

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
TANGA DISTRICT REGISTRY**

**AT TANGA**

**MISC. CIVIL APPLICATION NO. 20 OF 2022**

*(Arising from Civil Case No. 6 of 2018)*

**DAUDI HUSSEIN SULEIMAN.....APPLICANT**

***-VERSUS-***

**NATIONAL MICROFINANCE BANK PLC.....1<sup>ST</sup> RESPONDENT**

**BAKARI ALI MTAVYA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last order: 12/10/2022*

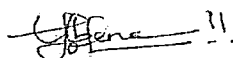
*Date of ruling: 19/10/2022*

**AGATHO, J.:**

The applicant applied for leave to appeal to the Court of Appeal of Tanzania (herein cited as CAT). The application is brought by way of chamber summons supported by an affidavit. The application was uncontested as the respondents did not file any counter affidavit.

It is crucial to state that to appeal to the CAT requires leave. Moreover, the applicant is bound to show there is or are arguable issues to be tried by the CAT.

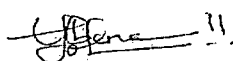
In my view the claim that the speed track expired and hence the court lacked jurisdiction is without merit because the respondent applied to the court to vary the scheduling orders and enlargement of speed track. And



the same was granted. Even if it was not granted it was the trial court that was better placed to determine this issue considering the context of the application for enlarging the speed track. The applicant's counsel ought to have raised the issue earlier. Another question is whether the court can extend the speed track *suo motu*? In my view the issue of speed track sound like an afterthought.

The issue as to whether there was a loan advanced to the 2<sup>nd</sup> defendant/respondent that is a matter of evidence. It is not a pure point of law. Along that whether it was proper to rely on electronic evidence that was not properly admitted as per Section 18(2) of the Electronic Transactions Act.

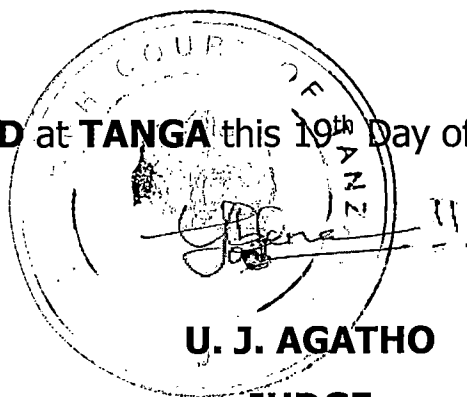
Looking at the applicant's affidavit, a critical point is whether a preliminary objection (PO) on point of law can be raised at the stage of final submission? It is my understanding that a PO may be raised at any time before judgment. The guiding principle was underscored in **Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors LTD (1969) EA 696**. The PO purely on point of law such as jurisdiction or law of limitation, for instance a matter being time barred may be raised at any stage even on appeal. In **Tanzania-China Friendship Textile v Our Lady of Usambara Sisters Civil Case No. 84 of 2002** it was held



that a PO being a point of law, can be raised at any time, and at any stage even at appellate stage. In the present application, the issue whether the PO is concomitant to raising new issue a practice which is disallowed at final submission, that in my view is a matter better be determined by a superior court. The Court of Appeal should thus provide a guide whether the PO may be raised at the stage of final submission. In the present application it is clear that the trial judge rejected the raising of PO at that stage. The learned trial judge was of the view that raising of the PO could have been done at the stage of hearing and not in final submissions. But this is an important issue that is worth to be determined by the Court Appeal Tanzania.

For the foregoing reason leave to appeal to the Court Appeal of Tanzania is granted. And given the nature of the case at hand each party shall bear its costs.

**DATED at TANGA this 19<sup>th</sup> Day of October 2022.**

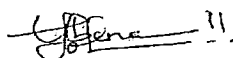


**U. J. AGATHO**

**JUDGE**

**19/10/2022**

**Date: 19/10/2022**

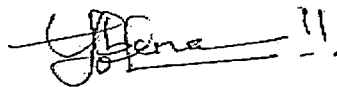


Coram: U. J. Agatho, Judge.

For the Applicant: Wantora, Advocate

For the Respondents: Eric Akaro, advocate

**Court:** the ruling is delivered on this 19<sup>th</sup> day of October 2022 in the presence of Wantora, Advocate for the Applicant and Eric Akaro, Advocate for the Respondent.

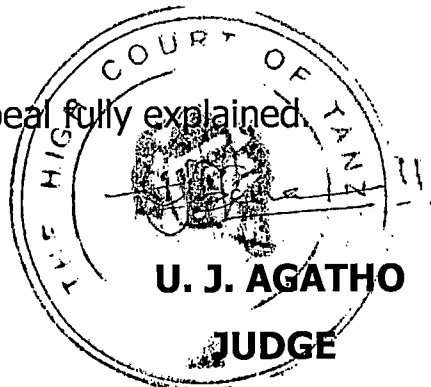


**U. J. AGATHO**

**JUDGE**

**19/10/2022**

**Court:** Right of Appeal fully explained



**U. J. AGATHO**

**JUDGE**

**19/10/2022**

