

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**MISC. CIVIL APPEAL NO. 1 OF 2013**

*(Original from the Vedict of Medical Council of Tanganyika)*

**DR. GODBLESS CHARLES..... APPELLANT**

**V**

**MEDICAL COUNCIL OF**

**TANGANYIKA .....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**RULING**

**Shangwa, J.**

On 20<sup>th</sup> June, 2013, counsel for the Appellant Prof. Safari Lodged a Memorandum of Appeal against the sentence which was imposed on the Appellant by the

Medical Council of Tanganyika after convicting him of the offence of taking part in a strike namely a sentence of **ERASURE FROM THE REGISTER OF PROVISIONALLY REGISTERED MEDICAL PRACTITIONERS.**

On 6<sup>th</sup> September, 2013 Prof. Safari filed an application on behalf of the Appellant for an order against the Respondents to produce letters written by the Medical Council of Tanganyika to Dr. Elipokea P. Sarakikya of Ifakara and Dr. George Adriano of Mwanza for enabling this court to determine the fifth ground of appeal in the Memorandum of Appeal.

On 2<sup>nd</sup> September, 2013, the learned State Attorney for the Respondents filed a notice of preliminary objection against the appeal saying that it is incompetent for being preferred in contravention of the Medical Practitioners and Dentist Act. Cap. 152 R.E. 2002.

On 30<sup>th</sup> September, 2013, the learned State Attorney filed another notice of Preliminary objection against the Application saying that it is time barred.

Both points of preliminary objection were argued by way of written submissions. On the point of objection against the appeal, the learned State Attorney submitted that the appeal is incompetent for being preferred in contravention of Rule 7 of the Medical Practitioners and Dentists (Appeals) Rules which requires that a Memorandum of Appeal from the decision of the council to the High Court shall be accompanied by a fee of forty shillings. He contended that as the Memorandum of Appeal was not accompanied by such fees the appeal is incompetent and that therefore it should be struck out with costs.

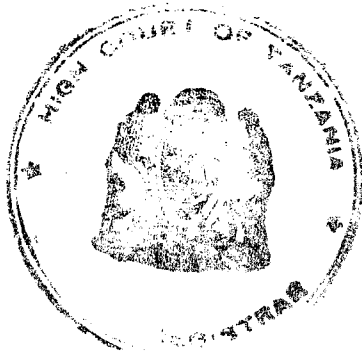
Prof. Safari admitted the fact that his Memorandum of Appeal was not accompanied by a fee of forty shillings as

required by rule 7 of the Medical Practitioners and Dentists Appeals Rules of Court. However, he submitted that the amount of forty shillings is very negligible and an innocuous formality. I do agree with him. In my view, the provision of Rule 7 of the Medical Practitioners and Dentists Appeals Rules of Courts are obsolete and require immediate amendment. This is because forty shillings in our economy is no longer popular. The coins of one shilling that we used to see are no longer in circulation. The coins that are in circulation are those starting with fifty shillings. In this case, even if the Appellant had to pay fifty shillings to the cashier before filing his appeal so that he may be refunded one shilling, the cashier would simply say that he has no such amount to refund him as change. Therefore, the point of objection against the appeal has no merit because it is based on obsolete provision of law. I overrule it.

On the point of objection against the Application, the learned State Attorney submitted that the Application is hopelessly time barred because the verdict against the Appellant was made by the Medical Council of Tanganyika on 9<sup>th</sup> April, 2013 and the Application was filed on 6<sup>th</sup> September, 2013 after the expiration of sixty days provided for under r. 21 Part 111 of the Schedule to the Law of Limitation Act. Cap. 89 R.E. 2002.

Prof. Safari submitted in reply that the Application to produce the relevant letters is not at all time barred. He contended that the time for filing his Application does not start to run from the date when the verdict was made by the Medical Council of Tanganyika on 9<sup>th</sup> April, 2013. He said that he wanted to make an oral application before court on 2<sup>nd</sup> September, 2013 but the court ordered that he should file a formal application on 17<sup>th</sup> September, 2013 which he did. So, I agree with Prof. Safari that the time of

filing his application started to run on 2<sup>nd</sup> September, 2013 when he was ordered by the court to file a formal application which he filed within time as fixed by the court. Thus, in my view, the point of objection against the Application has no merit as well. I overrule it. Consequently, I order that the Application should come for hearing on 10/2/2014.

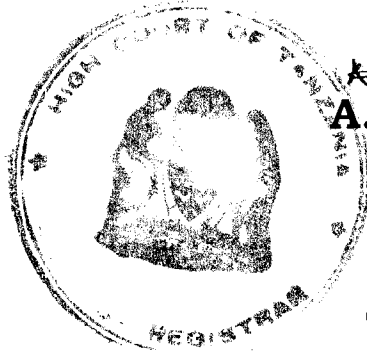


  
**A. Shangwa**

**JUDGE**

**4/2/2014**

Delivered in open court this 4<sup>th</sup> day of February, 2014 in the presence of Prof. Safari for the Appellant and Miss Mtulo for Respondent.



  
**A. Shangwa**

**JUDGE**

**4/2/2014**