

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

**MSH. CIVIL APPLICATION NO. 5 OF 2014**

**KIBONG'OTO WANRI RURAL CO-OPERATIVE SOCIETY LTD.....APPELLANT  
VERSUS  
KOBOKO RURAL CO-OPERATIVE SOCIETY LTD..... RESPONDENT**

**(Application from the decision of the High Court of Tanzania  
at Moshi)**

**(Makuru, J.)**

**Dated 7<sup>th</sup> day of May, 2014  
in  
(HC) Land Case No. 1 of 2004  
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**ORDER**

**MWARIJA, J.A.:**

At the hearing of this application, the applicant was represented by Mr. Gwakisa Sambo, learned counsel while the respondent was represented by its secretary, Mr. John Issack Mmari. When the parties were called upon to argue the preliminary objection which was raised by the respondent, Mr. Sambo readily conceded to it. In the preliminary objection, the notice of which was filed on 26<sup>th</sup> September, 2014, the respondent raised five grounds including the fact that the application is misconceived because there is a pending notice of appeal which has not been withdrawn by the court.

Mr. Sambo agreed that under the circumstances, it was not proper for the applicant to bring this application for extension of time to file another notice of appeal. He submitted also that even without that notice, under R. 47 of the Tanzania Court of Appeal Rules, 2009, such an application ought to have been filed first in the High Court. He thus prayed that the same be struck out and each party be ordered to bear its own costs given the fact that the applicant has readily conceded to the preliminary objection.

Mr. Mmari did not have any objection to the prayer for striking out the application. He only pressed for costs contending that the respondent has incurred expenses in preparing itself for the application.

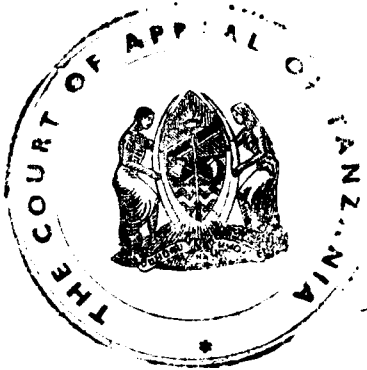
Having heard the learned counsel for the applicant and the respondent's representative, I agree that the application is incompetent. The applicant is applying for an extension of time to file a notice of appeal while such notice is already in record. Although there is a written notice to withdraw it filed on 21/7/2014, such application for withdrawal has not been granted by the court. Even if however, that notice was withdrawn, as submitted by Mr. Sambo, the application for extension of time to institute a notice of appeal ought to have been commenced in the High Court.

On the basis of the above stated reasons, I find that the application is incompetent and hereby strike it out. As to the question of costs, I have considered the fact that the applicant has readily conceded to the preliminary objection hence saving the time of the court and the parties. It is true as argued by Mr. Mmari that the respondent must have incurred costs but I think under the circumstances stated above, the parties who are both Cooperative Societies shall each bear its own costs.

**DATED at ARUSHA** this 2<sup>nd</sup> day of October, 2015.

A. G. MWARIJA  
**JUSTICE OF APPEAL**

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



  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**