

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

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

CIVIL REFERENCE NO. 5 OF 1995

BETWEEN

SELEMANI SHABANI. APPLICANT

AND

MWAMTORO ALLY. RESPONDENT

(Reference from the Ruling of a single
Judge of the Court of Appeal of Tanzania
at Dar es Salaam)

(Kisanga, J.A.)

dated the 18th day of May, 1995

in

Civil Application No. 7 of 1995

R U L I N G

OMAR, J.A.:

The applicant Selemani Shabani is dissatisfied with the ruling of a single Judge (Kisanga, J.A.) dated 18/5/95 and delivered on 23/5/95. In his ruling of Civil Application No. 7 of 1995 the learned single Judge dismissed the application for extension of time to file a reference because the reason given by the applicant is that after the delivery of the ruling by Makame, J.A. on the same matter Makame, J.A. did not inform him of the requirements of the law that in the case of dissatisfaction with the ruling he the applicant was required to apply for a reference informally to the Court or in writing to the Registrar within 7 days of the ruling. Ignorance of the law on the part of the applicant did not avail him in his application for extension of time to file a reference nor could the judge be held responsible for not informing him of this

requirement which is found in rule 57(1) of the Court of Appeal Rules.

In this reference the applicant is seeking an extension of time to file his memorandum of appeal which he says he should not be prevented to argue because of legal technicalities. He said that he was late in bringing his appeal because of ill health which prevented him from attending Court. He was attending local doctors in the village but he has no documents to prove his "hospital" attendance. This shortcoming he explained, should not be used by the Court to deprive him of his right of inheritance of the deceased's property. He therefore prayed for his application to be accepted.

Mrs. Mwamtoro, the respondent replied thus: "This applicant is a rogue and where has he defeated me - in which Court? Only theft rules his head. As soon as the brother of his father died the applicant came home where I conducted the burial and cleaned the house of all the deceased belongings and went away to Tandika where he resides". This is all that both applicant and respondent had to say.

We reiterate the previous ruling of a single Judge (Kisanga, J.A.) that no good ground has been advanced by the applicant to make us grant an extension of time to file his memorandum of appeal. Nor is there any ray of light that his chances of success in this probate matter have improved.

We therefore dismiss this reference with costs to the respondent.

DATED at DAR ES SALAAM this 3rd day of November, 1995.


A.M.A. OMAR
JUSTICE OF APPEAL



L.M. MFALILA
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

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


(M.S. SHANGALI)
DEPUTY REGISTRAR