

Civil application No.62 of 2007 – Court of Appeal of Tanzania at Dar es Salaam Msoffe J.A	The Registered Trustees of Agricultural input trust fund Vs. Alhaji Ali Utoto (Application for striking out the Notice of appeal from the judgement of the High Court of Tanzania at Dar es Salaam civil case no.138 of 2001 Bubeshi J)	Failure to take some essential steps in the prosecution of intended appeal could be one of the ground which will result the struct out of the notice of appeal.
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**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 62 OF 2007**

**THE REGISTERED TRUSTEES OF AGRICULTURAL  
INPUTS TRUST FUND.....APPLICANT**

**VERSUS**

**ALHAJI ALI UTOTO .....RESPONDENT**

**(Application for striking out the Notice of Appeal  
from the Judgement of the High Court of  
Tanzania at Dar es Salaam)**

**(Bubeshi J.)**

**Dated the 2<sup>nd</sup> day of August, 2004  
in  
Civil Case No. 138 of 2001**

**RULING****17<sup>th</sup> & 17<sup>th</sup> September, 2007****MSOFFE, J. A.:**

This is an application for striking out a notice of appeal dated 2<sup>nd</sup> August 2004 against the decision of the High Court of Tanzania (Dar es Salaam District Registry) delivered on 2/8/ 2004 in Civil Case No. 138 of 2001. The application is by way of notice of motion and is supported by an affidavit of Mariam Nkumbi, the Executive Director of the applicant Fund.

When the application was called on for hearing Mr. Kashumbugu learned advocate for the respondent did not appear. Since there was evidence that Mr. Kashumbugu was served, Mr. George Mushumba learned advocate for the applicant prayed, and the Court granted the oral application to proceed to hearing in the absence of the respondent in terms of Rule 58 (2) of the Court of Appeal Rules, 1979.

In both the affidavit in support of the application and the oral submission by Mr. Mushumba it is evident that the application is

grounded on two points. **One**, that the notice of appeal was not served on the applicant contrary to the requirements of Rule 77 (1). **Two**, that on 14<sup>th</sup> July, 2006 the Applicant's advocate received a copy of letter ref. No. C. C. 138/ 2002 dated 14/7/ 2006 from the Registrar of the High Court informing that copies of proceedings, Ruling and drawn order were ready for collection, yet up to 8 months later, i. e. 21/3/ 2007 when this application was filed, no appeal had been instituted.

In the absence of an affidavit in reply filed by the respondent under Rule 53 (1), or the respondent's appearance at the hearing of the application, there is nothing to fault the applicant on the two grounds mentioned above. So, it will follow that the applicant has not taken some essential steps in the prosecution of the intended appeal.

In the result, for the above reasons, the application is granted with the result that the notice of appeal dated 2<sup>nd</sup> August, 2004 is struck out with costs.

DATED at DAR ES SALAAM this 17<sup>th</sup> day of September, 2007.

J. H. MSOFFE  
**JUSTICE OF APPEAL**

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

I.P. KITUSI  
**DEPUTY REGISTRAR**