IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

CIVIL APPLICATION NO. 7 OF 2001

JOSEPH JOHN ..... APPLICANT

VERSUS

CHANDRAKANT SHAMJI SHAH ..... RESPONDENTS

(Application for leave to appeal to the Court of Appeal of Tanzania from the Decision of the High Court of Tanzania at Moshi)

(Mchome, J.)

dated the 17th day of August, 2001
in
Miscellaneous Civil Application No. 22 of 1999

R U L I N G

15 & 29 September, 2006

RUTAKANGWA, J.A.:

The Applicant and two others were the Defendants in Moshi District Court Civil Case No. 75 of 1994 in which the Respondent herein was the Plaintiff. The Respondent's suit was dismissed with costs by the trial court. Dissatisfied by the trial court's decision, the Respondent appealed to the High Court at Moshi i.e. Civil Appeal No. 20 of 1995. In its decision which was delivered on 19th March 1998 in the presence of all the parties, the High Court (Munuo, J. (as she then was)), allowed the appeal with costs. The Applicant and his co-Respondents in the appeal were aggrieved by the decision of the

High Court, and resolved to challenge it on an appeal to this Court. They, however, failed to file the notice of appeal in time. They accordingly filed Miscellaneous Civil Application No. 22 of 1999 in the High Court at Moshi for extension of time.

In his ruling delivered on 17th August 2001, Mchome J. found the said application "devoid of any merit" and dismissed it with costs. The applicant alone was aggrieved. He accordingly, lodged this application on 3rd September, 2001.

In the application the applicant is seeking to be:-

> "... granted leave to appeal to the Court of Tanzania (sic) and for (sic) order that the costs of and incidental to the Application abide the results of the said appeal."

The application, by notice of motion, is brought under section 5 (1) of the Appellate Jurisdiction Act, 1979 and Rule 44 of the Tanzania Court of Appeal of Tanzania Rules, (or simply the Rules hereinafter).

The application was first called on for hearing, before a single Judge, on 21st June, 2005. As the Respondent had not been served with a copy of the notice of motion, he prayed for an adjournment.

The applicant had no objection. The matter was adjourned for hearing in the next sessions. The learned Judge further ordered:

> "Applicant to take the opportunity to apply for rectification of certain inadequancies in the application, e.g. the correct enabling law, a copy of the decision of the High Court refusing leave, if any, and to supply the respondent with the documents relating to this application."

The matter was again called on for hearing on 8th October 2005. Again the hearing was adjourned to the next sessions of the Court as the applicant was yet to comply with the directions contained in the order of adjournment of 21st June, 2005. The third hearing date was 15th September, 2006. On this date the applicant prayed for another adjournment as he was yet to file the application for rectification of the original notice of motion. Very reluctantly, Mr. Njau, counsel for the respondent acceded to the prayer for adjournment. The hearing was accordingly adjourned to 22nd September, 2006 to enable the applicant to make the necessary application. The applicant ultimately filed the said application on 15th September, 2006.

When the said application was called on for hearing on 22nd September, 2006, Mr. Njau, learned counsel, raised a point of preliminary objection challenging the competence of the latest application. To Mr. Njau, the said application is incompetent and therefore cannot be entertained by the Court because:

(a) First, the notice of motion is based on section 14 of the Law of Limitation Act, 1971, and

(b) secondly, the notice of motion is also based under no specific rule of the Rules.

The applicant, pleading ignorance of the law had nothing to say in response.

It is indeed true that the notice of motion is based:

> "Under Rules of Tanzania Court of Appeal Rules, 1979, section 14 of the Law of Limitation Act, 1971 and any other enabling law."

In order to appreciate the thrust of Mr. Njau's argument one has, of necessity, to look at the orders the applicant is seeking for.

By his notice of motion the applicant is moving this Court to be allowed to:-

(a) supply documents relating to the application to the Respondent and

(b) attach and supply the copy of the decision of the High Court refusing leave to this Court.

It is the submission of Mr. Njau that section 14 of the Law of Limitation Act, 1971 has no relevance to this particular application. I totally agree with him. In the first instance the provisions of the Law of Limitation Act do not apply to applications and appeals to this Court. So the citing of section 14 of this Act as one of the enabling provisions of the case was a mis-conception. Secondly, even if it were to be held that the Limitation Act applies to proceedings before this Court it would, all the same, have been found and held that section 14 of this Act which deals only with extensions of periods for the institutions of appeals and applications, was the wrong enabling provision. This would have been so because in this particular application the applicant is not seeking for extension of time to file any application.

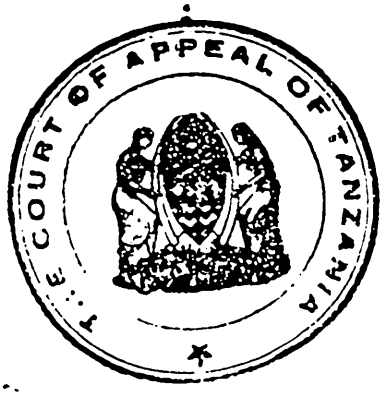
As already shown above the notice of motion is based also on the Rules generally. Mr. Njau is contending that this is not enough to move the Court to grant the orders the applicant is seeking. According to him the applicant ought to have cited a specific rule upon which the notice of motion is based. Again, having regard to the current state of the law on this issue, I have found myself in full agreement with the position taken by Mr. Njau. It is trite law that if a party fails to cite a specific provision of the law upon which his/her application is based and/or cites a wrong provision of the law, the matter becomes incompetent as the Court will not have been properly moved. There is a plethora of decisions of this Court to that effect: See for instance, **Hussein Mgonja vs The Trustees, Tanzania Episcopal Conference,** Arusha Civil Revision No. 2 of 2002, dated 15th July, 2005, (unreported) in which the earlier decisions of this Court are cited. As the applicant has not cited a particular rule upon which the notice of motion is based and/or has cited both a wrong and wholly irrelevant law, the application is found to be incompetent.

For the above reasons this application is struck out with costs.

GIVEN at ARUSHA this 29th day of September, 2006.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

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



(S. M. RUMANYIKA)
DEPUTY REGISTRAR