

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 81 OF 2005

*(Originating from the ruling of Dar es Salaam Resident Magistrate Court at Kisutu
by Hon. Mutungi, SRM)*

JOSEPH M. ULIZA AND 56 OTHERS . . . APPELLANTS

VERSUS

- 1. HOTEL AGIP**
 - 2. DIMITRI HARRY MANTEAKIS**
 - 3. EMMANUEL MANTEAKIS**
 - 4. MARY MANTEAKIS RESPONDENTS**
-

*Date of last order – 16/10/2007
Date of Ruling – 18/10/2007*

R U L I N G

Shangwa, J.

On 9th May, 2005, Joseph Uliza and 56 others filed an appeal against the Ruling of the Court of the Resident Magistrate at Kisutu in Misc. Civil Application No. 59 of 2004. The said Ruling was delivered on 29th April, 2005. In his ruling, the Senior Resident Magistrate, Mr. Mutungi gave an

interim order for stay of execution of the decree of the Industrial Court in Industrial Case No. 6 of 1998 pending the hearing of an application for setting aside an exparte order of the Kisumu Court of the Resident Magistrate issued on 29/7/2004.

On 2nd February, 2007, the Respondents filed a notice of preliminary objection against this appeal. In their notice of preliminary objection, the Respondents state that the appeal is incompetent as it is contrary to S.43 (2) of the Magistrates' Courts Act, 1984 [Cap. 11 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) Act No. 25 of 2002.

The preliminary objection was argued by way of written submissions. Counsel for the Respondents Mrs. Makani submitted that the Ruling given by Mutungi, SRM was not conclusive as it did not determine the suit in any way. She said that as the said Ruling did not conclusively determine

the suit, the appeal filed by the Appellants against it is not appealable. She referred the court to S. 43 (2) of the Magistrates' Courts Act, 1984 as amended by Act No. 25 of 2002 which provides as follows:

"subject to the provisions of subsection (3), no appeal or application for revision shall be against or be made in respect of any preliminary or interlocutory decision or order of the District Court or a Court of the Resident Magistrate unless such decision or order has the effect of finally determining the criminal charge or the suit".

She then argued that as the said Ruling did not conclusively determine the suit, the Appeal filed by the Appellants against it is contrary to the above quoted provisions of law

and is premature. She requested the court to dismiss it with costs.

On the other side, the Appellants submitted inter-alia that the order which was appealed from is not an interlocutory one as there was no suit pending in the Court of the Resident Magistrate from whose decision they filed their appeal. They said that what was pending before the court was an application for stay of execution and extension of time to file a review. They argued that as the matter which was pending in the Court of the Resident Magistrate, Kisumu is an application and not a suit, the Ruling of Mutungi, SRM is appealable.

In rejoinder, Mrs. Makani for the Respondent conceded that what was pending before the Court of the Resident Magistrate at Kisumu is not a suit but an application. However, she stated that the Ruling of the Court in that

application did not bring to an end the dispute between the parties.

In my view, the ruling of the Court of the Resident Magistrate at Kisumu in Misc. Civil Application No. 59 of 2004 which was to the effect that execution of the decree of the Industrial Court in Industrial Case No. 6 of 1998 should be stayed pending the hearing of an application for setting aside an *ex parte* order issued by the court on 29/7/2004 was interlocutory in nature. In law, such a Ruling is not appealable. I think that the provisions of S. 43 (2) of the Magistrates' Courts Act, 1984 as amended by Act No. 25 of 2002 already cited are quite relevant. The problem of delay of cases which was intended to be prevented by the Legislature in amending S.43 (2) of the Magistrates' Courts Act, 1984 through Act No. 25 of 2002 is not only in relation to suits as contended by the Appellants. Applications are also covered. Moreover, the word 'suit' is defined at page

1475 of BLACK'S LAW DICTIONARY EIGHTH EDITION to mean

*"any proceedings by a party or parties
against another in a court of law".*

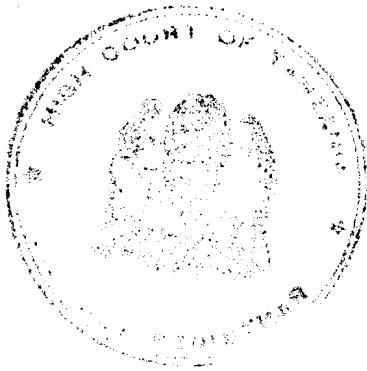
For these reasons, I agree with Mrs. Makani for the Respondents that this appeal is incompetent and premature. I hereby dismiss it and order that hearing of the dispute between the parties has to proceed from where it ended in the Court of the Resident Magistrate at Kisutu until it is finally resolved. The case file containing the proceedings of the Court of the Resident Magistrate at Kisutu should be returned to the said court within one week from today. Each party to bear its own costs. It is so ordered.


A. Shangwa

JUDGE

18/10/2007

Delivered in open court this 18th day of October, 2007 in
the presence of the Appellants and Mrs. Makani for the
Respondents.




A. Shangwa

JUDGE

18/10/2007