

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(TABORA DISTRICT REGISTRY)**

**AT TABORA**

**CRIMINAL CASE APPLICATION NO. 26 OF 2021**

*(Arising from PC Criminal Appeal No. 1 of 2020 – RM - Ext. Jurisdiction, from Original Criminal Case No. 78 of 2020, Isevya Primary Court)*

- 1. KAWILI RAMADHANI**
- 2. MARY NKYA**
- 3. SADA MAGANGA**
- 4. MOHAMEDI ISMAILI**
- 5. MASHAKA IDD**

..... **APPLICANTS**

**VERSUS**

**ZENGO JILYA MADUKA**

*(Administrator of estate of the late Jilya Maduka)* ..... **RESPONDENT**

*Date of Last Order: 17.05.2023*

*Date of Ruling: 17.05.2023*

**RULING**

**KADILU, J.**

The applicants under legal representation of the learned Advocate, Mr. Lucas Ndanga filed this application seeking leave of the court to grant a certificate on the point of law for them to appeal to the Court of Appeal. The respondent was represented by Mr. Kelvin Kayaga, the learned Counsel. In the respondent's counter affidavit, Mr. Kelvin raised a Preliminary Objection on the point of law that, the application is hopelessly time-barred. On 17/05/2023 when the application came for hearing of the P.O., Mr. Kelvin submitted that under Rule 44 (2) of the Court of Appeal Rules, the applicants were required to file their application within fourteen (14) days from the date


the notice of appeal was filed. According to Mr. Kelvin, the notice of appeal was filed on 12/4/2021 whereas the present application was filed on 4/10/2021, which is nearly six (6) months later. The learned Counsel for the respondent prayed for the court to strike out the application for being time-barred.

Responding to the objection, Mr. Ndanga submitted that Rule 44 (2) of the Court of Appeal Rules is not superior to Article 107 (2) (e) of the Constitution which requires that in dispensation of justice, regard should be on substantial justice rather than procedural technicalities. He urged the court to have mercy on his clients and overrule the objection since they have been going through very hard situations.

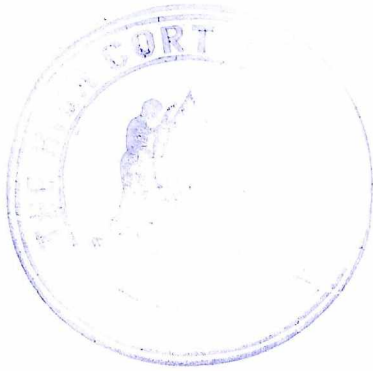
I have gone through the records and found that the present application was filed six months after the applicants had given the notice of appeal. Since Mr. Ndanga did not dispute the filing dates of both the notice of appeal and the current application, it is evident that this application was filed out of time prescribed by the law. As such, the objection raised by the Advocate for the respondent is upheld. Consequently, the application is struck out for being time-barred.

**Order accordingly.**



  
**KADILU, M.J.,**  
**JUDGE**  
**17/05/2023**

Ruling delivered in Chamber on the 17<sup>th</sup> Day of May, 2023 in the presence of Mr. Lucas Ndanga, Advocate for the applicants and Mr. Kelvin Kayaga, Advocate for the respondent.



  
**KADILU, M. J.**

**JUDGE**

**17/05/2023.**