

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

CIVIL APPLICATION NO. MBY 3 OF 2006

**LEONARD H. KASHAMAKULA APPLICANT
VERSUS
HEBRON P. NZYUNGULA RESPONDENT**

**(Application for striking out Notice of Appeal
from the decision of the High Court of Tanzania
at Mbeya)**

(Mackanja, J.)

**dated the 14th day of May, 2002
in
(DC) Civil Appeal No. 6 of 2001**

ORDER

MBAROUK, J.A.:

When this matter was called on for hearing, Mr. Mbise learned counsel for the applicant informed this Court that this application was inadvertently filed because the same kind of prayers have already been dismissed on 31.8.2006 by Mroso, J.A. of this Court without further order to reinstate it.

He said, before the order of dismissing Civil Application No. 3 of 2006, the current Respondent filed Civil Appeal No. 41 of 2006 before this Court. Thereafter a notice of motion to strike out the notice of appeal was filed under Rule 82 of the Court of Appeal Rules, 1979.

However the main appeal was heard ahead of the notice of motion filed by the applicant.

In the main appeal (Civil Appeal No. 41/2006) the applicant raised a preliminary objection which contained points of objection similar to those which appeared in Civil Application No. 3 of 2006. In the result the preliminary objection was sustained, hence the notice of appeal was struck out with costs. This made Civil Application No. 3 of 2006 to be overtaken by events. That necessitated Mr. Mbise, advocate for the applicant to write to the Registrar Court of Appeal for the withdrawal of the application No. 3 of 2006 to which the same was granted. The application was dismissed by Justice Mroso of this Court under Rule 3 (2) (a) of the Court of Appeal Rules, 1979 on 31.8.2006.

As far as the contents of the prayers herein this application are similar to those which have already been dismissed by Justice Mroso on 31.8.2006, Mr. Mbise prayed for this matter before me to be marked closed under Rule 3 (2) (a) of the Court Rules, 1979.

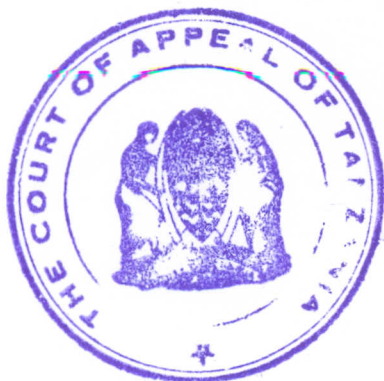
On the other hand, Mr. Mushokorwa advocate for the respondent had no objection to the prayers by his learned friend. He agreed to the proposed prayer.

In the event to what has transpired, and as far as the matter before me has been overtaken by events and will not serve any useful purpose any more, as prayed by the advocate for the applicant, the matter is marked closed under Rule 3 (2) (a) of the Court of Appeal Rules, 1979. There will be no order as for costs.

DATED at MBEYA this 2nd day of July, 2008.

M.S. MBAROUK
JUSTICE OF APPEAL

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




DEPUTY REGISTRAR