

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

MISC. LAND APPLICATION NO. 06 OF 2023

(Arising from Misc. Land Application No. 132 of 2022)

TRADTECK LIMITED 1ST APPLICANT

SULEIMAN NASSORO MOHAMED 2ND APPLICANT

VERSUS

KORU FREIGHT LIMITED RESPONDENT

Date of last Hearing: 24/04/2023

Date of Ex Parte Ruling: 25/05/2023

EX PARTE RULING

I. ARUFANI, J

The applicant filed in this court the application at hand seeking for leave to appeal to the Court of Appeal against the ruling of this court delivered in Miscellaneous Land Case Application No. 132 of 2022 dated 10th August, 2022. The application is made under Section 5 (1) (c) of the Appellate Jurisdiction Act Cap 141 [R.E 2019] and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 as amended (henceforth the Rules).

The application was supported by the affidavit of Titus Aron, advocate for the applicants. After the respondent being served with the chamber summons and its supporting affidavit her counsel filed in the court a notice of preliminary objections containing points of law listed hereunder: -

- (a) *That the application is misconceived and bad in law for being hopelessly time barred;*
- (b) *That the application is bad in law for being in contravention with Rule 46 (1) of the Tanzania Court of Appeal Rules, 2009 as amended.*

The mentioned points of preliminary objection were scheduled to come for hearing on 24th April, 2023 and as nobody appeared in the court to represent the applicants the court was prayed and allowed hearing of the preliminary objection to proceed ex parte against the applicants. Mr. Shundi Mrutu, learned advocate for the respondent told the court in respect of the first point of preliminary objection that, the application is hopelessly time bad.

He argued that, as stated at paragraph 5 of the affidavit supporting the application, the ruling which the applicants are seeking for leave to appeal to the Court of Appeal was delivered on 10th August, 2022. He stated the time limit for filing application for leave to appeal to the Court of Appeal from the decision of the High Court as provided under Rule 45 (a) of the Rules is thirty days from the date of delivery of the impugned decision.

He submitted that, as the impugned ruling was delivered on 10th August, 2022 the application for leave to appeal to the Court of Appeal ought to be filed in the court not later than 9th September, 2022. He

argued that, the application at hand was filed in the court on 3rd January, 2023 which is after the elapse of about four months from the limitation of time for filing the application of this nature in the court. He submitted that shows the application is hopelessly time barred and there is no extension of time sought for and granted before filing the present application in the court. He prayed the Court to invoke section 3 (1) of the Law of Limitation Act, Cap 89 R.E 2019 to dismiss the application with costs.

He argued in relation to the second point of preliminary objection that, the application is bad in law for contravening Rule 46 (a) of the Rules which requires the application for leave to appeal to the Court of Appeal to be preceded by notice of appeal. He argued there is nowhere in the application filed in the court indicated there is a notice of appeal which has ever been filed in the court to initiate the appeal before filing the application for leave to appeal in the court.

He submitted that shows the application is bad in law for contravening the stated provision of the law. He prayed that, as the application was filed in the court before complying with the requirement provided under Rule 46 (a) of the Rules and as the application was filed in the court out of time prescribed by the law, the application be dismissed with costs.

Having considered the submission fronted to the court by the counsel for the respondent and after going through the application filed in the court, the court has found the issue to determine here is whether the points of preliminary objections raised by the counsel for the respondent are meritorious. I will start with the first point of preliminary objection which states the application is hopelessly time barred. The court has found as rightly argued by the counsel for the respondent the law governing limitation of time for filing application for leave to appeal to Court of Appeal against a decision of the High Court is Rule 45 (a) of the Rules.

The foregoing cited Rule states the time for filing in the court the application for leave to appeal to the Court of Appeal for appeals which lies with leave is within thirty days from the date of the decision intended to be challenged. That being the time frame within which the application at hand ought to be filed in the court, the court has found the record of the application shows the decision which the applicants are seeking for leave to appeal against was delivered on 10th August, 2022 and the application at hand was filed in the court on 3rd January, 2023.

Counting from when the impugned decision was delivered until when the application was filed in the court it is crystal clear that about 115 days had passed from when the impugned decision was delivered

until when the present application was filed in the court. Since the application at hand was required by the law to be filed in the court within thirty days from the date of the delivery of the impugned decision but it was filed in the court after the elapse of about 115 days and as rightly argued by the counsel for the respondent there is no leave sought from the court to file the application in the court out of time and granted, then the application is hopelessly time barred.

Although the above point of preliminary objection is enough to dispose of the application at hand but the court has found it is proper to have a short look on what was stated by the counsel for the respondent in respect of the second point of preliminary objection. The court has found it is true as argued by the counsel for the respondent that, Rule 46 (1) of the Rules requires before filing application for leave to appeal to the Court of Appeal in the court, notice of appeal be filed in the court the before application for leave to appeal is filed in the court. For clarity purpose the cited rule states as follows: -

"Where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged."

From the wording of the above cited provision of the law it is crystal clear that, application for leave to appeal to the Court of Appeal from the decision of the High Court for matters which appeals lies with leave of the

High Court, cannot be filed in the court before notice of appeal has been filed in the court. Since it is not stated anywhere in the application at hand that there is a notice of appeal which has ever been filed in the court, the court has found as rightly argued by the counsel for the respondent the application is bad in law for contravening Rule 46 (1) of the Court of Appeal Rules.

The above finding makes the court to find both points of preliminary objections filed in the court by the counsel for the respondents are meritorious and deserve to be upheld. Therefore, both points of preliminary objections raised by the counsel for the respondent are hereby upheld. As it was found in the first point of preliminary objection that the application is time barred, the court has found as rightly submitted by the counsel for the respondent the remedy available for the application filed in the court out of time and without leave of the court to file the same out of time is a dismissal of the application.

The stated remedy has been stated in number of cases which one of them is the case of **Hashim Madongo & Others V. Minister for Industries and Trade & Two Others**, [2009] TLR 357 where it was stated that, as provided under section 3 (1) of the Law of Limitation Act, a proceeding which is instituted in court after the prescribed period of time has to be dismissed. Consequently, the application filed in the court

by the applicants out of time and without leave of the court to file the same out of time is hereby dismissed in its entirety with costs. It is so ordered.

Dated at Dar es Salaam this 25th day of May, 2023



I. Arufani

JUDGE

25/05/2023

Court:

Ex parte ruling delivered today 25th day of May, 2023 in the presence of Mr. Hussein Swedi, learned advocate for the applicants and in the presence of Mr. Shundi S. Mrutu, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

25/05/2023