

IN THE ~~HIGH~~ COURT OF TANZANIA

DAR ES SALAAM

(PC) CIVIL APPEAL NO.176 OF 1995

(From the decision of the District Court of Temeke  
at Kivukoni in Civil Appeal No.16 of 1995 Original  
Civil Case No. 235 of 1994 of Temeke Primary Court)

SALEHE NASSORO.....APPELLANT

versus

HAMZA ABED.....RESPONDENT

R U L I N G

MKWAWA, J:

In this matter the applicant, SALEHE NASSORO is seeking leave to appeal to the Court of Appeal of Tanzania against the judgment of this court (Kaji, J.) delivered on August 16, 1996. The application is supported by an affidavit deposed to by the applicant himself. In the said affidavit it is averred (in para 5) that there are points of law that are involved as per his chamber summons. According to the letter the points raised are:-

- (a) Appeal to the District Court was time-barred but the Resident Magistrate entertained and heard the appeal.
- (b) The High Court proceeded to hear the appeal No.16/95 in my absence and delivered judgment on 16th August, 1996."

This application was heard unopposed as the respondents though served did not enter appearance. The applicant who appeared in person urged this court to adopt the above stated averments in the supporting accompanying affidavit and on the strength of the averments should grant him the sought leave.

I will first deal with the second averment, namely that this court had not given <sup>him</sup> an opportunity of hearing. Here, I hasten to state that the applicant's assertion is not borne out on record. It is on record shown that the hearing of the appeal was by way of written submission by both learned counsel. In the light of the foregoing the applicant can not now be heard to say that the court had contravened "the doctrine of audi alteram partem."

In the result, I accordingly dismiss that ground of attack/complaint.

WICOURT  
TANZANIA

I will next deal with the remaining ground of complaint in this application raised by the applicant in his chamber summons. That the appeal to the District Court was time barred.

The instant matter is in respect of property which is alleged to have been lost or misappropriated by a court-brother and not when the sale transaction was invalidated. It is evident from the record of this court and those below that the act complained of ensued on July 29, 1976. The applicant/appellant, according to the record of this court commenced legal proceedings on August 1, 1983. If I am not wrong in my calculations, that is over seventeen (17) years. According to the Law of Limitation Act, 1971 first schedule the stipulated period is twelve (12) years.

In the light of the foregoing the applicant's/appellant's complaint is to my mind, without sufficient substance.

In the final analysis therefore and for the reasons I have stated, this application must fail and is hereby dismissed. As the respondents did not enter appearance I make no orders as to cost. It is so ordered. DELIVERED at DAR ES SALAAM in the presence of the applicant this 4th day of March, 1997.

Sgd. J. J. MKWAWA  
JUDGE

4th March, 1997.

This is the certified true copy of the original.

SENIOR DEPUTY REGISTRAR