



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



AMINA SWALEHE MOLEL v. FARID HASAN HAJI

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

**(KITUSI, J.A. KAIRO, J.A. AND MURUKE. J.A)
CIVIL APPLICATION NO. 987 OF 2025**

(Application to strike out a notice of appeal in respect of the Judgement and Decree of the High Court of Tanzania, at Temeke Sub Registry One Stop Judicial Centre at Temeke) (Sarrwat Kazi. J.) dated the 15th day of October, 2024 in Civil Appeal No. 18365 of 2024)

Appellate Practice and Procedure – Striking out of Notice of Appeal – failure to serve the record of appeal – whether omission to serve the record of appeal amounts to failure to take essential steps warranting striking out of the notice of appeal under Rule 89(2) of the Court of Appeal Rules notwithstanding that the appeal is already pending before the Court.

This is an application for striking out a Notice of Appeal, wherein the Applicant seeks an order of the Court to strike out the Notice of Appeal lodged by the Respondent on 28th October 2024, arising from the judgment and decree of the High Court of Tanzania, Temeke Sub-Registry (One Stop Judicial Centre) at Temeke in Civil Appeal No. 18365 of 2024.

The application is grounded on the contention that the Respondent has failed to take essential steps to pursue the intended appeal. In particular, the Respondent failed to effect service of the Record of Appeal upon the Applicant within the prescribed time. Pursuant to Rule 97(1) of the Court of Appeal Rules, the Respondent was required to serve the Record of Appeal within seven (7) days from the date of lodging the appeal, which he failed to do.

The Applicant submitted that non-compliance with this mandatory provision renders the appeal incompetent and liable to be struck out, as the omission amounts to failure to take essential



THE UNITED REPUBLIC OF TANZANIA OFFICE OF THE SOLICITOR GENERAL



steps towards the prosecution of the appeal. Accordingly, the Applicant prayed that the appeal be struck out under Rule 89(2) of the Rules.

In response, the Respondent contended that neither the Applicant nor his advocate could be traced for purposes of effecting service. He further submitted that the process server had sworn an affidavit to that effect. However, the said Affidavit was misplaced and was therefore not annexed to the affidavit in reply. And that since the appeal was uploaded in the court system then the Applicant had knowledge of the institution of the said appeal.

Held:

- (i) The intended appeal has already been lodged by the Respondent since 27/12/2024.
- (ii) The Respondent has not served the applicant with the memorandum of appeal and the record of appeal as required under rule 97 (1) of the Tanzania Court of Appeal Rules.
- (iii) Failure to comply with rule 97 (1) of the Rules is considered to be failure to take essential steps in terms of rule 89 (2) of the Rules.

The notice of appeal is hereby struck out with cost

Statutory provisions referred to

- (i) The Tanzania Court of Appeal Rules.

Case Laws

- (i) Bi Asha Seif and Another vs Banjeet Gokal Damji, Civil Appeal No. 50 of 2012 [2012] TZCA 150 (12 Dec 2012)
- (ii) Shirika la Meli la Zanzibar and the Hon. Attorney General vs Mohamed Hassan Juma and Others, Civil Appeal No. 56 of 2006 [2006] TZCA 384 (13 September 2006) TANZLII.
- (iii) Rosemary Stella Chambejairo vs David Kitundu Jairo, Civil Ref. No. 6 of 2018 [2021] TZCA 442 (2 September 2021) TANZLII

Mr. Ashiru Lugwisa, learned counsel for the Applicant

Mr. John Msifuni Msuya, learned counsel for the Respondent,