

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CORAM: OTHMAN, C.J. MBAROUK, J.A. And KAIJAGE, J.A.

CIVIL APPLICATION NO. 16 OF 2014

**CROWN HOLDINGS LTD.....APPLICANT
VERSUS**

1. AL HAKIM SHAKIR 2. MUKTABEN G. DAYA 3. NITESH V. NAKESHRI 4. SHAH LAKAMSHI MEDA 5. NAZIM KARIMBHA 6. VASANTLAL DHARSHI	} RESPONDENTS
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**(Application to strike out the Notice of Appeal from the Ruling
of the High Court of Tanzania at Arusha)**

(Mugasha, J.)

**Dated 05th day of July, 2013
in**

Misc. Civil Application No. 77 of 2012

RULING OF THE COURT

30th & 31st October, 2014.

MBAROUK, J.A.:

The applicant has filed this application by way of notice of motion under Rule 89(2) of the Court of Appeal Rules, 2009 (the Rules) seeking for the following orders:-

- 1. That the Honorable Court be pleased to strike out the Notice of Appeal lodged by the Respondents intending to appeal against the decision and order of Madam Justice Mugasha on the 05th day of July, 2013.*
- 2. Costs of and incidental to this Application be paid by the Respondents.*

In support of the notice of motion, there is an affidavit sworn by Mr. Nelson Merinyo, learned advocate for the Applicant.

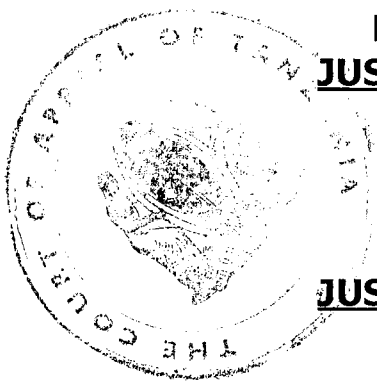
At the hearing of the application, Mr. Severin Lawena, learned advocate for the respondents readily conceded to the application. However, he prayed not to be condemned to costs.

In his rejoinder submissions, Mr. Merinyo insisted his prayer for costs. In support of his prayer for costs, Mr. Merinyo submitted that, as the learned advocate for the respondents gave no prior notice of his intention to concede to the application, he had prepared himself for the hearing. Mr. Merinyo mentioned the essential step not taken by the respondents as not to have applied for leave to appeal, as this case arose from a land dispute.

We are of the opinion that, as far as the learned advocate for the respondents has conceded to the application, hence we are constrained to grant the application as prayed. For that reason, the notice of appeal lodged by the respondents intending to appeal against the decision and order of Madam Mugasha dated the 05th day of July, 2013 in Misc. Civil Application No. 77 of 2012 is hereby struck out with costs. It is so ordered.

DATED at **ARUSHA** this 31st day of October, 2014.

M.C. OTHMAN
CHIEF JUSTICE



M. S. MBAROUK
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


F. J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL