IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MAKAME, J.A., SAMATTA, J.A., And LUGAKINGIRA, J.A.)

CIVIL REFERENCE NO. 12 OF 1996

BETWEEN

LAUREAN RUGAIMUKAMU ..... APPLICANT

AND

THE EDITOR MFANYAKAZI NEWSPAPER
& ANOTHER ..... RESPONDENT

(REFERENCE from the Ruling of the Court
of Appeal of Tanzania at Dar-es-Salaam)

(Kisanga, J.A.)

dated the 24th September, 1996

in

Civil Application No. 17 of 1996

RULING OF THE COURT

LUGAKINGIRA, J.A.:

This is the seventh time since 1994 that the applicant has come before this Court on the issue of costs. The background to the saga is short and it is this.

The applicant sued the respondents for defamation before the High Court at Dar es Salaam in Civil Case No. 330 of 1991. The respondents did not file a defence and the hearing proceeded ex parte by affidavit. However, the suit was dismissed upon the Court finding that the claim had not been established. The applicant then applied to the same Court to review its decision but the Court refused to do so. He appealed to this Court against the refusal in Civil Appeal No. 39 of 1992. The Court allowed the appeal, remitted the suit to the High Court for trial according to law, but made no order for costs since they were not asked for in the memorandum of appeal. That was the genesis of the saga.

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In or about May, 1994, the applicant's advocate, Mr. Magesa, presented a bill of costs incurred in the appeal for taxation, but it was disallowed by the Taxing Officer who pointed out that the Court had not awarded any costs. The applicant, now appearing personally, contested that ruling in Civil Reference No. 4 of 1994 before a single judge of the Court arguing that "where the Court is silent on the question of costs in its judgment, it implies that costs are awarded to the successful party." The learned judge rejected the argument, stating that a successful party must be declared by the Court as the recipient of costs, but he does not automatically attract costs by merely being declared a successful party. The applicant was adamant and made a further reference to a panel of three judges before whom he submitted that in civil matters a successful party has to be awarded costs. He conceded, however, that costs have to be asked for specifically - which was not the case in his memorandum of appeal - and further conceded that a court was not obliged to grant costs when they were not asked for, but maintained that silence in the judgment implied that costs had been granted. The judges were not impressed and dismissed what was Civil Reference No. 8 of 1994. Undaunted, the applicant returned with Civil Application No. 24 of 1995 praying for review of the decision but that, too, was refused.

Upon realising that he could not obtain costs as of right, he changed tactics. In February, 1996 he applied to a single judge, this time to vary the judgment of the Court so as to include an order for costs. The judge (Nyalali, C.J.) struck out the application for being "hopelessly time-barred" and "an abuse of Court process." That did not deter the applicant; on the contrary, it seems to have spurred him into renewed battle. He now lodged Civil Application No. 17 of 1996 for extension of time to apply "for correction of

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judgement." On this occasion he also has another prayer. Following this Court's directions in Civil Appeal No. 39 of 1992, the High Court retried the suit, found in the applicant's favour and awarded him damages. However, it did not award him interest on the decretal amount from the date of filing the suit to date of judgment stating that "it was not pleaded for." The applicant says this is an error and invites this Court to correct that error pursuant to s. 2 (3) and (5) of the Appellate Jurisdiction Act, 1979 as amended by Act No. 17 of 1993 and award him interest at the rate of 31%.

We begin with the prayer for extension of time. When the applicant appeared before us he stated that he could not make the application in time because he assumed that costs had been awarded. He did not become aware of the true position until the matter came for taxation. This argument may well be true but it cannot assist the applicant in the circumstances of this case. We say so because even after the ruling in the taxation, which was given on 01.06.94, and the ruling on the reference therefrom which was given on 12.10.94, and both of which made it clear that costs had not been awarded and could not be presumed, the applicant, for well over a year thereafter, persisted in his contention to the contrary as evidenced by Civil Reference No. 8 of 1994 and Civil Application No. 24 of 1995. In reality, therefore, although the truth was brought to his door, he refused to accept it, preferring instead to rely on his own wisdom and his ability to have his way. The resulting delay was therefore not attributable to any misapprehension of the judgment; it was entirely of the applicant's own making. His current attempts to shift ground come after realising the futility of his position and can only be described as an abuse of the Court process. We are unable to fault the decision of the single judge and we refuse the extension prayed for.

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The prayer for additional interest on the sum decreed by the High Court is equally misconceived. It is an entirely different subject, quite unconnected with this reference, and cannot be considered with it. If the applicant thinks he has a case, let him take it up with the High Court if he can be heard there.

The reference is accordingly dismissed.

DATED at Dar-es-Salaam this 29th day of October, 1999.

L. M. MAKAME
JUSTICE OF APPEAL

B. A. SAMATTA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

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

(A.G. MWARIJA)
DEPUTY REGISTRAR