



The respondent opposed this application saying that the applicant has made it a habit to blame court for his failure to follow up his matters in court. That the dispute the subject of the previous and the current application for leave to appeal was vacant possession of the suit land. That the applicant pleaded in the written statement of defence that he is no longer the owner of the suit land since he disposed of the same long ago and has no control over the same. That therefore granting leave would serve no purpose in view of the above pleading. That failure to serve a hearing notice does not necessarily mean the applicant has a high likelihood of success on appeal or that the appeal raises matters of great importance.

Court allowed respective counsel to file written submissions in support of their respective cases.

I have considered this application as a whole and the submissions by respective counsel.

I am inclined to agree with the respondents that this application lacks merit. Although the applicant claims that he has good grounds of appeal and that the appeal raises matters of great importance, he has not attempted to indicate what those matters are. Although he acknowledges that he came to know of the Ruling after almost four months, he must have read the ruling and pointed out the errors in the ruling which warrant consideration of the Court of Appeal. The alleged failure to serve a hearing notice does not necessarily mean that the applicant has a high likelihood of success which can persuade this court to extend time within which to file for leave to appeal. None service of a hearing notice cannot be a ground of appeal because it does not go to the merits of the decision complained of. None service is only an error of procedure which does not defeat the decision of court on merits. The above notwithstanding the applicant has deponed in paragraph 10 of the affidavit in support of the Notice of Motion that:

***“ ... I have filed an appeal before the Court of Appeal which has high chances of success.”***

If the applicant has already filed the appeal then there is no need for extension of time to file the appeal.

For the reasons herein, this application is dismissed with costs.

**Stephen Musota**

**J U D G E**

**21.08.2017**

**R U L I N G**