

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: OMAR, J.A., MNZAVAS, J.A., And MFALILA, J.A.)

CIVIL APPEAL NO. 20 OF 1995

BETWEEN

ENOCK M.H. CHACHA. APPELLANT

AND

MANAGER, NBC - TARIME. RESPONDENT

(Appeal from the Judgement of the
High Court of Tanzania at Mwanza)

(Masarcha, J.)

dated the 23rd day of November, 1993

in

Civil Appeal No. 22 of 1993

SUMMARY REJECTION OF APPEAL

MFALILA, J.A.:

There is absolutely no merit in this appeal. It all started at Tarime District Court where the appellant sued the respondent bank to recover damages amounting to Shs. 3.5m for unlawfully dishonouring his cheque for Shs. 20,000/= which he had intended to pay for the balance of the cost of a motor vehicle. The respondent bank failed to file the written statement of defence within the stipulated time. The appellant was therefore allowed to prove his claim ex-parte. This was done and the Court entered judgement in his favour as prayed. It was when the appellant moved to execute the judgement that the respondent bank realised of the existence of the judgement against it. It filed two applications, one for stay of execution and the other for setting aside the ex-parte judgement. The application for stay of execution was

granted while that for setting aside the ex-parte judgement was dismissed. The respondent bank successfully appealed to the High Court against this refusal. The High Court (Masanche, J.) allowed the appeal on the basis that the appellant did not prove his claim as a whole and the special damages claimed. In the circumstances the learned judge was of the view that it was necessary to have the case tried. Against this decision the appellant lodged this appeal.

His claim and only complaint in this appeal is that the application to set aside the ex-parte judgement in the district court was out of time and therefore time-barred and that therefore the district court correctly and rightly dismissed the application to set aside the ex-parte judgement.

There are two reasons why this appeal must fail. Firstly, the question of limitation is being raised for the first time in this Court. The points should have been raised in the Courts below who would then have made a ruling on the issue. This Court cannot give decisions as a Court of first instance. Secondly, under Section 5(1)(c) of the Appellate Jurisdiction Act, appeals like the present must come to this Court only with the leave of the High Court. The appellant neither sought nor obtained leave to appeal to this Court. The appeal is therefore incompetent for non compliance with Section 5(1)(c) aforesaid.

In the result as we have indicated earlier this appeal has no merit and we reject summarily. The order of the High Court should now be complied with.


DATED AT DAR ES SALAAM THIS 6th DAY OF November, 1995.

A.M.A. OMAR
JUSTICE OF APPEAL

N.S. MNZAVAS
JUSTICE OF APPEAL

L.M. MFALILA
JUSTICE OF APPEAL

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


(M.S. SHANGALI)
DEPUTY REGISTRAR