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**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL CAUSE 377 OF 2002**

**SHABANI HASSANI . . . . . APPLICANT**

**VERSUS**

**KURUTHUM YUSUFU . . . . . RESPONDENT**

Date of final submission - 13/4/2006  
Date of Ruling - 20/6/2006

**RULING**

**MLAY, J.:**

The applicant was granted an extension of time by this court, in which to apply for leave to appeal to the Court of appeal of Tanzania. The applicant through his advocate has filed the present application for leave to appeal to the Court of Appeal under Section 5 of the Appellate Jurisdiction Act No. 15 of 1979 and Rules 45 and 46 of the Tanzania Court of Appeal Rules 1979 and section 95 of the Civil Procedure Code, 1966. The application is supported by the affidavit of the applicant SHABANI HASSAN. In paragraph 5 of the affidavit the applicant has deponed as follows:

*"5 That in the intended appeal I will rely, inter alia on the following grounds:*

*(i) That the 1<sup>st</sup> appellate Court erred in law and in fact to hold that the suit was filed by the respondent in Ilala District, that is Civil Case No. 23 of 1999, was not time barred*

*(ii) That the 1<sup>st</sup> appellate Court erred in law and in fact to write that ruling instead of a judgment in the said appeal."*

Further in paragraph 6 of the said affidavit the applicant has deponed:

*"6 That I am advised by Mr Magesa Esq. Advocate that the above grounds contain a point or points of law which are to be considered by the Court of Appeal of Tanzania"*

The respondents advocate EMIL NGAUSE MASSAWE filed a counter affidavit in which he has deposed in paragraphs 3 and 4 as follows:

*"3 That the effect of a ruling and judgment is basically the same.*

*4. That it is doubtful whether there is a point of law worthwhile consideration by the Court of Appeal."*

The counsel of both parties were granted leave to file written submissions on this application. On behalf of the applicant Mr Magesa submitted that the affidavit shows that there are two points of law to be considered by the Court of Appeal. Mr Magesa repeated the two grounds set out in the affidavit of the applicant. On the first point Mr Magesa contended that whether Civil Case No. 23 of 1999 filed in the Ilala District Court was time barred or not, is a point of law to be considered by the Court of Appeal. He further stated that the applicant is arguing that the said case was time barred and the respondent is arguing that it was not. Mr Magesa submitted that despite the ruling of this 1<sup>st</sup> appellate Court that the case was time barred, the applicant feels that there is need for the Court of Appeal to consider this issue further. He referred to the Case of MNYANGA vs ABDALLAH SALEHE (1996) TLR at page 74-5 where Msumi J, as he then was, held that the matter raised was a

contentions issue of law and is a fit case for further consideration by the Court of Appeal. On the second point Mr Magesa submitted that the matter before the 1<sup>st</sup> appellate court was an appeal and after hearing the appeal the Principal Resident Magistrate (Extended Jurisdiction) was supposed to write a judgment and not a ruling. He submitted that that issue for consideration by the Court of Appeal is whether after hearing an appeal a Judge or Magistrate writes a ruling.

Mr Masawe on behalf of the respondent started by complaining of the late receipt of Mr Magesa's written submissions. For the record, the applicant was ordered to file written submissions by 23/3/2006. According to date of filing shown on the written submissions and on the excheque for filing fees, the written submissions were filed on 17/3/2006. The applicants advocate therefore filed his written submissions within the time ordered by this court. Mr Massawe's submissions are to the effect that "he (Mr Magessa) is repeating what was said in our counter-affidavit that the effect of a Ruling and a judgment is basically the same as it disposed off the matter in issue.

Whether the matter is time barred or otherwise is a question of fact this there is no legal point to be contested."

Having given due consideration to the application and the written submissions from Counsels of both parties, this court is of the

view that whether or not the suit was time barred, is an issue of limitation which is a question of law, which warrants consideration by the Court of Appeal. Also whether a ruling can proceed after hearing an appeal rather than a judgment, or if as argued by the respondent, a ruling has the same effect as a judgment, is an issue of law worth the consideration by the Court of Appeal.

In the final analysis this Court is satisfied that the application raises issues or matters worth the consideration of and determination by the Court of Appeal. For the above reason leave to appeal to the Court of Appeal is granted, as prayed, with costs.

**(J.I. MLAY)**

**JUDGE**

**20/6/2006**

Ruling is delivered in the presence of the Applicant in person and in the absence of the Respondent and the respondent's advocate this 20<sup>th</sup> June, 2006.

**(J.I. MLAY)**

**JUDGE**

**20/6/2006**

923 Words.