

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

**(CORAM: KIMARO, J.A., MANDIA, J.A, And KAIJAGE, J.A.)**

**CIVIL APPEAL NO. 90 OF 2012**

**VENANCE NYARINGA KAZURI.....APPELLANT  
VERSUS  
ELDAD MWASINGWA SOSPETER.....RESPONDENT**

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

**(Moshi, J.)**

**Dated the 5<sup>th</sup> day of March, 1999  
in  
(DC) Civil Appeal No. 26 of 1996**

.....

**RULING OF THE COURT**

**21<sup>st</sup> & 27<sup>th</sup> November, 2012**

**KAIJAGE, J.A.:**

This Ruling is subsequent to the arguments presented on behalf of the parties to the present appeal on a preliminary point of objection Notice of which was lodged on 16/11/2012 by Mr. Mushokorwa learned counsel who advocated for the Respondent. Mr. Mbise, learned counsel, advocated for the appellant.

The Notice of objection filed under Rule 107 (1) of the Court of Appeal Rules, 2009 (the Rules) seeks to move this court to strike out with costs the Notice of Appeal dated 11/3/1999 on the ground that it does not conform with the basic requirements of Rules 83 (6) of the Rules which provides;

*"A Notice of Appeal shall be substantially in the Form D in the First Schedule to these Rules and shall be signed by or on behalf of the appellant."*

In arguing the said point of objection, Mr. Mushokorwa pointed out unsatisfactory features besetting the Notice of Appeal as lodged on 11/3/1999. First, he submitted that the Notice of Appeal is addressed to the Registrar of the Court of Appeal instead of the Registrar of the High Court. Secondly, that the Notice was signed on behalf of the Registrar of the Court of Appeal instead of the Registrar of the High Court. To bolster up his arguments he referred to us decisions of this Court in **WILLIAM LOITIAME vs. ASHERI NAFTALI** [2003] TLR 320 and in **EDSON**

**MBOGORO vs. OC-CID SONGEA DISTRICT AND ANOTHER,** Civil Appeal No. 44/2004, CAT at Mbeya (unreported).

Mr. Mbise did not put up a serious resistance to the point of objection. Upon reflection, he readily conceded to the apparent shortcomings in the Notice of Appeal in question which was drawn and presented for filing by himself. He however pressed us to dispense with costs to the respondent.

On our part, we have closely examined the Notice of Appeal in question. It is certainly violative of the requirements under Rule 83 (6) of the Rules. Form D, provided for under Rule 83 (6) requires that the Notice of Appeal should be addressed to the Registrar of the High Court and be lodged in the High Court. It is evident that the Notice of Appeal in question is addressed to the Registrar of the Court of Appeal. It should have been addressed to the Registrar of the High Court.

Indeed, Form D requires that the Notice of Appeal should be signed by the Registrar of the High Court; which term includes the District Registrar of the High Court (See; Rule 3 of the Rules). The obligation to sign the Notice of Appeal cannot be delegated to a person or other persons not envisaged in Form D. It is curious that the Notice of Appeal in question was signed "For Deputy Registrar, Court of Appeal" instead of the Registrar of the High Court or the Deputy Registrar of the High Court.

As was held in MBOGORO's case, we find that, the shortcomings in the present Notice of Appeal are serious and not minor. A notice of appeal signed by a person not prescribed under Form D cannot be said to be a valid Notice of Appeal.

In the upshot, we are constrained to sustain the respondent on the preliminary objection. Consequently, we strike out the Notice of Appeal with costs.

**DATED** at **MBEYA** this 23<sup>rd</sup> day of November, 2012.

N. P. KIMARO  
**JUSTICE OF APPEAL**

W. S. MANDIA  
**JUSTICE OF APPEAL**

S. S. KAIJAGE  
**JUSTICE OF APPEAL**

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

(P. W. Bampikya)  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**