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IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MBAROUK, J.A., LILA, J.A. And MWAMBEGELE, J.A.)

CIVIL APPLICATION NO. 195 OF 2015

ENOCK KALIBWAMI.....APPLICANT

VERSUS

**1. AYOUB RAMADHANI
2. JACOB ELIKANA MURO
3. YUSUFU MUHANDO** }RESPONDENTS

**(Application for stay of execution from decision of the High
Court of Tanzania (Land Division)
at Dar es Salaam)**

(Kente, J.)

dated the 13th day of August, 2015

in

Land Case No. 113 of 2008

RULING OF THE COURT

24th September & 5th October, 2018

MBAROUK, J.A.:

By way of notice of motion made under Rule 4(2) (b)
and Rule 11(2) (b), (c), (d) (i) and (ii) of the Tanzania Court
of Appeal Rules, 2009 (the Rules) the applicant has moved
this Court seeking the following orders:-

"That this honourable Court be pleased to make an order for stay of execution of the judgment and decree of his Lordship Kente, Judge sitting at the High Court of Tanzania, Land Division at Dar es Salaam, Land Case No. 113 of 2008 delivered on the 13th day of August, 2015 pending the final determination of an intended appeal to this Court."

In support of the notice of motion, the affidavit of Enock Kalibwami has been annexed.

In this application, Mr. Daniel Haule Ngudungu, learned advocate, represented the applicant; the first respondent appeared in person; whereas Mr. Francis Mgare, learned advocate appeared for the second respondent, and the third

respondent was represented by Mr. Living Kimaro, learned advocate.

When the matter came up for hearing, the Court wanted to satisfy itself as to whether the application has been properly filed. This was for the reason that, the notice of appeal lodged by the applicant in this application was not endorsed by a judicial officer.

Initially, Mr. Ngudungi tried to convince the Court that at page 29 of the record there is a receipt which can prove that they have filed their notice of appeal. However, he later agreed with the contention raised by the Court that Rule 18 of the Rules requires any document lodged in the registry or sub-registry, or in the Registry of the High Court, or tribunal to be endorsed by a judicial officer. For that reason, Mr. Ngudungi then urged the Court to strike out the incompetent application.

Being a lay person not conversant with legal issues, the first respondent left the matter in the hands of the Court to reach to a just decision.

Mr. Mgare, agreed with the defect raised by the Court and prayed for the application to be struck out. On his part, Mr. Kimaro too agreed with the defect raised and urged the Court to strike out the application.

As pointed out earlier, the issue in this matter is the non-compliance with the mandatory requirement to endorse the notice of appeal lodged in this application for stay of execution as required by Rule 18 of the Rules. Rule 18 of the Rules reads as follows:-

" Whenever any document is lodged in the Registry, sub-registry of the Court, or in the registry of the High Court, or

*tribunal under or in accordance
with these Rules, the Registrar,
or Deputy Registrar, or the
Registrar of the High Court or any
other officer of the court
appointed for that purpose, as
the case may be, shall forthwith
cause it to be endorsed, showing
the date and time when it was
lodged. "* (Emphasis added)

It is therefore clear that a document is properly lodged in Court when the same is endorsed by a judicial officer as mandatorily provided for by Rule 18 of the Rules. See **Lekashingo Building Construction Co. Ltd v. Festo Lukelo t/a Kamwene Investment**, Civil Appeal No, 192 of 2016 (unreported).

The effect of not being endorsed, renders the notice of appeal to be defective.

It is also pertinent to note that, it is a requirement under Rule 11(2) (b) of the Rules that in an application for stay of execution, a notice of appeal has to be appended with the notice of motion. As in the instant application, the notice of appeal has not been appended with a valid notice of appeal that renders the application incompetent.

Taking those two mandatory requirements in Rules 11(2) (b) and 18 of the Rules applied conjunctively, we find that the effect of non-compliance with those two Rules is fatal and renders the application for stay of execution incompetent.

For the reason of being incompetent, we strike out the application. As the matter was raised by the Court *suo motu*, each party to bear its costs.

It is so ordered.

DATED at DAR ES SALAAM this 1st day of October, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

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


E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL