

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 253 OF 2022**  
*(Originating from Land Appeal No.3 of 2022, by Hon. Ay. Msafiri, J.)*

**COCODACOR GENERAL CO. LTD.....APPLICANT**

**VERSUS**

**UNYIHA ASOCIATES LIMITED.....1<sup>ST</sup> RESPONDENT**

**CHARLES MPAMBA CHENZA.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 20.07.2022*

*Date of Ruling: 29. 07 .2022*

**T. N. MWENEGOHA, J.**

The ruling arises from a preliminary objection on point of law, advanced by the two respondents jointly that the instant application is time barred. Initially, the applicant here in above sought for a leave to appeal to the Court of Appeal of Tanzania, against the whole decision of this court, given by Hon. A. Msafiri, J. vide Land Appeal No. 3 of 2022, dated 19<sup>th</sup> April, 2021. The application was made under Section 47 (2) of the Land Disputes Courts Act, Cap 216 R. E. 2019 accompanied by the affidavit of the applicant's director, Halima Omary Dedego. Being against the application, the respondents objected the same for the reasons afore-stated.

Their written arguments as presented by their learned Advocate, Godfrey F. Alfred, were that, the application at hand offends the provisions of section 45(a) of the Appellate Jurisdiction Act, Cap 141, R. E. 2019. The said provision requires that an application for a leave to appeal in Civil Matters be made within 30 days. That, the decision which forms the basis of the intended appeal was delivered on the 19<sup>th</sup> of April 2022 and the application at hand was filed on the 24<sup>th</sup> of May 2022. Hence the same was clearly filed out of the prescribed time.

In reply, Advocate Herman Kilenzi for the applicant maintained that, in computing the period of limitation of time the rules require that, the time used in obtaining the copies of the impugned decision should be excluded as per section 19 (2) of the Law of Limitations Act, Cap 181 of 2019. That, the applicant was given the copies of the judgment and decree on the 27<sup>th</sup> of April 2022. Therefore, his time started to run from that day. That means the 30 days expired on the 27<sup>th</sup> April. That, this application was filed three days before the expiry of the required statutory time. In his submissions, the applicant's counsel cited the case of **Epimael Nko vs. Frida Malya, Misc. Land Application No. 6 of 2022, High Court of Tanzania at Morogoro, (unreported)**.

I have considered the arguments of both counsels on behalf of the parties. The question for determination is whether the objection has merit or not.

To answer this question, I went through the chamber summons to see as to when the same was filed in this court. I found that, it was filed on the 24<sup>th</sup> of May 2022 as stated by the counsel for the respondents. The same chamber summons has been accompanied by the judgment of Hon. Msafiri J, dated 19<sup>th</sup> of April 2022. It is this judgment which the applicant intends to challenge

before the Court of Appeal of Tanzania. If we count the days from the day the impugned decision was delivered, on the 19<sup>th</sup> April 2022 to the date of filing of this application, on the 24<sup>th</sup> of May, 2022, we get a total of 35 days. This is where we find the basis of the respondents' objection. That, the application is against section 45 of the Appellate Jurisdiction Act, Cap 141 R. E. 2019.

To make things clear for the interest of justice, I should remind the respondents' counsel that, the correct provision for his position is Rule 45(a) of the Court of Appeal Rules of 2019, made under section 12 of the Appellate Jurisdiction Act, Cap 141 R. E. 2019. For easy reference, I will reproduce Rule 45(a) of the Court of Appeal Rules of 2019 as here under;-

*"Notwithstanding the provision of Rule 46(1), 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 thirty days of the decision."*

As pointed out herein above, this case was filed 35 days after the decision of Hon. Msafiri J was out. Obviously, it was filed out of the required time. The applicant was supposed to obtain leave of this court first and give his reasons as to why he delayed to present his application within time. That is where the arguments given by her learned counsel come in. In this application, those arguments are misplaced.

To that end and for the reasons I have given herein earlier, I find the objection by the respondents to have merits and sustain it accordingly.

The application is hereby struck out with costs.

It is so ordered.



**T. N. MWENEGOHA**

**JUDGE**

**29/07/2022**

