

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MAKAME, J.A., OMAR, J.A., AND MFALILA, J.A.)

CIVIL APPEAL NO. 36 OF 1991

BETWEEN

CLEMENT CONRAD BEREGE -- CHAIRMAN
MRCU (1984) LIMITED. APPELLANT

AND

1. REGISTRAR OF CO-OPERATIVE SOCIETIES
2. ATTORNEY GENERAL. RESPONDENTS

(Appeal from the Judgement of the
High Court of Tanzania at Dar es Salaam)

(Lugakingira, J.)

dated the 10th day of January, 1991

in

Misc. Civil Case No. 35 of 1990

R U L I N G

OMAR, J.A.:

The appellant Mr. Clement Berege was the Chairman of the Managing Committee of the Morogoro Region Co-operative Union (1984) Ltd. which committee was dissolved on 12/4/90 by a decision of the Union's Special General Meeting called by the Registrar of Co-operative Societies, the first respondent. Mr. Berege then applied in the High Court for order of Certiorari after pointing out that the Special General Meeting acted without jurisdiction and/or wrongly exercised jurisdiction and that the procedure followed in the meeting violated the rules of natural justice.

The High Court (Lugakingira, J.) held that the ~~decision of the Special General Meeting was void but still~~

refused to grant Certiorari. He discharged the interim order made on 19/5/90 reinstating Berege and his committee for the second time, and allowed the caretaker committee led by Mr. Onasia Kisanga to assume the duties of managing committee until a new committee was formed according to the Union's by-laws.

This appeal concerns the above decision of the High Court. But before it was argued Mr. Warema the learned State Attorney representing the Attorney General, the second respondent, raised a preliminary objection that the appeal was incompetent because leave to appeal as envisaged by Sec. 5 (1) C of the Appellate Jurisdiction Act was not obtained in the High Court. Mr. Marando, the learned advocate for the appellant, agreed with this submission and gave his reasons thus: "I was ushered into this case rather late I took over from Mr. Mchora, the advocate, and I looked into the record and found no leave to have been sought. I concede the submission is pertinent". There seems to be no reasonable explanation for the omission. The appeal before us is incompetent for want of leave by the High Court. We accordingly strike it out. Each party to bear his own costs.


DATED at DAR ES SALAAM this 16th day of July, 1992.

L. M. MAKAME
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

L. M. MFALILA
JUSTICE OF APPEAL.

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


(M. S. SHINGALI)
DEPUTY REGISTRAR.