IN THE HIGH COURT OF TANZANIA
(Commercial Division)
AT DAR ES SALAAM

COM CIVIL CASE NO. 3 OF 1999

THE MANAGING DIRECTOR
SOUZA MOTORS Ltd.....APPLICANT

Versus

1.RIAZ GULAMANI t/a
GEOPROCESS TANZANIA (Ltd).....First RESPONDENT

2.MOHAMED ENTERPRISES (T) Ltd...Second RESPONDENT

Counsel:

Mr: Mwengela for the Applicant
Mr. Chandoo for both Respondents

RULING

BWANA, J.

On 22 February 2000, this court dismissed an earlier Chamber Application for the attachment of a motor vehicle and for the furnishing of security. No order as to costs was awarded. Aggrieved by that decision, Mr. Chandoo filed a Notice of Appeal against that Interlocutory Ruling of this court. Mr. Mwengela controverted that Notice of Appeal in view of the clear provisions of the Written Laws (Misc. Amendments) Act 10/99 which amend section 5 (2) of the Appellate Jurisdiction Act, 1979. When both counsel appeared before me this morning Mr. Chandoo did concede that he was not aware of those provisions. However, he requested the court to make a Ruling so that

some guidelines are established. Mr. Mwengela, on his part, while opposing the application, he, as well, requested the court to make a Ruling.

It is the settled province of the law that the right to an appeal is an absolute one. There can be no legal cul-de-sac on this principle unless a given law provides otherwise. In the instant matter the said law is Act 10 of 1999, which stated inter alia as follows: -

S. 5 (2) (d):

> *"No appeal shall lie against any preliminary or interlocutory decision or order of the Commercial Division of the High Court unless such decision or order has the effect of finally determining the suit.."*

The Ruling of this court, dated 22 February 2000 as referred to above, did not have the effect of finally determining the suit. What it did was to determine matters of a subsidiary/secondary nature. The main issue is yet to be determined by way of trial, should mediation fail. Neither can it be said, it is my opinion, that accepting Mr. Chandoo's application may lead to a subsequent disposal of the case, should the Court of Appeal agree with him. The intention of the Legislature is and appears to have taken into account the needs for speedy disposal of cases of significant commercial nature without undue delay. There is no dearth of authorities on this approach to speedy disposal of cases. A few, if I may cite them, are very relevant to the instant issue. In Benoy Krishn vs Satisla Chandra Gari (55) I. A.131, the Court while dismissing the application, stated inter alia:

" the delay occasioned by taking an appeal (against an interlocutory ruling) adds to the procrastination which is the bane of litigation..."

In an earlier case of Sajjad Alkhan vs Ishaq Khan (1919) ILR 42 All.174 it was stated thus:

"...Appeals on matters of interlocutory in nature should be allowed.... only when their decision will practically put an end to the litigation and finally decide the rights of the parties."

The word "finally" was subsequently interpreted (in the case of Bhagwati Dayal vs Dhan Khanwar (1925) ILR 48, All 324) to mean –

" an order which puts to an end a litigation between parties, or at all events, disposes so substantially of the matter in issue between them as to leave only subordinate or ancillary matters for decision."

The foregoing principles in the Sajjad and Bhagwat cases seem to have been adopted in subsequent cases. In fact in Mangur vs Mangur (1965) MR 22 at sec, a Mauritian case, the Court stated:

" the party so wishing to appeal against an interlocutory judgment could still do so as of right from the final judgment and question at same time, the decision in the interlocutory

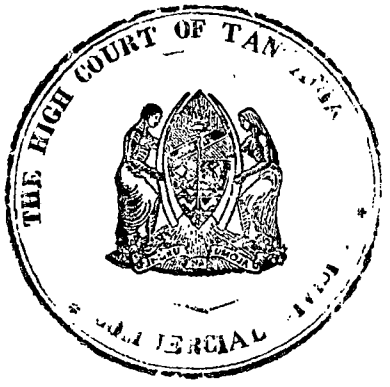
judgment.... entertaining an appeal against an interlocutory judgment may entail un necessary delay and expenses preducial to all parties..."

Therefore it is my considered view that appeals on matters of interlocutory in nature should be allowed to be preferred to an appellate court only when the decision practically puts an end to the litigation and finally decides the rights and or liabilities of the parties. In the absence of that, then such intended appeal should await the final judgment of the trial court.

If I may add, in conclusion, that the granting of leave to appeal is not a mere mechanical process. Rather, and especially before this court, it is a procedural bar to prevent frivolous and vexatious matters not only intended to obfuscate but also causing prejudice and delay to those who would otherwise benefit by the decision sought to be canvassed in appeal. The amendment contained in Act 10/1999 was intended to check on that abuse, by denying parties the right of appeal as a matter of course. In Ratnamn vs Cumarsamy (1964) 2 A.E.R. 933, Lord Guest stated:

"rules of court must prima facie,
be obeyed.... if the law were otherwise, a party
in breach would have an unqualified right to
extension of time which would defeat the
purposes of the Rules which is to provide a
time table for the conduct of litigation..."

Therefore for reasons stated herein the application by Mr. Chandoo for leave to appeal to the court of Appeal is dismissed. No order as to costs.



Sgd: Dr. S. J. Bwana

JUDGE

7/4/2000