

IN THE HIGH COURT OF TANZANIA

DODOMA SUB REGISTRY

AT DODOMA

MISCELLANEOUS LAND APPLICATION NO. 52 OF 2023

(Arising from the ruling and drawn order of the High Court of Tanzania, Dodoma District Registry in Misc. Land Application No.82 of 2022)

**THE REGISTERED TRUSTEES OF
THE EVANGELISTIC ASSEMBLIES OF
GOD (TANZANIA) APPLICANT**

VERSUS

**KASSIM MATONYA 1ST RESPONDENT
KIBAIGWA AUCTION MART&COMPANY LTD.....2ND RESPONDENT
BERNARD KAALI3RD RESPONDENT**

RULING

Date of last order: 30/11/2023

Date of Ruling: 8/12/ 2023

LONGOPA, J.:

On 2nd June 2023, this Court dismissed an application in Misc Land Application No. 82 of 2022 for exercising its supervisory/inspection powers and revisional jurisdiction under Section 43(1)(a) and (b) of the Land Disputes Courts Act, Cap 216 R.E. 2019 against orders of District Land and Housing Tribunal for Dodoma in Land Application No. 117 of 2009 and Misc. Land Application No. 240 of 2022. The Applicant was of the view that



such proceedings were characterized by inappropriateness and illegalities in the conduct of execution proceedings thus the need to revise them. The 1st and 3rd Respondents were the parties to both Land Application No 117 of 2009 and Misc Land Application No 240 of 2022 before the District Land and Housing Tribunal involving Plot No. 4 Block B Miyuji North within the City of Dodoma. The Applicant was not a party to either of the applications.

It can be canvassed from the record that 3rd Respondent instituted a Land Application No. 117 of 2009 against the 1st Respondent which was finalised by the trial Tribunal dismissing it with costs. In execution of the decree thereof vide Drawn Order dated 16/8/2022 in respect of Misc. Land Application No. 240 of 2022, the 1st Respondent as a decree holder engaged the 2nd Respondent who allegedly demolished the Applicant's church building located in Plot 16 Block B Miyuji North within Dodoma City. It should be noted that the 3rd Respondent being a judgement debtor did not object the execution of decree.

It is this action of the 1st and 2nd Respondents which prompted the Applicant herein to invoke the powers of the High Court under Section 43(1) (a) and (b) of the Land Disputes Courts Act, Cap 216 R.E. 2019 to call, inspect and revise the records of Land Application No. 117 of 2009 and Misc Application No. 240 of 2022 of the District Land and Housing Tribunal for Dodoma.

The High Court on its ruling and drawn order dated 2/6/2023 found that the decree so executed tallied with the judgement of the District Land and Housing Tribunal in both Land Application No 117 of 2009 and Misc.



Land Application No. 240 of 2022 which involved the 1st and 3rd Respondents as the Respondent and Applicant respectively. The High Court thus dismissed the application for revision having found it devoid of merits.

Being unsatisfied with the decision of the High Court, the Applicant on 31/7/2023 filed an application by way of Chamber Summons supported by affidavit requesting the High Court to grant leave to appeal to the Court of Appeal of Tanzania against the dismissal order.

The Chamber Summons was preferred under Section 47(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019; section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019; Rule 45(a) of the Court of Appeal Rules, 2009; and Section 95 of the Civil Procedure Code, Cap 33 R.E. 2019 for the following orders:

- 1. That, this Honourable Court be pleased to grant leave for the applicant to appeal to the court of appeal of Tanzania.*
- 2. Cost of this application.*
- 3. Any other orders this Honourable court may deem just to grant.*

The Counsel for 1st and 2nd Respondents raised preliminary objection on the grounds that this matter is hopelessly filed out of time and that the same was bad in law by accompanying notice of appeal which is contrary to the law thus deserve to be dismissed with costs.



On 30/11/2023, the parties with their respective counsel appeared before me and they proceeded to submit on the preliminary objections raised. The Applicant was represented by Mr. Fabian Donatus, learned advocate while the Respondent enjoyed legal service of Mr. Christopher Malinga, learned advocate.

It was submitted by Mr. Malinga Counsel for Respondent that the Respondent had filed two grounds of preliminary objections, namely that the application is timed-barred, and that the application is bad in law for accompanying with a notice of appeal contrary to law. The Respondent withdrew the second ground therefore he submitted on the first ground alone.

It was submitted that the Application is time barred as 30 days required by the law had elapsed before the application was filed as per Rule 45 (a) of the Court of Appeal Rules, 2009 as Revised in 2019. It was further argument that the rule requires that all applications for leave to the Court of Appeal of Tanzania must be preferred within 30 days of the decision for which the appeal is intended to be appealed against. The decision was made on 2/6/2023 and this application was filed and admitted on 31/7/2023 which is 55 days after the decision.

The Respondent argued that there is no extension of time applied to this Court and the Respondent was of the view that this application cannot be maintainable as it lacks validity for contravening mandatory provisions of the Court of Appeal Rules. The learned advocate prayed for dismissal of the application with costs.



In response, the Counsel for Applicant submitted that the application was made within time under Rule 45(a) of the Court of Appeal Rules that require that the same must comply with requirements of Rule 46(1) of the Court of Appeal Rules. It requires that notice to appeal must be filed and then the applicant may apply informally or formally.

The Applicant reiterated that Rule 45(b) is about formal application and requires that all necessary documents should be attached. The Applicant wrote a letter dated 8/6/2023 requesting for documents from the High Court. The documents were availed on 27/7/2023.

It was further argued that in accordance with Rule 45, all days spent in making follow ups of the documents are excluded. It is on that ground that on 27/7/2023, the Registrar of the High Court notified the Applicants that documents were ready for collection and excluded all the time spent in follow ups of the same from 8/6/2023 to 27/7/2023 making the current application within time as it was filed on 4th day of the receipt of the documents. That is what is contained in paragraph 7 of the Applicant's affidavit.

It was further submitted that Rule 45 was amended by GN No. 362 dated 22/9/2017 and Rule 90 was amended vide GN No 344 dated 26/4/2019 catering for issue of certificate of delay applicability in those two provisions of the Court of Appeal Rules. It was Applicant's counsel submission that certificate of delay issued on 27/7/2023 suffices to address the matter that this application is within time stipulated under the law.



Thus, the Preliminary Objection should be dismissed with costs and this application be heard on merits.

The counsel for Respondent rejoined by reiterating the submission made in chief. It was added that exclusion of days as certified by the Registrar applies only in relation to appeals only and not applications like the instant one. The said certificate of delay was made under Rule 90 of the Court of Appeal Rules which does not apply to the leave to appeal to Court of Appeal. The letter dated 8/6/2023 relates to application to be supplied with the proceedings and record of appeal not ruling and drawn order which were required for purposes of this application.

It was further reiterated that the proviso to Rule 45 applies only to exclusion of time spent to obtaining the decision and not proceedings or records. Ruling and drawn order were availed to Counsel for Applicant on 6/6/2023 which is within 4 days of the decision. Additionally, it was argued that arguments advanced by the Applicant are not relevant as per requirements of the Court of Appeal Rules, all necessary documents for applications were received on 6/6/2023 thus Applicants would have filed the same within time. It was reiterated that on those circumstances the application is barred with time thus deserve to be dismissed.

I have keenly followed up the submissions by both counsel for Respondent and Applicant in respect of the preliminary objection raised. I have also thoroughly perused the records of both the ruling and drawn order of the High Court dated 2/6/2023 against which an appeal is desired. It is important for this Court to analyse the requirement for leave to appeal

to Court of Appeal prior to analysing whether the application was filed within prescribed time.

The leave to appeal to Court of Appeal is a statutory requirement provided for in the law. It is categorically enumerated in section 5 of the Appellate Jurisdiction Act (AJA), Cap 141 R.E. 2019 and the Court of Appeal Regulations, GN Nos. 368 of 2009, 36 of 2010; 362 of 2017 and 344 of 2019. Section 5 (1) (c) of AJA states as follows:

"5 (1) in civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall be to the Court of Appeal-

*(c) With the leave of the High Court or the Court of Appeal, against **every other decree, order, judgment, decision or finding of the High Court.**" [Emphasis added].*

The High Court of Tanzania on 2/6/2023, made an order dismissing the application to inspect and revise the decision and proceedings of the District Land and Housing Tribunal for Dodoma in Land Application No. 117 of 2009 and Misc Land Application No. 240 of 2022 whose execution by the 1st Respondent was not opposed by the 3rd Respondent. Indeed, there is an order by the High Court that may be challenged to Court of Appeal thus the need to obtain leave.

According to the Applicant's affidavit, execution of the District Land and Housing Tribunal order impaired the rights of the Applicant in Plot No.

16 Block B Miyuji North as the 1st and 2nd Respondents trespassed to their land and demolished part of the church building on that land.

The procedure of appeals on the matter at hand originating from land dispute is also reiterated in Section 47(1) and (2) of the Land Disputes Courts Act, Cap 216 R.E 2019. The law states that:

47.-(1) a person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act.

(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.

In the instant matter at hand, the High Court was exercising its revisional powers. Thus, as per Section 47(2) of the Act, this matter requires a leave of either the High Court or the Court of Appeal to appeal against the decision of the High Court.

The importance is leave to appeal was reiterated in the case of **Alli Chamani vs Karagwe District Council & Another** (Civil Appeal 148 of 2020) [2021] TZCA 700 (30 November 2021), where the Court of Appeal at pages 10-11 stated that:

*The importance of procuring leave to appeal to this Court in land matters where they emanate from decisions of the High Court in its appellate or revisional jurisdiction cannot be underscored. As highlighted above it has been provided under section 47(1) of the Land Disputes Act. In **Dorina N. Mkumwa vs Edwin David Hamis**, Civil Appeal No. 53 of 2017 (unreported) the Court stated: "In land disputes, the High Court is the final court on matters of fact. The legislature has taken this finality so seriously that it has, under subsection (1) and (2) of section 47 of Cap 216 [as amended by the Written Laws (Miscellaneous Amendments) Act (No. 3) Act, 2018 Act No. 8 of 2018] imposed on the intending appellant the statutory duty to obtain either leave or a certificate on point of law before appealing to this Court."*

Also, in the case of **Sonora Gold & Corporation & Another vs Minister for Energy & Minerals** (Civil Appeal 112 of 2018) [2022] TZCA 183 (6 April 2022), the Court of Appeal noted that effect of non-compliance to the requirement of leave to appeal makes the appeal incompetent. At pages 6, and 10, the Court stated that:

It is not in dispute that the order which is a subject of appeal is governed by the provisions of section 5(1) (c) of the Appellate Jurisdiction Act (the AJA) Cap 141 R.E. 2019 which requires leave of the court to be granted before lodging the appeal... Thus, having failed to obtain the



requisite leave as prescribed by law, the appeal is in violation of section 5(1) (c) of the AJA which imposes mandatory requirement to the effect that an appeal of this nature can only be pursued after obtaining requisite leave. Therefore, the aforesaid omission renders the appeal incompetent.

To ascertain whether application for leave was filed within time prescribed by the law it is important to critically analyse the provisions of Rule 45, 46 and 49 of the Court of Appeal Rules, 2009 as Revised in 2019. These provisions provide some enlightenments on the timing, order of documents and the necessary documentation to support the application.

In commencing the analysis, Rule 45 provides for mode of application for leave to appeal to the Court of Appeal. It states as follows:

45. In civil matters: -

(a) notwithstanding the provisions 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; or

(b) where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in rules 49 and 50 and within fourteen days of the decision against which it is desired to appeal or, where the application for leave to appeal has been made to the



High Court and refused, within fourteen days of that refusal;

*Provided that, in computing the time within which to lodge an application for leave in the Court under paragraph (b), **there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision** subject to the provisions of rule 49(3).*

The contents of this rule reveal that that the following important aspects, namely: First, if it is an informal application for leave such application should be made immediately on the same day and date when that decision or order is pronounced. Second, if it is a formal application then it must be made using a Chamber Summons within thirty (30) days of the decision or order and it should be accompanied by necessary documents. Third, application should be in accordance or compliance with rules 49 and 50 of the Court of Appeal Rules. This involves filing the affidavit (s) or supplementary affidavit(s) to support the application within 14 days of the decision. Fourth, time exclusion under the provision of rule 45 relates only to the time spent in preparation of a copy of the decision.

It is lucid that there is time stipulated for different modes of application for leave to appeal to the Court of Appeal. It ranges from immediately on pronouncement of the decision for informal (oral application) to maximum of thirty (30) days of the delivery of decision or



order for formal application. Exclusion of time is exceptionally on the time spent in following up the availing of copy of the decision.

In legal context, a decision is a judicial determination of parties' rights and obligations reached by a court based on facts and law. It may take a form of judgement, ruling, decree, drawn order or order.

The decision of the High Court of Tanzania at Dodoma District Registry was delivered on 2/6/2023, availed and received by the Applicants herein on 6/6/2023 as per available record. This is in form of the ruling and its drawn order dated 2/6/2023. It is on record that the applicant supplied with the copy of ruling and drawn order on 6th day of June 2023. The Drawn Order at page 2 reads as follows:

Extracted on: 2nd day of June, 2023

Issued on: 6th day of June 2023

*To: **Fabian Advocate for the Applicant.***

From the available record, it is not disputed that the ruling of the High Court was delivered on 2nd day of June, 2023 while the application for leave was lodged on 31st day of July, 2023.

The second aspect relates to contents of the formal application which must be accompanied by necessary documents for it to be valid. These documents are stipulated under Rule 49(1), (2) and (3) of the Court of Appeal Rules, 2009 as Revised in 2019. The crucial documents to support the application are affidavit (s) of the person(s) having knowledge of facts

or supplementary affidavits. Rule 49 is hereby quoted for easy of reference as follows:

49.-(1) every formal application to the Court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.

(2) An applicant may, with the leave of the Court or with the consent of the other party, lodge one or more supplementary affidavits, and an application for such leave may be made informally.

*(3) **Every application for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal** and where application has been made to the High Court for leave to appeal **by a copy of the order of the High Court.***

The instant application for leave was made formally through Chamber Summons supported by an affidavit of one Magnus Said Sweddy, the bishop of the Diocese of Dodoma in the Evangelistic Assemblies of God (Tanzania) Church on 31/7/2023. It is compliant of the provisions of Rule 49(1) of the Court of Appeal Rules.

Paragraph 7 of the said affidavit provides that on 8/6/2023, the Applicant did write a letter to the Registrar of High Court requesting for the proceedings and record of appeal to enable the Applicant herein to file appeal to the Court of Appeal. It is stated further that Registrar did notify



the Applicants on 27/7/2023 that the documents are ready for collection and proceeded to issue a certificate exclude the time from 8/6/2023 to 27/7/2023 as that time was spent in preparation of the necessary documents regarding the appeal. It is on that understanding, the Counsel for Applicant reiterated that the application was filed within time i.e. within only four days of receipt of the necessary documents to support the application.

It should be noted that Respondent vehemently refuted that such certificate is of no value to the matter at hand. It was submitted that certificate of delay was made under Rule 90 of the Court of Appeal Rules. In effect, exclusion of time relates to filing of an appeal before the Court of Appeal. It has nothing to do with the application for leave as such application did not require proceedings nor the record of appeal for this Court to entertain the application for leave. What was required is the decision against which the applicant desires to appeal to challenge it.

I concur with arguments made by the counsel for Respondent that by virtue of rule 49(3) of the Court of Appeal Rules, 2009 as amended the law requires that a decision or order for which the appeal is desired should be attached to the application for leave. It is neither the proceedings nor the record of appeal that are required.

A copy of the decision or order in this matter would only be limited to ruling and drawn order dated 2/6/2023 which is evident from record that were availed to the Applicant on 6/6/2023 within four days of the delivery



of the decision. It is the Counsel for Applicant who signed to have been issued with Ruling and Drawn Order on 6/6/2023 which is Annexure A to the Affidavit of the Applicant.

I am not persuaded with the arguments of the Applicant that filing of the application of 31/7/2023 was within time by the fact that certificate issued by the Registrar excluded all the days from 8/6/2023 to 27/7/2023. Certainly, the excluded time do not cater for application for leave rather it exclude time for filing an appeal. According to the proviso to Rule 45 the only time that can be excluded in relation to application for leave is that time spent in the preparation of a copy of the decision.

The main question at this point would be that was the excluded time from 8/6/2023 to 27/7/2023 spent in preparation for a copy of the decision of the Court? The answer is in the negative. As it is revealed from the certificate itself and the affidavit supporting the application at hand, that time was used in preparation of the record of appeal and proceedings of the High Court in Miscellaneous Land Application No 82 of 2022. As per Paragraph 7 of the Affidavit of the Applicant as well as Annexure F on exclusion of time partly reads: "a total number of 50 days should be excluded in computing time for instituting the appeal to the Court of Appeal of Tanzania."

It is lucid that proviso to Rule 45 and Rule 49(3) of the Court of Appeal Rules focus on copy of decision not otherwise. Applying the certificate issued under Rule 90 of the Court of Appeal Rules is a



misconception. That certificate applies only in relation to institution of appeal.

Though the counsel for Applicant emphasized that the application for leave was filed on 31/7/2023 within four (4) days of receipt of the proceedings and record of appeal, I am not convinced with his arguments that those proceedings and record of appeal were necessary to litigate on application for leave. The application for leave to appeal is different to filing the appeal and the requirements in terms of documentation are different.

In the case of **Mohamed Suleiman Mohamed vs Amne Salum Mohamed & Others** (Civil Appeal 87 of 2019) [2019] TZCA 439 (4 December 2019), at pages 8-9 of the decision, the Court of Appeal reiterated the distinction between the two and timing of the same. It stated as follows: -

*Unlike a notice of appeal which initiates the appellate process, **leave to appeal is sought in a separate proceeding.** In this case, it was sought and obtained in Civil Application No. 21 of 2017. Furthermore, Rule 45(a) of the Rules, one of the provisions under which the leave to appeal in question was sought and obtained, an application for leave to appeal may be made informally before the High Court when the decision which is desired to be appealed against is given or by a chamber summons within thirty days of the decision. Leave to appeal can therefore be sought and obtained before a notice of appeal is lodged. Rule 45 (a) states clearly that this can be done*



notwithstanding the provisions of Rule 46 (1) which provides that an application for leave to appeal shall be made after the notice of appeal has been lodged.

In our considered view therefore, since leave to appeal is sought and obtained in a proceeding which does not form part of the proceedings of the appeal, and because such an application may be made before a notice of appeal is lodged the striking out of the appeal did not have the consequential effect of annihilating the leave to appeal granted in a separate proceeding.

In fact, the affidavit in support of the application did not attach proceedings nor record which were collected on 27/7/2023 to form part of the affidavit of the Applicant. Evidently, in case the same were necessary documents to the filing of application for leave to appeal, the Applicant could have taken trouble to ensure that they form part and parcel of the application.

However, Rule 46(1) requires that application for leave to appeal must be preferred after a notice of appeal is filed. It states that:

46.-(1) where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged.

In accordance with the provisions of rule 46 (1), filing of application for leave can be preceded by the notice of appeal. As the Court of Appeal has noted in the decision of **Mohamed Suleiman Mohamed vs Amne**



Salum Mohamed & Others (Civil Appeal 87 of 2019) [2019] TZCA 439 (4 December 2019) (Supra), application for leave may be preferred prior to notice of appeal. This is true especially where the application is made instantaneous following delivery of the decision of the Court. Also, rule 45 uses term “notwithstanding the provisions of rule 46(1)...” to mean that despite existence of section 46(1) of the Rules, the application should be preferred within time whether the notice of appeal is filed or otherwise. This is so as rule 45(a) allows the application to be made instantaneously on pronouncement of decision of the Court for which an appeal is desired to be preferred.

Furthermore, Paragraph 6 of the Affidavit supporting the application states that the applicant intends to appeal to Court of Appeal and had filed a Notice of Appeal which formed Annexure C of the affidavit. I have perused Annexure C which is a notice of appeal filed on 8/6/2023. This was on the same day that a letter to request for proceedings and record of appeal was written. It is my settled view that even if the notice of appeal was a condition precedent to the institution of application for leave, the applicant would have preferred the application within time prescribed by the law as the notice was filed within six days of the delivery of the decision of the Court.

In the case of **Abdalahamani Mponzi v. Daudi Mlwilo** [2001] TLR 318, the Court of Appeal was invited to determine impact of a decision made by the High Court in contravention of leave to appeal granted out of time. The Court stated that the application before the judge was for leave



to appeal out of time and he ought to have heard both parties before making any decision.

Further, in the case of **Cresthale (UK) Ltd v. Bondeni Seeds Ltd** [2000] TLR 1, the Court of Appeal restated that leave to appeal preferred out of time should be considered to render the application incompetent thus a nullity. It states that: -

We have given the question before us anxious and careful consideration and in the upshot we are satisfied, that the provisions of rule 3 cannot be prayed in aid to save an appeal, like the instant one, which has been lodged out of time. Those provisions, in our opinion, cannot be used to circumvent the mandatory provisions of the rules laying down time limits within which legal steps should be taken.

It is simple and straightforward that time limitation on application for leave is an essential element to be adhered to for the application for leave to have validity. An application for leave filed out of time cannot be saved through application of the overriding objective principle as the time limitation goes to the root of matter for the Court lacks jurisdiction for application that is preferred out of time.

I am of a settled view that given the nature of irregularity in filing application for leave to appeal out of time without applying for extension of time touches on jurisdiction of the Court. In **Martin D. Kumaliya & others vs. Iron and Steel Ltd** (Civil Application 70 of 2018) [2019] TZCA

542 (27 February 2019), the Court of Appeal stated at page 9 of the ruling that:

*We are aware that the Court is enjoined by the provisions of section 3A and 3B of the Appellate Jurisdiction Act, Cap 141 R.E. 2018 introduced recently vide the Written Laws (Miscellaneous Amendments) (No. 3) Act, No. 8 of 2018 to give effect to the overriding objective of facilitating the just, expeditious, proportionate, and affordable resolution of disputes. **While this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court (Emphasis added).***

The overriding objective principle enshrined in the law cannot therefore be invoked in circumstances where it is intended to evade mandatory provisions of the law that touch the root of the case. Time limitation ousts the jurisdiction of the court which is quite fundamental in administration of justice. The Applicant's failure to adhere to timelines in filing the application for leave within prescribed time deserves nothing but rendering the application incompetent thus warranting rejection by this Court.

The foregoing analysis reveals that the application for leave was filed on 31/7/2023 which is almost 55 days of the delivery of decision of the Court on 2/6/2023. I have also clearly indicated that certificate of delay issued under Rule 90 of the Court of Appeal Rules is inapplicable to the circumstances of this matter as that relate to exclusion of days for

purposes of filing of appeal. It does not apply in relation to the application for leave to appeal to the Court of Appeal of Tanzania.

In totality, I find the preliminary objection on the application for leave on ground of being time-barred has merits as the current application was preferred after lapse of 55 days of the delivery of the decision of the Court. It was beyond the allotted time of 30 days for application for leave to be preferred when it is done formally. It has exceeded the prescribed time by 25 days.

This preliminary objection fits squarely on the ambits of point of law as demonstrated in the case of **Salim O. Kabora vs TANESCO Ltd & Others** (Civil Appeal 55 of 2014) [2020] TZCA 1812 (7 October 2020), where at page 12, the Court of Appeal stated that:

*While the foregoing decision gave a definition, more elaboration and instances of a preliminary objection, were expounded in the case of **Karata Ernest and Others v. The Attorney General** - Civil Revision No. 10 of 2010 (unreported) where the Court stated that:-*

*"At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. **It only consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings.** Obvious examples include, objection to the jurisdiction of the court; **a plea of limitation**; when the court has been*



wrongly moved either by non-citation or wrong citation of the enabling provisions of the law; where an appeal is instituted without a valid notice of appeal or without leave or a certificate where one is statutorily required; where the appeal is supported by a patently incurably defective copy of the decree appealed from etc. "(Emphasis added)

The Preliminary objection being founded on time limitation is evident consisting of a point of law thus complying to the principle in **Mukisa Biscuits Manufacturing Company Ltd vs West end Distributors Ltd**, [1969] EA 696, which emphasized on preliminary point of law should be on pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.

In the upshot therefore, I hold that on account of the reasons given above, the preliminary objection raised by the Respondent is competent, meritorious and I hereby proceed to upholding it. Consequently, I dismiss the application for leave to appeal for being preferred hopelessly out of time. Each party should bear its own costs.

It is so ordered.

DATED and DELIVERED at Dodoma this 8th day of December 2023.



Longopa
E.E. LONGOPA
JUDGE
08/12/2023.