

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. CIVIL APPLICATION NO. 16 OF 2020
(Originating from High Court, Shinyanga Registry in Rev. No. 3 of 2020)

DONALD NDAKI.....APPLICANT
VERSUS
BARIADI TOWN COUNCIL.....RESPONDENT

RULING

24th November, 2020

Mdemu, J.;

The Applicant moved this court in terms of Rule 45(a) of the Court of Appeal Rules for leave to appeal to the Court of Appeal against the decision of this court (Mkwizu, J) dated 29th May, 2020, in Revision No. 03 of 2020.

Upon being served with the Application, the Respondent Bariadi Town Council, along with filing an affidavit in reply, lodged a notice of preliminary objection that **one**, the appeal is out of time and **two**, that, the same is incompetent for being preferred under wrong provisions of the law.

Parties argued the preliminary objection. The Respondent under the service of Maganiko Msabi, learned Solicitor, abandoned the 2nd preliminary objection on improper citation of the Law.

Arguing the 1st preliminary objection on time limitation, the learned Solicitor submitted that, the Applicant lodged this application out of prescribed time limit of fourteen (14) days provided for under Rule 45 (a) of the Court of Appeal Rules, 2009. He stated that, the decision of this court was delivered on 29th of May, 2020, thus the Applicant by his move to lodge this application on 14th July, 2020 was out of time for almost forty six (46) days.

As there was no leave of this court to have time enlarged, Mr. Maganiko urged me to struck out the application with costs.

The Applicant conceded to have lodged the application out of time but elected that, time to lodge the application is 30 days and not 14 days as stated by the learned Solicitor.


Having considered the position of the two parties, and the fact that the Applicant conceded to the preliminary objection, I am of the humble view that, this application for leave to appeal to the Court of Appeal is out of time.

Parties however differs on time limitation for leave to appeal in terms of Rule 45(a) of Court of Appeal Rules. The learned Solicitor, as submitted, stated that, time limit is 14 days. The Applicant on the contrary view stated that, time limit to be thirty (30) days.

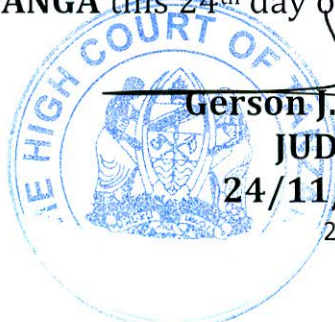

I am inclined to the view of the Applicant that time limit for leave to appeal to the Court of Appeal in terms of Rule 45(a) of Court of Appeal Rules, 2009 as amended is thirty (30) days and not fourteen (14) days as stated by Mr. Maganiko.

It as it may, the application is out of time and as stated by Mr. Maganiko, there is no leave sought to this court to have the same filed out of time. In that stance, the remedy is one, that is to dismiss the application, as I here by do. Each part to bear own costs.

It is so ordered.


Gerson J. Mdemu
JUDGE
24/11/2020

DATED at SHINYANGA this 24th day of November, 2020.



Gerson J. Mdemu
JUDGE
24/11/2020
2