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**RULING OF THE COURT**

**22 November & 24 December, 2007**

**MROSO, J.A.:**

Hon. Kalegeya, J (as he then was) gave judgment (not availed to us) in a Civil Case No. 300 of 1997 on 21<sup>st</sup> November, 2001. The applicants were defendants in the case. The case was decided against them. On 3<sup>rd</sup> December, 2001 the applicants duly lodged a notice of intention to appeal against the decision. Earlier, on 1<sup>st</sup> December, 2001 they applied for copies of proceedings for appeal purposes. According to Mr. Galikano, advocate for the respondent, copies of proceedings were ready and were duly certified on 21<sup>st</sup> November, 2001 and a copy of the decree was ready and duly signed on 20<sup>th</sup> December, 2001. Even so, the applicants did not then lodge their appeal to this Court.

On 20<sup>th</sup> December, 2001 Amur Said Abdalla with the assistance of his advocates, Washokera and Company Advocates, filed a Chamber Application in the High Court under Rule 57 (Order was not

mentioned), sections 68 (e) and 95 of the Civil Procedure Code, 1966 for the following substantive reliefs –

“(i) That the *status quo* be maintained pending the determination of the suit.

(ii) That the Honourable court be pleased to investigate the Applicant/Objector’s claims and order that:-

(a)  $\frac{1}{4}$  value of the house No. 53 Swahili Street, Kariakoo, Dar es Salaam and rental thereof belongs to the Objector due to cost of repairs, renovation and rehabilitation made by the objector on the house.

(b) That house No. 6 Somanga Street and rentals thereof belongs to the objector.

(c) That money left by late Hadija Karim Katan belongs to the objector.

(iii) That all properties, House No. 53 Swahili Street, House No. 6 Somanga Street and other properties of late Hadija Karim Katan have erroneously been granted to the

Plaintiff on the basis of unauthentic WILL and other wrong evidence.

(iv) That all the properties of late Hadija Karim Katan are not liable for attachment and execution by decree passed on 21<sup>st</sup> November, 2001 in Civil Case No. 300 of 2001.

(v) That the applicant should not be evicted from house No. 53 Swahili Street till the determination of this suit."

The High Court, Ihema, J, in a ruling which was given on 19<sup>th</sup> May, 2005 dismissed the application for the reason that it was, wrongly, seeking to "*challenge the decision*" of Kalegeya, J, which "*the applicants*" could not do. The High Court also said –

"Applicants' rights and cause of action is to appeal to the Court of Appeal a step which they ought to have taken immediately after the delivery of the judgment on 21<sup>st</sup> November 2001."

As mentioned earlier in this ruling the only person who initiated the application which Ihema, J heard and decided was Amur Said Abdalla as an objector to the execution of the decree in Civil Case No. 300 of 1997. Apparently, the defendants (now applicants) in that case were not party to the application. However, Ihema, J assumed that the applicants together with Amur Said Abdalla were all prosecuting the application. If the applicants appeared and addressed the High Court in the application, that would be wrong because Amur had not filed the application jointly with them. In other words they had no *locus standi* in that application.

Taking a cue from Ihema, J's ruling of 19<sup>th</sup> May, 2005 the applicants lodged a Notice of Motion before a single Justice of this Court (Munuo, J.A.) on 2<sup>nd</sup> June, 2005 seeking extension of time to lodge an appeal against Kalegeya, J's judgment of 21<sup>st</sup> January, 2001. It was claimed in the Notice of Motion that Ihema, J. had refused an application for extension of time to appeal.

We do not have before us any proceedings or documents from the courts below showing that there had been an application before

Ihema, J. for extension of time to appeal against Kalegeya, J's decision of 21<sup>st</sup> January, 2001. As indicated above documents before us only show that one Amur Said Abdalla had filed objection proceedings in the High Court which Ihema, J. dismissed. Even so, the single judge of this Court (Munuo, J.A.) dismissed the Notice of Motion on 4<sup>th</sup> August, 2007, taking the view that there was "*no ground, let alone sufficient ground*" for extending the time to appeal. The applicants were unhappy with the dismissal order of the single judge of the Court and sought reference to the full Court.

Both applicants appeared at the hearing of this reference and Mr. Juma Ramadhani, the first applicant, addressed the Court, also on behalf of the second applicant Seif Abdallahaman. The respondent was represented by Mr. Galikano, learned advocate.

Mr. Juma Ramadhani argued that he was not late in fact in lodging the appeal and, as he did before the single judge, blamed Ihema, J. for the delay in lodging their appeal.

Mr. Galikano asked the Court to dismiss this reference with costs because no tenable reasons were given for the delay to appeal

against Kalegeya, J's judgment. The learned advocate gave a factual background of what the applicants have done in relation to their case. Although the applicants may have thought they were parties in the objection proceedings by Amur Said Abdalla, there was nothing in those proceedings to prevent them from pursuing their intention to appeal to this Court.

We have looked closely at all the material before us including the affidavits and affidavits in reply which were before the single judge and we are unable to discern any ground for faulting the single judge of this Court. No acceptable reason for delay had been given to the single judge of this Court.

Rule 83 (1) of the Court of Appeal Rules requires that an appeal has to be instituted by lodging in the appropriate registry a memorandum of appeal and the record of appeal within sixty days of the date when notice of appeal was lodged. If it is accepted that the applicants lodged their notice of appeal on 3<sup>rd</sup> December, 2001, it would follow that the appeal should have been lodged by 2<sup>nd</sup> February, 2002. Mr. Galikano informed the Court from the bar that

all necessary documents were ready and available from the High Court by 20<sup>th</sup> December, 2001. Which means that the applicants could, if they wanted, have lodged their appeal within the requisite time.

The applicants, but more especially Amur Said Abdalla, may have legitimate complaints regarding the delay by Ihema, J. to deliver his ruling but that delay has nothing to do with the applicants' failure to lodge an appeal in time against the decision of Kalegeya, J. which they wished to impugn. Ihema, J. had not refused an application by the applicants to appeal to this Court and, in fact, the Judge, as the High Court, did not have power to grant an application for extension of time to appeal to this Court against a High Court decision.

We have to agree with Mr. Galikano that the reference is completely lacking in merit. The single judge cannot be faulted in the circumstances. We dismiss the reference with costs.

DATED at DAR ES SALAAM this 19<sup>th</sup> day of December, 2007.



J. A. MROSO  
**JUSTICE OF APPEAL**

S. N. KAJI  
**JUSTICE OF APPEAL**

N. P. KIMARO  
**JUSTICE OF APPEAL**

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

(I. P. KITUSI)  
**DEPUTY REGISTRAR**