

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. LAND APPLICATION NO. 10 OF 2017

(Arising from Misc. Land Appeal No. 34 of 2016).

MATHIAS SHIJA LUZABI.....APPLICANT

VERSUS

THOBIA M. MWANJI.....RESPONDENT

RULING

01/11/2018 & 2/01/2019

Gwae, J

Before me is an application for extension of time upon which the applicant may file the Notice of intention to appeal to the Court of Appeal out of time. The applicant has preferred this application under **Regulation 10, 83** (1) (2) and (3) of the Court of Appeal Rules, 2009 and section Civil Procedure Code (Cap 33 R. E 2002).

When composing this ruling I came to learn that there is purported wrong citation on the applicant's chamber summons as provision of the Civil Procedure Code (supra) was cited and worse still there are no Regulations in the Court of Appeal of Tanzania Rules except Rules. As right

to be heard is fundamental one which every person is entitled by virtue of being human being.

Parties particularly the respondent present was entertained to address the court but since the aye laypersons, therefore, they had nothing useful to assist the court.

It is trite law that Civil Procedure Code, Cap 33 Revised Edition 2002, is not applicable in Court of Appeal. In our present application, the applicant is praying to file notice of appeal to appeal to the Court of Appeal out of time in order challenge the decision of this court dated 15th November 2016. I am of the firm view that it was not proper for him to cite provision of CPC.

In **Paul Mgana v. Managing Director Tanzania Coffee Board**, Civil Appeal No. 82 of 2001 (unreported), where the Court of Appeal rightly stated;

“It is common knowledge that rules of procedure being handmaids of justice, should be complied with by each and everybody..whether the case involved a constitutional right as the appellant urged or not, so long as the provision of Rules (1) are mandatory going to the root of

matter, there is no way in which the appellant could be exempted from complying with the rule”.

In order the court to do what it is asked to do, there must be proper citation of the applicable law and not randomly citing law or rules which a inapplicable.


Moreover the applicant ought to cite provisions of the Appellate Jurisdiction Act which a specific law rather citing the non-existent Regulation as Court of Appeal Rules do not have Regulations but Rules.

I need not say any more on the purported citation in the applicant’s chamber summons; suffice it to say that there is no Regulation in the Court of Appeal of Tanzania Rules, 2009 and no citation of the Civil Procedure Code is allowed in this nature of application

All said and done, this application is incompetent; the same struck out with costs

It is so ordered




M. R. Gwae
Judge
02/01/2019