

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

**(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And MJASIRI, J.A.)**

**CIVIL APPLICATION NO. 4 OF 2011**

**UNILEVER TEA (T) LTD ..... APPLICANT**

**VERSUS**

**ZACHARIA MWATIMWA ..... RESPONDENT**

**(Application for leave to appeal to the Court of Appeal from the  
Decision of the High Court of Tanzania at Iringa)**

**(Mkuye, J.)**

**dated the 2<sup>nd</sup> day of December, 2010**

**in**

**(DC) Civil Appeal No. 9 of 2009**

-----

**RULING OF THE COURT**

**26<sup>th</sup> & 30<sup>th</sup> July, 2013**

**MJASIRI, J.A.:**

Before us is an application by Notice of Motion brought under Rule 45 (b) of the Tanzania Court of Appeal Rules 2009 (the Court Rules).

The orders being sought are reproduced as under:-

- (a) The Court be pleased to grant leave to appeal to the Court on the ground that the applicant was aggrieved by the decision of the High Court and that his application for leave to appeal which was made to the High Court was refused.

(b) The costs of and incidental to this application abide by the result of the intended appeal.

At the hearing of the application the applicant was represented by Mr. Basil Mkwata, learned advocate and the respondent appeared in person and was unrepresented.

The background to this application is that the applicant applied for leave in the High Court before Kihio, J. However the application did not proceed on merit and was struck out because the applicant cited wrong provisions of the law rendering the application incompetent.

Mr. Mkwata on his part asked the Court to grant him leave to appeal to the Court of Appeal as his application has been refused by the High Court. He argued that he was justified to rely on **Rule** 45 (b) of the Court Rules as his application was rejected by the High Court.

The Respondent, being a layman and not being represented by an attorney simply requested the Court to rely on his counter affidavit filed in Court.

The law is settled on applications for leave to this Court. An application for leave to appeal has to be filed in the High Court first and can only be filed in the Court of Appeal when leave has been refused by the High Court. The position of the law is clear and unambiguous. Rule 45 of the Court Rules provides as under:-

*"(a) Where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within fourteen days of the decision.*

*(b) Where an appeal lies with leave of the Court application for leave shall be made in the manner prescribed in Rules 49 and 50 within fourteen days of the decision against which it is desired to appeal or, where the application for leave to appeal has been made to the High Court and **refused**, within fourteen days of the refusal."*

*(Emphasis ours)*

After carefully going through the record, it is evident that the application for leave has not been refused by the High Court. The application was not heard on merit and was struck out for being incompetent. In the prevailing circumstances the application cannot

be said to have been refused within the meaning of the provision of Rule 45 (b). See **Thomas David Kirumbuyo and Abas Mhanga v Tanzania Telecommunications Co. Ltd**, Civil Application No. 1 of 2005 CAT (unreported). We are therefore of the considered view that the application for leave before this Court has been brought prematurely. The application is incompetent, and ought to have been heard by the High Court as it has not been determined on merit.

We therefore, strike out the application for being incompetent. We grant costs to the respondent.

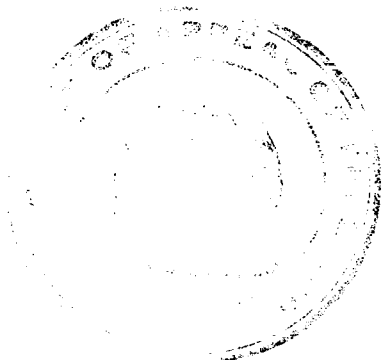
**DATED at IRINGA** this day 26<sup>th</sup> July, 2013

E. M. K. RUTAKANGWA  
**JUSTICE OF APPEAL**

B. M. LUANDA  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

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



  
M. A. Malewo  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**