

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: KILEO, J. A., OTHMAN, J.A. AND MASSATI, J.A.)

MZA CIVIL APPLICATION NO 4 OF 2005

BETWEEN

PETER MABIMBI.....APPLICANT

AND

THE MINISTER FOR LABOR AND YOUTH DEVELOPMENT.....FIRST RESPONDENT

THE ATTORNEY GENERAL.....SECOND RESPONDENT

THE REGIONAL MANAGER, TANESCO- MWANZA.....THIRD RESPONDENT

**(Application for review of the Order of the Court of Appeal of Tanzania at
Mwanza,**

{Ramadhani, J.A.; Mroso, J .A.; and Munuo, J.A.}

Dated the 7th day of March, 2005

in Civil Appeal No 21 of 2004)

RULING OF THE COURT

12 & 22 May 2009

KILEO, J. A.

The applicant, Peter Mabimbi, was aggrieved by an Order of this Court in Civil Appeal No. 21 of 2004 delivered on 7th March 2005. By that Order the Court sustained two points of preliminary objection that had been raised by the Third Respondent. The Preliminary Objection related to requirement of leave to appeal and defective decree filed in the record of appeal. The appeal was struck out. The applicant has come back to the Court by way of review. In his

Notice of Motion lodged under Rule 3 (2) (a), (b) and (c) of the Court of Appeal Rules, (The Rules) he is seeking the following Orders:

- (a) The Court be pleased to **review its Order** in Civil Appeal No.24 of 2004 dated the 7th day of March 2005.
- (b) The Court be pleased **to overrule, or depart from, its previous decision** dated 27th January, 2005, in Civil Appeal No. 37 of 2001 between Tanganyika Cheap Store and National Insurance Corporation (T) Ltd. which held, inter alia, that the Registrar or any Deputy Registrar or District Registrar of the High court is incompetent to sign decrees under Order XX Rule 7 of the Civil Procedure Code, 1966.

The applicant gives three grounds for seeking the above Orders; namely:

1. That, the applicant was denied a hearing, i.e. he was condemned unheard.
2. That, the decision of the Court dated 27th January, 2005, in Civil Appeal No. 37 of 2001 was wrong and given per incuriam.
3. That, it is in the interest of justice for the said decision in Civil Appeal No. 37 of 2001 and the like to be urgently departed from or overruled.

The application has been met with a preliminary objection, notice of which was lodged by the Third Respondent, pursuant to Rule 100 of the Rules. The Preliminary Objection consists of two points:

a) That the application is misconceived and it amounts to an abuse of the process of the court.

b) The application to review the decision dated 27th January, 2005, in Civil Appeal No. 37 of 2001 is time barred.

The preliminary objection was argued by Mr. Johnson, learned advocate on behalf of the Third Respondent. The First and Second Respondents were represented by Mr. Lukosi, learned State Attorney, while the applicant appeared in person.

On the first ground of preliminary objection, Mr. Johnson submitted that the application is misconceived and is an abuse of the court process in that the applicant has included two applications in one Notice of Motion. The learned counsel argued further that the Third Respondent was not a party to Civil Appeal No 31 of 2001, which the applicant seeks, by his Notice of Motion to have overruled or departed from. Being not a party to that Civil Appeal, the Third Respondent would not be in any position to make representations on the application, the learned counsel argued. The learned counsel submitted also that the application for review of Civil Appeal No. 37 of 2001 is time barred, the application having been filed more than eighty days after delivery of the decision which is complained against. Referring to **National Bank of Commerce v. Sadrudin Meghji** (1998) TLR 503, he argued that the period provided for the filing of an application for review is 60 days after the delivery of the decision

which is sought to be impugned. Mr. Johnson prayed, in the circumstances, that the application be struck out with costs.

Mr. Lukosi supported Mr. Johnson's submission on the preliminary objection.

In response to the arguments advanced by Mr. Johnson, the applicant submitted that he has not mixed two applications in one Notice of Motion. He claimed that he was seeking a review in relation to Civil Appeal No. 21 of 2004 and not Civil Appeal No 37 of 2001. He also argued that his application was well within time as he filed it on 27.4.2005 while the decision by which he is aggrieved was delivered on 7.3.2005. He made reference to a decision of this Court in **Peter Ng'homango v. Gerson M. K. Mwangwa and Attorney General** – Civil Application No 33 of 2002 (unreported). The Court in the above case referred to its previous decision in the case between **James Masanja Kasuka and George Humba-** Civil Application No. 2 of 1997 (unreported) which set the period within which an application for review has to be lodged at 60days.

We have given the matter due consideration and we are of the settled view that the preliminary objection raised has substance. It is true that the applicant has mixed two applications in the same Notice of Motion. The applicant is seeking orders for review of two cases, one of which the third respondent was not a party and therefore one in which it is not competent to make representations. Though the applicant in his submission claims that he is not seeking a

review of Civil Appeal No. 31 of 2001, however, the contents of his own Notice of Motion and his affidavit contradict him. The second order that the applicant is seeking as per his Notice of Motion is for the Court to overrule or depart from its decision in Civil Appeal No. 37 of 2001. The applicant's grounds for the application speak out loud and clear as to what the applicant is seeking. Two of the grounds specifically refer to Civil Appeal No. 37 of 2001. These grounds have earlier on been mentioned but for the sake of clarity we wish to mention the same once again. These grounds are:-

1. *That, the decision of the Court dated 27th January, 2005, in Civil Appeal No. 37 of 2001 was wrong and given per incuriam.*
2. *That, it is in the interest of justice for the said decision in Civil Appeal No. 37 of 2001 and the like to be urgently departed from or overruled.*

The means by which the Court can depart from or overrule its own decision is by way of review. The applicant's assertion that he has not asked for a review of Civil Appeal No. 37 of 2001 is therefore a misconception. Moreover, looking at his affidavit, particularly paragraph 11 it would appear that the applicant desires a review of the above case because the Court in Civil Appeal No. 21 of 2004 wrongly relied on it.

We find that the application is misconceived because the third respondents were not parties in one of the matters in which a review

is sought in the application. The applicant should, if he so wishes, look for a proper forum to challenge that decision. Apart from that, we also note that the application for the review of that matter has been brought outside the period of limitation. The decision in Civil Appeal No. 37 of 2001 was delivered on 27 January 2005. The applicant filed the application for its review in this Court on 27 April 2005. The period between 27 January 2005 and 27 April 2005 is 89 days. This was certainly beyond the time provided for lodging of applications for review, which is 60 days as per cases of **Peter Ng'homongo v. Gerson M. K. Mwangwa and Attorney General** and **James Masanja Kasuka v. George Humba** – supra.

In the light of the above considerations, we uphold the Preliminary Objection raised by the Third Respondent. We strike out, with costs, the application lodged by Peter Mabimbi.

DATED at MWANZA this 19th day of May 2009.



E. A. KILEO
JUSTICE OF APPEAL

M. C. OTHMAN
JUSTICE OF APPEAL

S. A. L. MASSATI
JUSTICE OF APPEAL

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

(P. A. LYIMO)
DEPUTY REGISTRAR