

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: RAMADHANI, J.A., MROSO, J.A., And KAJI, J.A.)

CIVIL APPEAL NO. 94 OF 2001

BETWEEN

MVITA CONSTRUCTION COMPANY..... APPELLANT

VERSUS

TANZANIA HARBOURS AUTHORITY..... RESPONDENT

**(Appeal from the Decision of the High Court
of Tanzania at Dar es Salaam)**

(Msumi, PJ)

dated the 23rd day of January, 2001

in

Miscellaneous Civil Cause No. 138 of 1999

JUDGMENT OF THE COURT

MROSO, J.A.:

In this appeal the appellant company was represented at the hearing by Mr. M.J.A. Lukwaro together with Mr. Pherose Eruch Nowrojee and Mr. Dalip Singh Obhrai, learned advocates. The respondent authority was represented by Mr. Kabuta together with Mr. Tim Lamb, QC, Dr. Mapunda and Mr. Sikila, learned advocates. A question arose whether Mr. Nowrojee and Mr. Obhrai who are both advocates on the Rolls of Kenya and Zanzibar and have current practicing certificates for Zanzibar, had a right of audience before us.

Three days before the appeal was to come for hearing Mr. Lukwaro had sent positions to the Chief Justice for special licence in respect of those two advocates from Kenya. It was the prayer of Mr. Lukwaro that considering the two advocates had been enrolled in Zanzibar and held current practicing certificates there, they did not need any special licence under Section 39 (2) of the Advocates Ordinance, Cap. 341 of the Laws of Tanzania.

Section 39 of the Advocates Ordinance has provisions on the conditions for acting as an advocate and sub-section (2) thereof says –

(2) Notwithstanding anything to the contrary contained in this Part, the Chief Justice may, upon payment to the High Court of the prescribed fee admit to practice as an advocate for the purpose of any case any of the persons mentioned in subsection (1) of section 8 who has come or intends to come to Tanzania for the purpose of appearing in such case.

Subsection (1) of Section 8 of the Ordinance lists the qualifications of a person who applies to the Chief Justice to be admitted as an advocate.

According to Mr. Lukwaro, the Chief Justice said that there might be merit in the proposal but to avoid delay in the hearing of the appeal granted a special licence to the two advocates.

Mr. Kabuta was of the view that although Zanzibar advocates have a right of audience before the Court of Appeal in Zanzibar, they do not have an automatic right of audience before the Court on the mainland. So, although the Chief Justice granted the two advocates special licence to appear before the Court they had to pay the necessary fees. The advocates for the parties agreed that the hearing of the appeal could proceed and, in the meantime, they would undertake legal research on whether an advocate of the High Court of Zanzibar has an automatic right of audience in this Court whether it sits on the mainland or in Zanzibar. Following from that undertaking the Court proceeded to hear the appeal and written

submission on the right of audience before the Court followed thereafter.

In his written submissions Mr. Lukwaro referred to Rule 31 (3) of the Court of Appeal Rules, 1979 where it is provided:-

Every advocate who is for the time being entitled to practice before the High Court shall have the right of audience before the Court---

And argued that from 1984, by Act No. 16 of 1984, the definition of "High Court" was broadened to include the High Court of Zanzibar. So, under the Appellate Jurisdiction Act, 1979 as amended, an advocate of the High Court of Zanzibar is as well an advocate of the High Court of Tanzania for purposes of the right of audience before the Court of Appeal. To quote Mr. Lukwaro from his written submissions he said –

In other words any reference to the High Court under the Appellate Jurisdiction Act, 1979 and the Rules made thereunder – the

Tanzania Court of Appeal Rules – is reference to both the High Court of Tanzania and the High Court for Zanzibar (our underlining for emphasis)

He concluded that it followed that every advocate who for the time being was entitled to practice before the High Court had a right of audience before the Court of Appeal of Tanzania under Rule 31 (3) of the Court Rules. Mr. Nowrojee and Mr. Obhrai were therefore entitled to be heard by the Court without the need to pay fees for a special practicing licence.