

**IN THE HIGH COURT OF TANZANIA**  
**AT DAR ES SALAAM**

*P.C. CIVIL APPEAL 112 OF 2004*

*(From the Decision of the District Court of Ilala Civil Appeal  
No. 17 of 2002 Bakari Kisensi, DM)*

ALLY OMARI .....APPELLANT

***VERSUS***

ABDALLAH MAKOKA.....RESPONDENT

**JUDGMENT**

**A.Shangwa,J.**

This appeal is against the ruling of Bakari Kisensi, DM in Civil Appeal No.17 of 2002 filed at the District Court of Ilala. In his ruling, the said Magistrate gave judgment in favour of Abdallah Makoka who was the appellant in that case for failure by Ally Omari who was the respondent in that case to file reply submissions within time as specified by the Court on 31/3/2003. The said ruling was given after counsel for Ally Omari, the late Rweyemamu had made a prayer for

extension of time to file reply submissions which was refused.

Ally Omari was not satisfied with the ruling of the District Court. He engaged the services of his counsel the late Rweyemamu who drew and filed the memorandum of appeal on his behalf. Five grounds of appeal were raised in his memorandum of appeal. Out of the said grounds, it is ground 2 and 3 which are most relevant. Ground No. 2 reads as follows : That, the learned Magistrate was clearly in error by refusing to allow the respondent extension of time to file his written submissions because by such a refusal the Magistrate denied the respondent the basic and fundamental right to be heard. Ground No.3 reads as follows: That, the learned Magistrate misdirected himself by treating the law governing the filing of a written submission as the same as

the law governing the filing of replies to written statement of defence.

The record of the District Court of Ilala in Civil Appeal No.17 of 2002 shows that on 31/3/2003, Bakari Kisensi, D.M. ordered that the appeal be argued by way of written submissions. Mrs. Washokera, Advocate for the appellant now respondent had to file her written submissions by 30/6/2003 and the late Mr.Rweyemamu for the respondent now appellant had to file his written submissions by 14/7/2003. The late Rweyemamu failed to file the same by 14/7/2003 as ordered by the Court.

On 5/8/2003, the late Rweyemamu prayed for extension of time to file his written submissions. He told the Court that he failed to file his written submissions within time as fixed by the Court because he was very sick. He was

feeling pain in his legs especially the left leg. Abdallah Makoka who was the appellant before the District Court objected to his prayer. His objection was upheld and judgment was entered in his favour.

In his ruling, Bakari Kisensi, DM held that as Ally Omari failed to file his reply submissions within the prescribed time, judgment has to be entered in favour of Abdallah Makoka. He based his decision under O.VIII, rr (1) (2) and 14(1) (2) of the Civil Procedure Code, 1966.

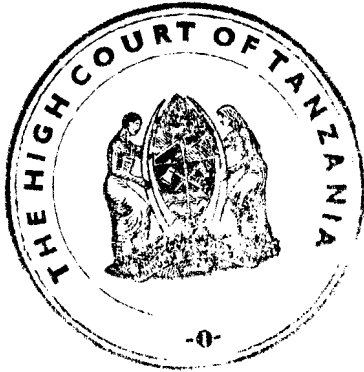
In my opinion, the learned District Magistrate erred in refusing to give the respondent now the appellant extension of time to file his written submissions as there was reasonable cause for not filing them within the time limit specified by the Court. The cause for the delay was due to

his counsel's sickness the late Rweyemamu whose legs had been affected by disease.

Also, the learned District Magistrate erred by invoking the provisions of O.VIII. rr (1) (2) and 14 (1) (2) of the Civil Procedure Code in entering judgment in favour of the appellant notably because those provisions do apply in original cases where the defendant has failed to present his written statement of defence or where the plaintiff fails to file his written statement of defence to the counter claim within the time fixed by the court, but not in appeal cases where the respondent has failed to file his reply written submissions within the time fixed by the Court.

For these reasons, I quash the District Court's ruling and I allow this appeal. I order that the appellant should be given extension of time within which to file his written

submissions so that the appeal may be heard and determined on merit. As none of the parties can be blamed for the District Court's errors, I make no order as to costs.



*A. Shangwa, J.*  
**A. Shangwa, J.**

**24/5/2006.**

Delivered in open Court this 24<sup>th</sup> day of May, 2006.

*A. Shangwa, J.*  
**A. Shangwa, J.**

**JUDGE**

**24/5/2006.**