

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

**CIVIL APPLICATION NO. 119 OF 2004**

**1. THE HON. ATTORNEY GENERAL  
2. MINISTER FOR FOREIGN AFFAIRS ..... APPLICANTS  
3. BANK OF TANZANIA**

**VERSUS**

**VALERIAN BAMANYA t/a TANZANIA  
ASSOCIATED MERCHANDISE..... RESPONDENT**

**(Application for stay of execution from the  
decision of the High Court of Tanzania  
at Dar es Salaam)**

**(Kileo, J.)**

**dated the 25<sup>th</sup> day of March, 2003  
in  
Misc. Civil Application No. 103 of 2000**

**-----  
R U L I N G**

**MUNUO, J.A.:**

In this application, the applicants sought stay of execution under Rules 9 (b) and 45 of the Court of Appeal pending appeal against the decision in Miscellaneous Civil Application No. 103 of 2000 in the High Court of Tanzania on the 25<sup>th</sup> March, 2003. The applicant was represented by Mr. Chidowu, learned State Attorney, assisted by Mr. Asajili, learned State Attorney trainee. The respondent was represented by Ms. Rwechungura, learned advocate.

Counsel for the respondent filed a Notice of Preliminary

Objection seeking to strike out the application on the ground that it is incompetent. She submitted that since the intended appeal is on a prerogative order, leave to appeal had to be obtained under the provisions of Section 5 (1) (c) of the Appellate Jurisdiction Act, 1979.

The learned State Attorney opposed the preliminary objection on the ground that leave to appeal was not necessary. The application, he maintained, is competent and so is the appeal which has already been filed, because Section 17 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance, Cap 360 gives the applicant a right of appeal to this Court.

That is indeed the case. A similar objection arose in the case of **Attorney General versus Philomen Ndesamburo**, Civil Appeal No. 14 of 1998. In that case, the Court held, and I quote in extenso:

*An issue arose whether or not leave to appeal was required in this case. Mr. Salula, learned Principal State Attorney, for the appellant, cited the decision of this Court in Leonard Silayo Ngalai versus Hon. Justine Alfred Salakana &*

*the Attorney General, Civil Appeal No. 38 of 1996, holding at Page 12 that:*

3

*--- it is apparent that the provisions of Section 5 of the Appellate Jurisdiction Act, 1979 do not apply to all cases. Exceptions are recognized where there is a written Law providing for a contrary position ---*

*--- In this case, Mr. Salida pointed out that Section 17 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance, Cap 360 provides:-*

*Any person aggrieved by an order under this section may appeal wherefrom to the Court of Appeal of East Africa.*

*--- Under Section 5 (1) of the Appellate Jurisdiction Act, 1979, and as this Court held in **Ngalai's** appeal, it is obvious that the right of appeal to this Court is not granted by the Appellate Jurisdiction Act, 1979, alone but that there are other laws providing for such right. In **Ngalai** the other law was the Constitution of the United Republic of Tanzania, 1977. In the present case*

*it is the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance as amended. So, there was no need for leave to appeal in the present case.*

In view of the above decision, it is clear that the applicant has a right of appeal under the provisions of Section 17 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance, Cap 360 so leave to appeal was not required. For that reason I overrule the Preliminary objection and order that the application for stay of execution proceeds on merit.

DATED at DAR ES SALAAM this 8<sup>th</sup> day of September, 2005.

E.N. MUNUO  
**JUSTICE OF APPEAL**

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

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