



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



**CHARLES KATELEBE MUTOKA V EDWARD W. K.
BEJUMULA & OTHERS**

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(KITUSI. J.A. KAIRO 3.A. AND MURUKE J.A.)

CIVIL APPLICATION NO. 326/17 OF 2023

(Application for striking out Notice of Appeal arising from the Judgment and Decree of the High Court of Tanzania, Land Division at Dar es Salaam by Makani. J. dated the 30th day of September, 2021 in Land Case No. 146 of 2018)

Appellate Practice and Procedure – Striking out of Notice of Appeal – failure to take essential steps in prosecuting an appeal – whether such failure renders the notice of appeal liable to be struck out under Rule 89(2) of the Court of Appeal Rules.

The Applicant filed an application before the Court seeking an order under Rule 89(2) of the Court of Appeal Rules, 2009, to strike out the Notice of Appeal lodged by the 1st & 2nd Respondents on the ground that they had failed to take essential steps after lodging it, which amounted to abandonment of the intended appeal.

The Applicant argued that since the Notice of Appeal was lodged on 6th October 2021, the Respondents had neither filed nor served the memorandum and record of appeal within the prescribed time. Consequently, the Applicant prayed that the Notice of Appeal be deemed withdrawn under Rule 91 (a) of the Rules. In response, the Respondents attributed their inaction to the negligence of their former advocate.



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Held:

- (i) The 1st & 2nd Respondents failed or neglected to take essential steps in furtherance of their intended appeal.
- (ii) A party should not be punished for negligence of his advocate.

Notice of appeal struck out.

Case Law

- (i) Mohamed Suleiman Ghona v. Mahmood Mwemus Chotikungu, Civil Reference No. 179 of 2020 [2021] TZCA 109 TANZLII;

Statutory provisions referred to

- (i) Court of Appeal Rules, 2009

Mr. Benard Mbakileki assisted by Mr. Victor Ntalula, both learned counsel for the Applicant, Mr. Lameck John Erasto, learned counsel for the 1st, 2nd Respondents and Mr. Peter Musseti, learned counsel for the 3rd Respondent.