

IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR

(CORAM: MAKAME, J.A., RAMADHANI, J.A., And LUBUVA, J.A.)

CIVIL APPEAL NO. 19 OF 1997

BETWEEN

1. ZEE HOTEL MANAGEMENT GROUP LTD.	}	APPELLANTS
2. DEEPAK TARACHAND KOTHARI		
3. RAMTEJ HAJARAM BARAI		
4. RAJENDRA RAJAN PAWAR		

AND

1. MINISTER OF FINANCE	} ...	RESPONDENTS
2. PRINCIPAL SECRETARY, M. OF FINANCE		
3. " " " " PLANNING		
4. " " " " TRADE		
5. " " " " WATER		
6. " " " INFORMATION		
7. " " " AGRICULTURE		
8. GENERAL MANAGER, PEOPLES BANK OF ZANZIBAR		
9. CHAIRMAN, ZANZIBAR CHAMBER OF COMMERCE		
10. ATTORNEY-GENERAL, ZANZIBAR		
11. PRINCIPAL IMMIGRATION OFFICER, ZANZIBAR		
12. LABOUR COMMISSIONER, ZANZIBAR		

(Appeal from the decision of the High Court
of Zanzibar at Zanzibar)

(Dourado, Ag. J.)

dated the 28th day of January, 1997

in

Miscellaneous Civil Application No. 84 of 1996

JUDGMENT OF THE COURT

RAMADHANI, J.A.:

The appellants had applied in the High Court of Zanzibar for leave to apply for prerogative orders of certiorari, mandamus and prohibition against the Principal Immigration Officer (hereinafter referred to as P.I.O.) and the Labour Commissioner, that is, the last two respondents. However, that was changed to an application for leave to apply for judicial review against all the twelve

respondents. We could not find whether or not such leave was granted but there were a number of rulings given by the learned judge, not on procedure but on substance, giving instructions to the tenth and the eleventh respondents. Anyway, be that as it may, the appeal here is against some those rulings.

On 3rd February, 1997 the appellants filed a notice of appeal against five different rulings of the learned judge dated on 29th October, 1996; 12th December, 1996; 6th January, 1997; 9th January, 1997 and 28th January, 1997. Now under Rule 76 (2) a notice of appeal is required to be lodged within fourteen days of the date of the decision against which it is desired to appeal. So, the notice of appeal filed on 3rd February, 1997 is valid only for the ruling of 28th January, 1997 and the advocates for the appellants conceded that.

On 28th January, 1997 DOURADO, Ag. J. gave the following order:

"P.I.O. is once again, and finally, ordered to issue an Entry Permit or Special Pass for two years. If he feels that he needs another meeting with the A.G. and the Applicants Counsel, he should arrange to see them immediately. He should then comply with the order and then complain, if he so wishes.

I am adjourning to the 28th January at 8.30 a.m. to satisfy myself that the order has been complied with."

However, come 28th January, the learned judge prevaricated and issued another order:

"The above conditions guaranteed by the Deputy Attorney-General in the view of the court substantially meets with the spirit of the order of the court.

I hope that there will be co-operation on both sides. Should any difficulty arise, Mr. Patel should immediately get in touch with the Deputy Attorney-General Othman."

The "above conditions" referred to in the ruling cited above are:

"A-G's Office and P.I.O. undertakes to do the following:-

- (a) To give 3 months Pass renewable after 3 months.
- (b) Process 1 will keep on being renewed until arbitration proceedings between Government and Zee Hotels Management is finally settled.
- (c) Pass holders will pay \$100 each, renewal - no fee payable. (For two years they would pay \$400 each)."

Now Mr. Patel and Dr. Lemwai, the learned advocates for the appellants, submitted that the learned judge could not suo motu reviewed his order of 24th January without there being an application for review. The learned advocates pointed out that the learned judge was functus officio. Mr. Salum Toufiq, learned Senior State Attorney for the respondents, argued that the order of 24th January was for the issue of entry permit or special pass for two years. However, Mr. Salum continued to inform us that he had not consulted the P.I.O. when he became party to the consent

order and that while he eventually contacted him, they came to a workable understanding which was reduced to the three conditions given above. He submitted that the conditions do substantially implement the order of 24th January. Mr. Patel, on the other hand, pointed out that he was not a party to that understanding and he was not allowed by the court to make any comments before the new order was given on 28th January.

We agree with Mr. Patel and Dr. Lamwai that the learned judge was functus officio after he had given his order on 24th January in which he said "he is once again, and finally, ordered to issue an Entry Permit or Special Pass for two years" and that on 28th January he was going to satisfy himself that the order was complied with. As we have amply demonstrated, none of the two was done. And worse, there was no application for review, yet the learned judge went on to review his previous order. Apart from that, there was an officer from the Immigration Department in the Court at the time of hearing this appeal and he assured us that if permits for two years are granted, that period or any remaining portion of it can be cancelled at any moment, Dr. Lamwai, in response to our question, said that the two years should be ordered ^{retrospectively} at ... from the date DOURADO, Ag. J. gave the order.

We, therefore, allow the appeal, quash the order of 28th January and reinstate that of 24th January. The P.I.O. is to issue to the appellants with the necessary documents for two years from 24th January, 1997. We order costs for one advocate only for the following reasons: one, costs were not prayed for two advocates and two, we do not think that this appeal needed

two advocates. It is so ordered.


DATED at DAR ES SALAAM this day of 1997.

L.M. MAKAME
JUSTICE OF APPEAL

A.S.L. RAMADHANI
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