

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO.64 OF 2006**

(Originating from the Civil Case No. 82 of 1994 from the Kinondoni District Court by Kalombola)

**LOTA SATUWAKI.....1<sup>ST</sup> APPELLANT**

**LEONARD REED.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**CHARLES MAJINGE.....1<sup>ST</sup> RESPONDENT**

**EINCHARD EDWARD.....2<sup>ND</sup> RESPONDENTS**

Date of last Order 23/10/2009

Date of Ruling 16/11/2009

**R U L I N G**

**Aboud, J.**

In the application filed by the applicant through his Advocate Mr. Bwahama, the application is for leave to appeal to the Court of Appeal against the decision of Shaidi, J.

Mr. Bwahama strongly argued the case of his client that there is a point of law which need to be considered by the Court of Appeal. The main argument is that the Hon. Shaidi, J. was not proper in law to stuck out the 2<sup>nd</sup> appellant application and dismissing the appeal on the ground that the

application was based on non-existent law. The 2<sup>nd</sup> Appellant application for the extension of time was made under Sub Section 93, 95 and order 43 of the Civil Procedure Code 1966 and Section 14 (1) of the Limitation Act of 1971. The court found that the cited law was wrong as of now or currently is supposed to be cited at **THE CIVIL PROCEDURE CODE (CAP.33 R.E. 2002) (Government Notice No.312 of 2004 and Government Notice 124 of 2005).**

The applicant in this case also failed to comply with the court order that he should file his written submission on 31<sup>st</sup> July, 2007 at the latest and that was the reason for the application of extension of time to file his written submission out of time. In his decision Shaidi, J. made it clear that the reason to strike out the application was because the court was not properly moved as that applicant cited wrong provision of the law. The applicant chamber summons was filed under the provisions stated above. Shaidi, J. held that wrong citation or citation of none existent law renders that application incompetent. He cited decisions of this court and that of the Court of Appeal which made clear that the court will not be properly moved if the application is made under wrong and inapplicable section of provisions of the law. Since that is the position of this court as well as the highest ranking court of the land we are all bound to respect under the doctrine of precedent and I find no irregularities on this decision as Mr. Bwahama is trying to put forward in this court.

Secondly, in the decision of Shaidi, J. regarding the belatedly filing of the written submission by the 2<sup>nd</sup> Appellant, the applicant now, he disregarded that submission on the reason that the

2<sup>nd</sup> Appellant filed the submission without complying with the courts order. It is in proceedings that, he ordered the appeal to be argued by way of written submission in the following order.

“Submissions by 2<sup>nd</sup> Appellant on or before 1<sup>st</sup> August  
2007 Respondents reply on or before 31<sup>st</sup> August,  
2007. Reply if any by 14/2/2007.”

However the 2<sup>nd</sup> Appellant filed his written submission on 1/8/2007, that a day after the above scheduled order. Therefore he was supposed to seek for leave of the court to file the submissions out of time as required in law. The applicant did that by the filling his chamber summons supported by affidavit under the wrong provisions of the law which rendered it to be incompetent before the court as discussed above. Therefore the court dismissed that appeal for want of prosecution as in the eye of the law there was no submissions or the appeal was not argued before the court.

Mr. Bwahama made gallant effort in arguing this case. He cited that case of **Tanzania Harbours Authority v. Mohamed R. Mohamed, Civil Appeal No.80 of 1999**, Court of Appeal – Dar es Salaam (Unreported), where it was decided that in most cases extension of time is retrospective. The court went further that.

*"Admittedly this court has said in number of decision that time would be extended if there is an illegality to be rectified."*

He said there were some illegalities in the district court's decision that the High Court was supposed to resolve forthwith.

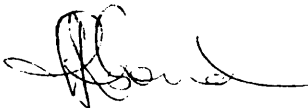
Despite all those attractive arguments of the 2<sup>nd</sup> Appellant Applicants' counsel, I asked myself what is the issue in this application. The only issue before this court is whether there is any irregularity in the decision of Shaidi, J to warrant the court to grant leave to appeal to the Court of Appeal where it will be determined as a point of law. I would like to reiterate the discussion above, that the court was not properly moved when the applicant asked for leave to file submissions out of time as decided by Shaidi, J. With such application for extension of time, it was when the presided judge would have considered the application focusing on whether there was irregularity to be rectified and find that there was a need to extend time to file the written submission out of time. The fact that the application was incompetent, the court had nothing to consider and finally determine on merit. In other words there was no application before the court. That being the position it is obvious that in the absence of the application for extension of time the court was not able to extend time to file submission suo moto even if there is any irregularity in the decision of the lower court to be rectified by it. Therefore the fact that there was no such application and the court decision as to whether to file

the submission, there was no prosecution of the case as decided by the High Court Judge.

In the event I find the application raised no point of law fit for consideration by the Court of Appeal and therefore leave to appeal is refused. The Application is dismissed with costs.

It is so ordered.

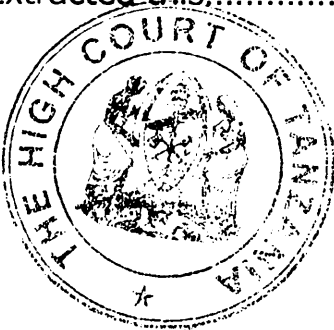


  
I.D. ABOUD

**JUDGE**

16/11/2009

Extracted this.....25<sup>th</sup>.....day of.....November.....2009.



  
**JUDGE**