

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 141 OF 2008**

**NYANZA COOPERATIVE UNION (1984) LTD.....APPLICANT**

**VERSUS**

- 1. W.K. BUTAMBALA  
t/a BUTAMBALA & CO. ADVOCATES**
- 2. AMOS NJILE LILI**
- 3. S.I. ISANGI AUCTION MART  
& COURT BROKER**

} .....**RESPONDENTS**

**(Appeal from the ruling and order of the High Court of  
Tanzania at Mwanza)**

**(Mchome, J.)**

**dated 18<sup>th</sup> day of June,2007**

**in**

**Civil Revision No. 2 of 2007**

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**ORDER**

**MJASIRI, J.A.:**

This is an application for leave to appeal to the Court of Appeal of Tanzania under Rule 43(b) and 44 of the Court of Appeal Rules, 1979.

The applicant is represented by Mr. R.K. Rweyongeza, learned Advocate. The first respondent is represented by Mr. C. Mutalemwa, learned Advocate and the second respondent by Mr. B. Kabonde, learned Advocate.

The respondents have raised preliminary objections, the notice of which has been filed under Rule 100 of the Court Rules.

The preliminary objection raised by Mr. Mutalemwa was to the effect that "the application for leave to appeal" is pre-maturely pursued as there is no refusal by the High Court.

When the application was called on for hearing Mr. Rweyongeza, learned Advocate for the Applicant readily conceded that the application for leave before the Court has been prematurely brought. He therefore applied to withdraw the application, and asked for costs to be awarded to the respondents. Mr. Mutalemwa and Mr. Kabonde had no objection to the prayer made by Mr. Rweyongeza, but asked for costs.

In view of the fact that Mr. Rweyongeza conceded that the court has been moved prematurely; and taking into consideration the no objection by both counsel and the requirements under the law, leave to withdraw the application is hereby granted under Rule 3(2)(a) of the Court of Appeal Rules, 1979. Respondents to be paid costs.

It is so ordered.

DATED at DAR ES SALAAM this 25<sup>th</sup> day of February, 2009.



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

S. MJASIRI  
**JUSTICE OF APPEAL**

P.A. LYIMO  
**DEPUTY REGISTRAR**