

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

**(CORAM: OTHMAN ,C.J., KIMARO,J.A., And MUGASHA, J.A.)**

**CIVIL APPLICATION NO. 4 OF 2014**

**ASSIYA MPWAGA.....APPLICANT**

**VERSUS**

- 1. EYAZALI MCHAPE**
- 2. REONALDANJOLA**
- 3. ALIBEYO CHELULA**
- 4. HEZULUN VIJELU**

.....**RESPONDENTS**

(Application to strike out notice of appeal filed under Rules 89(2) and 83(6) of the Court of Appeal Rules 2009).

**(Karua, J)**

**dated the 19<sup>th</sup> day of February, 2014**  
**in**  
**Misc. Land Appeal No. 6 of 2010**

.....  
**RULING OF THE COURT**

22<sup>nd</sup> & April, 2016

**KIMARO, J.A.:-**

The respondents were aggrieved by the judgment of the High Court (Karua, J) in Land Appeal No. 6 of 2010 dated 11<sup>th</sup> June 2013. They filed a notice of appeal intending to appeal against the decision of the High Court. The notice of Appeal was filed on 14<sup>th</sup> June 2013 and was addressed to the Registrar Court of Appeal.

Through a notice of motion filed under Rules 89(2) and 83(6) of the Court of Appeal Rules, 2009, Mr. Justinian Mushokorwa, learned advocate

for the applicant is challenging the legality of the notice of appeal. The only ground given is that it is addressed to the Registrar of the Court of Appeal instead of the Registrar of the High Court. The notice of motion is supported by the affidavit of Justinian Mushokorwa. In the affidavit it is averred that the notice of appeal does not conform to the prescribed format.

The learned advocate Mr. Mushokorwa was not present when the application was called on for the hearing. Mr. Victor Mkumbe, learned advocate for the respondents appeared and conceded in the absence of Mr. Mushokorwa that the notice of appeal challenged was not in compliance with the prescribed format. He prayed that the same be struck out and each party to bear own costs.

A close scrutiny of the notice of appeal shows that it was addressed to the Registrar of the Court of Appeal and lodged at the High Court of Mbeya.

Rule 83(6) provided that:

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

In Form D in the First Schedule to the Court of Appeal Rules, 2009 the appellant must indicate his name, the name of the judge who has given the decision he/she wants to appeal against and the date of the decision. It must also be indicated whether the appeal is against the whole decision or part of it. Both the addresses of the appellant(s) and the respondent(s) must be indicated and the notice of appeal must be addressed to the Registrar of the High Court and signed by, or on behalf of the appellant(s). Lastly it must be lodged in the High Court.

The defect shown in the notice of appeal under challenge is that it is addressed to the Registrar of the Court of Appeal instead of the Registrar of the High Court. The Court in the case of **Venance Nyaringa V Eldad Mwasingwa Sospeter** Civil Appeal No.90 of 2012 (unreported), held that because the notice of appeal was lodged in the Court of Appeal instead of the High Court, it was defective.

The importance of lodging the notice of appeal with the Registrar of the High Court is to bring to the attention of the Registrar that a party has been aggrieved by a decision of the High Court and intends to appeal against that decision. This will enable

the Registrar of the High Court to fulfill his/her responsibilities of preparation of the record of appeal for the party intending to appeal.

In the Rules there is no corresponding provision in cases of civil proceeding requiring the Registrar of the High Court to prepare a record of appeal after the notice of appeal is filed as is the case in criminal proceedings. We think it is important to have such a provision for easy of monitoring the period for the supply of the proceedings for appeal purposes.

Failure by the appellants to address the notice of appeal to the Registrar of the High Court, makes the notice of appeal defective. It is hereby struck out with no order as to costs.

DATED at MBEYA this      day of April, 2016.

M. C. OTHMAN  
**CHIEF JUSTICE**

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

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**