

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM  
(CORAM:RAMADHANI, J.A.; MROSO, J.A.; And KAJI,  
J.A.)**

**CIVIL REFERENCE NO. 12 OF 2003**

**BETWEEN**

**TRI-TELECOMUNICACION Tz. Ltd ... APPELLANT  
AND**

- 1. **TANZANIA TELECOMMUNICATION CO. LTD }**
- 2. **TANZANIA REVENUE AUTHORITY }**

**} RESPONDENTS**

- 3. **TANZANIA COMMUNICATIONS }**   
**COMMISSION }**
- 4. **VIP ENGINEERING AND MARKETING Ltd }**

**(Reference from the ruling of a single judge of the  
Court of Appeal of Tanzania at Dar es Salaam)  
(Nsekela, J. A.)**

**dated the 25<sup>th</sup> day of July, 2003**

**in**

**Civil Application No. 61 of 2003**

**.....  
RULING**

**RAMADHANI, J. A.:**

Before our learned brother, NSEKELA, J. A., there was an application to strike out the notice of appeal filed by the present applicant, Tri-Telecommunication Tz. Ltd. The learned single Justice of Appeal, *suo motu*, raised a question of the

date when the ruling of KIMARO, J., which was the subject matter of the intended appeal, was delivered. Was it on 12.6.2003 or 16.6.2003?

NSEKELA, J A. struck out the notice of appeal and said:

It will be recalled that the learned advocates submitted that the matter be remitted to the trial judge for rectification of the error. The idea is an attractive one, but I resist the temptation to do so. It is up to the respondent, if he so wishes to go back to the High Court and seek correction of the purported error. Whoever prepared it was careless to say the least, and I am not prepared to condone such carelessness in the preparation of a vital document such as a notice of appeal.

That comment is one of the grounds for this reference as given in the letter of Mr. Mohammed Ismail, learned advocate, to the Registrar:

- i) The single Justice of Appeal erred in law in condemning the respondent (Tri-telecommunications

Tanzania Ltd.) for an error committed by the trial court and wherein all the parties had duly agreed to refer the original record back to the Commercial Court for rectification of the accidental slip under the Slip Rule.

- ii) The single Justice of Appeal erred further for misinterpreting and misapplying Rule 76 of the Court of Appeal Rules in relation to Form D of the First Schedule to the Court of Appeal Rules.
- iii) The single Justice of Appeal erred in failing to apply substantial justice to the parties.

Before us the applicant was represented by Dr. Fauz Twaib, learned advocate, while the fourth respondent had the services of Mr. Tenga, learned advocate, who also held the brief for Mr. Mgullu, learned counsel for the first respondent, Mr. Rugaiya, learned counsel, advocated for the second respondent and also held the brief for Mr. Dafa, learned advocate for the third respondent.

Mr. Tenga raised a preliminary objection that:

[T]his Reference should be struck out with costs

on the ground that following the Registrar of Companies gazetting the winding up of TRI Telecommunication Tanzania Limited, under the Government Notice No. 752 dated 22<sup>nd</sup> August, 2003, and the gazetting of the appointment of Peter Claver Bakilana as the Liquidator of TRI Telecommunication Tanzania Limited under Government Notice No. 751 dated 22<sup>nd</sup> August 2003, at law, the impugned Receivers/Managers no longer have legal capacity to continue with the Reference proceedings in the name of TRI Telecommunication Tanzania Limited.

Mr. Tenga took a very long time expounding on his ground of preliminary objection but we do not need to go into all that because we agree with what Dr. Twaib said that all these matters were not before the single Justice of Appeal, they are irrelevant to the reference and, therefore, cannot provided a ground for objecting to the reference and asking for it to be struck out. Mr. Tenga responded that there was no time before the single Justice of Appeal to canvas the point

he has tried to sell to us.

It is true that NSEKELA, J.A. raised the issue of the date when the decision was given but Mr. Ngalo did not raise before him what he has told us as a preliminary objection just as he has done now. In a reference we deal with what was before a single Justice of Appeal and see where he/she erred. Since we cannot fault a single Justice of Appeal for what was not before him/her, then however legal an argument could be, it cannot find purchase with us to strike out the reference on a preliminary objection. So, we dismiss the preliminary objection with costs.

DATED at DAR ES SALAAM this 02<sup>nd</sup> day of September, 2005.

A. S. L. RAMADHANI  
JUSTICE OF APPEAL

J. A. MROSO  
JUSTICE OF APPEAL

S. N. KAJI  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

( S.M. RUMANYIKA )  
**DEPUTY REGISTRAR**