

**THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: RAMADHANI, J.A; MROSO, J.A; And NSEKELA, J.A.)**

**CRIMINAL APPEAL NO. 28 OF 2001  
BETWEEN**

**THE D. P. P.           ...       APPELLANT**

**AND**

**1. BERNARD MPANGALA     }  
2. CANISIUS NJIKA         }... RESPONDENTS  
3. MOHAMED HASSAN       }**

**(An Appeal from the Decision of the High Court of Tanzania, at  
Dar es Salaam)**

**(Mackanja, J.)**

**dated the 27<sup>th</sup> day of October, 1999**

**in  
Criminal Appeal No. 46 of 1998**

**20/2/2006 & 18/4/2006                       .....**

**JUDGMENT**

**RAMADHANI, J.A.:**

The respondents were confronted with three charges: conspiracy to defraud, forgery, and theft. They were all acquitted of all three charges and the learned Resident Magistrate said:

There are some doubts as to whether the accused person did commit the offences charged. The evidence by the defence side has created some reasonable doubts on the evidence by the

prosecution side. The law is clear that in criminal cases the prosecution side is supposed to prove its case beyond reasonable doubts. In this case the prosecution has failed .

The DPP was aggrieved by that and went to the High Court on appeal and MACKANJA, J. gave an order for written submissions. That was done. In the course of writing the judgment the learned judge, *suo mottu*, considered the issue of limitation. He said:

The appeal was argued by way of written submissions. I will revisit the law of procedure before I consider the evidence and learned counsel's arguments.

The learned judge went on to cite and consider sect. 379 of the Criminal Procedure Code which governs appeals by the D.P.P. and he formed the view that the appeal was time barred and, so, he struck it out. The D.P.P. has come with this appeal in which the third ground of appeal is:

That the first appellate court erred in law in not giving both parties an opportunity to be heard on the issue of limitation.

The other two grounds challenged the findings of the

learned judge that the appeal was time barred.

Before us was Mr. Mulokozi, Senior State Attorney, for the appellant, and Mr. Mkali, learned counsel for the third respondent, and the other two respondents were present but had no legal representation.

Both learned attorneys gave extensive exposition on whether or not the appeal was time barred. For reasons which will become apparent soon, we do not want to get into those arguments because they ought to have been made before MACKANJA, J. as contended in the third ground.

Admittedly, limitation is a legal issue which has to be addressed at any stage of proceedings as it pertains to jurisdiction. However, parties have to be given a right of hearing, especially as in this case where there was a need to give some explanation and even to tender proofs. As that was not done, the learned judge, with due respect, had erred.

We, therefore, quash his order to strike out the appeal and also his order that the acquittals and orders that were made by the trial court are upheld. In fact we wonder how he could have upheld the acquittal and the other orders when he found that the appeal was time barred and hence there was no appeal before him.

We order that the matter should be sent back to the High Court before another judge for the determination of the issue of limitation after hearing all parties and for other consequent and appropriate steps.

DATED at DAR ES SALAAM this 06<sup>th</sup> day of April, 2006.

A. S. L. RAMADHANI  
JUSTICE OF APPEAL

J. A. MROSO  
JUSTICE OF APPEAL

H. R. NSEKELA  
JUSTICE OF APPEAL

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

( S.M. RUMANYIKA )  
**DEPUTY REGISTRAR**

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CRIMINAL APPEAL NO. 28 OF 2001**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... APPELLANT  
VERSUS**

**1. BERNARD MPANGALA**

2. CANISIUS NJIKA ..... RESPONDENTS

3. MOHAMED HASSAN

**(Appeal from the Decision of the High Court  
of Tanzania, at Dar es Salaam)**

**(Mackanja, J.)**

**dated the 27<sup>th</sup> day of October, 1999  
in**

**Criminal Appeal No. 46 of 1998**

**Between**

The D.P.P. .... Prosecutor

**Versus**

Bernard Mpangala & 2 Others ..... Accused

-----

**Before: The Honourable Mr. Justice A.S.L. Ramadhani, Justice of  
Appeal**

**The Honourable Mr. Justice J.A. Mroso, Justice of Appeal**

**And The Honourable Mr. Justice H.R. Nsekela, Justice of  
Appeal**

-----

THIS APPEAL coming for hearing on the 20<sup>th</sup> day of February, 2006 in the presence of the first and third Respondents AND UPON HEARING Mr. Mulokozi, Senior State Attorney for the Appellant/The Director of Public Prosecutions Bernard Mpangala, first Respondent and Mr. Mkali, Counsel for the third Respondent when the appeal was stood over for judgment and this appeal coming for judgment this day:-

IT IS ORDERED that the High Court order striking out the appeal is quashed and order that the matter be sent back to the High Court before another Judge for consideration of the issue of limitation after hearing all parties and for other consequent and appropriate steps.

Dated this 20<sup>th</sup> day of February, 2006.

Extracted on 20<sup>th</sup> day of February, 2006.

( S.M. RUMANYIKA )

**DEPUTY REGISTRAR**