

**IN THE HIGH COURT OF TANANIA
AT DODOMA**

MISC. CIVIL APPL. NO. 49 OF 2004

**(Originating from RM Civil application no. 32 of 2004
of Dodoma)**

DIRECTOR GENERAL CDA C/O THE LEGAL DIVISION CAPITAL DEVELOPMENT AUTHORITY	} APPLICANT
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VERSUS

INFOBRIDGE CONSULTANTS LTD.RESPONDENT

23/6/2006 & 20/7/2006

RULING/ORDER

MASANCH, J.:

The Director General of Capital Development Authority (CDA) Dodoma who has called himself - "the applicant" was sent to the Court of Resident Magistrate here in Dodoma - in RM Miscellaneous Civil Application No. 32/2004. CDA was sent by the respondents, Infbrige consultant Ltd. I notice that the respondents did not open a Civil Suit. They had, actually, filed a chamber application supported by an affidavit. The Chamber Summons asked:

"(i) That this Honourable Court be pleased to treat the application as one of extreme urgency.

(ii) That this Honourable Court be pleased for grant of an order of summary attachment and sale of properties of the Defendant.

(iii) Costs of this application be provided for,

(iv) Any other relief, this Honourable Court may deem just fit to grant"

That application got filed in the said Court of Resident Magistrate, Dodoma.

My further scrutiny of the record, shows that that application was entertained, and at the end of the day, on 16/11/2004, orders were given attaching several properties of C.D.A. The order of attachment is dated 17/11/2004. The attachment was done just a month after the application was filed.

On 19/11/2004, the then District Registrar, the late Miss Mafuru, made an order undoing the order of attachment of the several properties of C.D.A. She ordered that the application, for attachment should wait until an application by C.D.A. to the High Court (Miscellaneous Civil Application No. 49 of) had been heard. The application, in fact reads, thus: That:

"the ruling issued on 16th November 2004 in RMCivil Case (Sic) No. 32 of 2004 he stayed to allow the Judgment Debtor to apply for revision (Sic) of the said ruling in the High Court.

(2) That warrant of attachment of properties issued on 17/11/2004 he stayed and property attached be restituted pending the determination of the application."

This is the application that has been pending, and one that I was supposed to adjudicate upon. For the applicant CDA, a Mr. Kitare appeared, a legal officer within the office of the Director General (CDA), and for the respondents Mrs. Munissi, learned advocate, appeared. Let me point out that actually, Kitare, the person who appeared on behalf of the applicant (CDA) is not a practicing advocate and also is not an advocated of the High Court.

Reading the entire record, those appear to be the facts, so far:

Infobridge Consultant, the applicants in the RM Miscellaneous Civil Application No. 32/2004 describe themselves as "Principal Tax Collector Agent of Dodoma Municipal Council". It is said they had been commissioned by Dodoma Municipal Council to collect Property Tax on buildings and sites owned by CDA, the respondents in that case. By June 2004 the applicants were demanding, from CDA, a total amount of Shs. 77,822,600/=, the amount being "property tax rate due owing by the Dodoma Municipal Council from 30th June 1998 to 30th June 2004, including para 1 by 50% ".

So, Infobridge Consultant decided to send CDA to Court.

I put up this record for necessary orders because there are several things that can be said about the record.

First, it is not known why Infobridge decided to open a chamber application in the Court of Resident Magistrate, asking to be paid that amount. The law provides (S.22 of the Civil Procedure Code) that:

"Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed."

Infobridge Consultants did not quote any law that exempts them from presenting a plaint.

Secondly, the chamber summons taken on 19/11/2004 talks of RM. Civil Case No. 32/2004 being "stayed to allow the judgment debtor to apply for a revision of the said ruling in The High Court." But, the record, No. 32/2004, is not a civil case. It is a chamber application. And, again, the record asking for a revision is not opened yet. In other words, the idea of opening a revision file has not been put to

practice. One also wonders why there should have been an idea of opening a revision - to revise what? A revision entails correcting of an error apparent on the face of the record. It is clear that who ever drafted the chamber summons, dated 19th November 2004, does not know what, in law, a revision is.

Thirdly, and this is quite important, Mr. Kitare, who appeared for the applicant (CDA) before the High Court, has no locus standi to appear in the High Court. There is no law, in this country, which authorizes legal officers, who are not enrolled advocates to appear before the High Court. They can appear in the High Court in the company of practicing advocates, assisting those advocates at the Bar. But, they cannot stand up and address" the court, nor can they prosecute cases before the High Court: The "only persons who have a right of audience before the High Court of Tanganyika are Advocates of the High Court of Tanganyika or the party in person" (See case Kuverji Karsandas Asons v Ali Khatoo 1 TLR 438)

Lord Denning, in Rondel V. Worsel [1967] 3 ALL ER has said this of an advocate. He says:

"An advocate is a Minister of Justice equally with a Judge. He has a monopoly of audience in The Higher Courts. No one save he can address the judge unless it be a litigant in person. This carries with it a corresponding responsibility."

Let me say one or two words about advocacy in our country. All practicing advocates, I am sure, know of the gruesome type of interview they undergo before being admitted to the Bar, and before being enrolled as practicing advocates. This is as it should be. Let me quote to you a passage from words of Compton J, spoken about 150 years ago. He said.

"This Court in which we sit is a temple of justice; and the advocate at the bar, as well as the judge upon the bench are equally ministers in that temple. The object of all equally should be the attainment of justice; now, justice is only to be

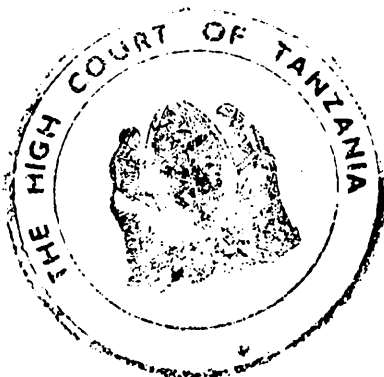
reached through the ascertainment of the truth Let us never forget that the advancement of justice and the ascertainment of the truth are higher objects and nobler results than any which in this place we can propose to ourselves."

The judge then referred to the suggested doctored that an advocate was a mere mouth piece of the client, then, continued:

"Such I do conceive is not the office of an advocate. His office is a higher one. To consider him in that light is to degrade him.He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly mis-state the law - he will not wilfully mis-state the facts, though it be to gain the cause of his client. He will ever bear in mind that if he be an advocate of an individual, and retained and remunerated (often inadequately) for his valuable service, yet he has a prior and perpetual retainer on behalf of truth and justice; and there is no Crown or other license which in any case, or for any party or purpose, can discharge him from that primary and paramount retainer"[passage quoted by Sir Charles New bold in an address to the Denning Law Society of University College, Dar es salaam on 30th January 1969, reported in The Journal of the Denning Law Society VOL 2 NO 2 - 1969 page 104]."

The words of Crompton J. should be a challenge to the Tanganyika Law Society, to see that the legal profession and advocacy, in particular, keep their rightful place in Society.

After saying all that, I give an order of declaring a nullity all proceedings before the Court of Resident Magistrate Dodoma, in RM Miscellaneous Civil proceedings no. 32/2004. The respondents, if they are still interested in the case, should open a Civil Case, by presentation of a plaint, in that court. They should, however, watch the limitation period.




(J.E.C. MASANCHE)

JUDGE

DODOMA:

20th July 2006

The Kilingo (Advocate) - for applicant CDA.

Mrs. Munissi (Advocate) - for respondent.