavit, after filing the Notice of Appeal the respondent did not take essential steps which would have led to the filing of an appeal to this Court. The applicant identified two steps which the respondent should have taken towards filing an appeal, but failed to take. **First**, is the failure to seek leave of the High Court to appeal to the Court of Appeal within fourteen days as the law requires. **Second**, by the time the applicant filed this motion, the respondent had not made any efforts to file an appeal to this Court.

When this application came up for hearing today, 3rd July 2018, the applicant was represented by its principal officer, Mr. John Chorai. The respondent District Council, although duly served by a process server who

took out an affidavit to confirm service neither appeared nor filed any Affidavit in Reply.

Before us, the Principal Officer of the applicant placed reliance in what is deposed in the supporting affidavit and what is stated in the written submissions. He blamed the respondent District Council for absenting itself from the hearing of this application in order to prevent the applicant from enjoying the fruits of the judgment of the High Court. He reiterated the stand that because the respondent has lost interest to pursue its appeal to the Court of Appeal, the only remedy available to the applicant is for this Court to invoke Rule 89 (2) of the Rules, to strike out the Notice of Appeal which the applicant filed on 06/06/2017.

Upon perusal of the motion and the record of the application and after hearing the oral and written submissions of the applicant, the main issue calling for our determination is whether the respondent, after lodging its notice of appeal, failed to take the next essential steps towards lodging the record and memorandum of appeal to this Court.

There are several decisions of the Court which underscore the duty the law places on the parties who after filing notices of appeal, to take

essential steps towards lodging an appeal subject of that notice of appeal.

In **OLIVIA KISINJA MDETE VS. HILDA MKINGA**, Civil Application No 4 of 2011 (unreported) this Court stated:

"...The law is now settled, upon lodging a Notice of Appeal, the impending appellant must not sit back but is required to move the process forward by taking essential steps that have been clearly outlined by the Court of Appeal Rules, 2009. The applicant was entitled to move this Court under Rule 89 (2) to strike out a notice of appeal where no essential steps have been taken beyond that notice."

It seems clear from this motion and the supporting affidavit, the (DC) CIVIL APPEAL NO. 5 OF 2016 was an appeal that originated from the District Court and for that, it needed prior leave of the High Court before respondent could file an appeal to this Court. It is now clear that after complying with Rule 83 (2) of the Rules by filing its Notice of Appeal on 6th June, 2016, the respondent neither applied for leave of the High Court in order to appeal to the Court, nor did the respondent take any step towards instituting an appeal to this Court within sixty days of filing its Notice of Appeal by lodging of the memorandum of appeal, record of appeal and

Rules 90 (1) and 96 of the Rules.

In the upshot of the respondent's failure to take essential steps to lodge an appeal after filing a notice of appeal, this application is allowed. The notice of appeal which was filed on 6th June 2016 is hereby struck out with costs to the applicant.

DATED at DODOMA this 4th day of July, 2018.

I. H. JUMA
CHIEF JUSTICE

A. G. MWARIJA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSTICE OF APPEAL



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


S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL