**IN THE COURT OF APPEAL OF TANZANIA**

**AT ZANZIBAR**

**ZNZ CRIMINAL APPLICATION NO. 2 OF 2013**

**DIRECTOR OF PUBLIC PROSECUTION ..... APPLICANT**

**VERSUS**

**1. AHMED KHAMIS AHMED**
**2. IDRISA ALI KHAMIS**
**3. OMAR MUSSA KASSU**
**4. MOHAMED AHMED KHAMIS**
**5. KHAMIS MOHAMED AMRAN** } **..... RESPONDENTS**

**(Application for extension of time from the judgment of the High Court of Zanzibar at Pemba)**

**(Abdul-Hakim, J.)**

**dated 22nd day of September, 2011**
**in**
**Criminal Revision No. 1 of 2011**

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**RULING**

**2nd & 10th September, 2013**

**MBAROUK, J.A.:**

When the appeal was called on for hearing, the Court *suo motu* raised a point as to whether it has been properly moved. This is for the reason, that the requirements under Rule 48 (1) of the Court of Appeal Rules, 2009 (the Rules) was violated by the applicant. Rule 48 (1) of the Rules states as follows:-

> *"Subject to the provisions of sub rule (3) and to any other rule allowing informal application,* ***every application to the Court shall be by notice of motion supported by affidavit. It shall cite the specific rule under which it is brought*** *and state the ground for the relief sought." (Emphasis added).*

In the instant application, the applicant has filed chamber application and not notice of motion. This is contrary to the mandatory requirements under Rule 48 (1) of the Rules. Apart from that, instead of citing specific rule under which the application is brought, the applicant cited a general rule. The record shows that, the applicant is seeking for the orders of this Court for extension of time to lodge the appeal out of time and has cited Rule 47 of the Rules instead of Rule 10 which has been kept specifically for that purpose. Surely, the applicant has cited a wrong provision to enable the Court to be properly moved.

Both, Mr. Albaghir Yakout Juma learned Senior State Attorney for the applicant Director of Public Prosecutions and Mr. Uhuru Hemed Khalfan, learned advocate for the all the respondents conceded to the defects raised earlier on by the Court.

As pointed out earlier, the purported application has contravened the mandatory requirements of Rule 48 (1) of the Rules. **Firstly,** the application was filed by way of chamber application instead of notice of motion. **Secondly,** the application has cited a wrong provision in moving the Court properly. These defects render the application to be incompetent. For being incompetent the same ought to be struck out. Hence for those reasons the application is hereby struck out. It is so ordered.

**DATED** at **ZANZIBAR** this 3rd day of December, 2013.

M. S. MBAROUK
**JUSTICE OF APPEAL**

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



Z. A. MARUMA
**DEPUTY REGISTRAR**
**COURT OF APPEAL**