

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. CIVIL APPLICATION NO. 2 OF 2008

(HIGH COURT OF TANZANIA AT DODOMA

CIVIL APPEAL NO. 57 OF 2004

DODOMA DISTRICT COURT AT DODOMA

CIVIL APPEAL NO. 10 OF 2004 –

ORIGINAL CIVIL CASE NO. 169 OF 2003

AT MAKOLE PRIMARY COURT)

ANNA MJELWA APPLICANT

versus

SHABANI MAYINGI RESPONDENT

11/08/2009 & 18/09/2009

RULING

HON. MADAM, SHANGALI, J.

This is an application filed by the applicant **Anna Mjelwa** seeking for two remedies. One, extension of time within which to lodge her notice of appeal to the Court of Appeal in respect of the decision of this court in (PC) Civil Appeal No. 57 of 2004; two, Certification that the intended appeal to the Court of Appeal involves points of law, hence leave to appeal.

The application has been made under section 55 (1) (c), Rule 43 and Rule 8 of the Appellate Jurisdiction Act No. 15 of 1979 and also section 14 (1) of the Law of Limitation Act, 1971. The

chamber summons is duly supported by affidavit deposed by the applicant narrating on the essence of her application.

When the application was fixed for hearing on 31.03.2009, Mr. Lussa, Learned Advocate, representing the applicant requested the court for leave to argue the application by way of written submission. The respondent, Shabani Mayingi, who appeared in person and unrepresented supported the request. The request was duly granted and parties were directed to file their written submissions according to the scheduled order.

Nonetheless, Mr. Lussa, learned advocate for the applicant forbore to file his rejoinder despite of the important issues of point of law raised by the respondent in his reply to the written submission.

I think it is wise to start with those issues raised by the respondent, which touches on the propriety of the application itself. In the ordinary way such issues should have been filed as preliminary objection. In his reply to the written submission, the respondent stated that the application is incompetent for being filed under the wrong provisions of the law. He claimed that the application has been filed under section 55 (1) (c), Rule 43 and Rule 8 of the Appellate Jurisdiction Act No. 15 of 1979 and Section 14 (1) of the Law of limitation Act, 1971.

The respondent, who is not a lawyer stated, correctly, that there is no section 55 (1) (c) in the Appellate Jurisdiction Act, No. 15 of 1979 nor Rules 43 and 8. The respondent submitted that either the applicant's advocate is not aware of the provisions of Appellate Jurisdiction Act, No. 15 of 1979 or has confused them with the rules in the Tanzania Court of Appeal Rules, 1979.

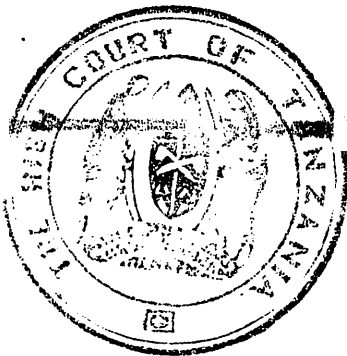
The respondent is absolutely correct. The court has been moved under wrong provisions of the law. The chamber summons was not prepared professionally. No diligence was employed. It appears that section of the Appellate Jurisdiction Act 1979, were mixed-up with rules of Tanzania Court of Appeal Rules, 1979. Even the provisions of Limitation Act, Cap. 89 are inapplicable in this application. Section 43 (b) of the Law of Limitation Act provide clearly that the Act shall not apply to application and appeals to the Court of Appeal. See also **Civil Application No. 1 of 1998 Stephen Massato Wassira Vs Joseph Sinde Warioba and another (A) Mwanza Registry**, (Unreported).

It is disappointing that such a defective chamber summons was prepared and filed by an advocate of the High Court. It has been settled in this jurisdiction that citation of wrong provision of the law or failure to cite the relevant provision of the law from which the court derives the power to hear and determine the application is failure to properly move the court. The omission renders the whole

application totally incompetent see the recent decision in the **Criminal Application No. 1 of 2005 – Marwa Masele Vs Rep (CAT) Mwanza Registry** (Unreported).

On the above findings, I see no reason to discuss the reliefs sought because the court has not been properly moved and vested with powers to determine them.

This application is struck out with costs.




M.S. SHANGALI

JUDGE

18/09/2009

Ruling delivered todate 18th September, 2009 in the presence of the applicant in person and the respondent in person. Also Mr. Hallama, Legal Officer from Njulumi Advocates Company.


M.S. SHANGALI

JUDGE

18/09/2009