Legal Aid Cases and Materials

Vol. 1
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## Abbreviations

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<th>Abbreviation</th>
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<tr>
<td>AG</td>
<td>Attorney General</td>
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<tr>
<td>BAKWATA</td>
<td><em>Baraza Kuu la Waislam Tanzania</em></td>
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<td>CA</td>
<td>Court of Appeal</td>
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<td>Cap.</td>
<td>Chapter</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CHODAWU Union</td>
<td>Conservation, Hotel, Domestic and Allied Workers</td>
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<td>CMA</td>
<td>Commission for Mediation and Arbitration</td>
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<td>DOLASED</td>
<td>Disabled Organisation for Legal Aid and Social Economic Development</td>
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<td>DW</td>
<td>Defence Witness</td>
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<td>ELRA</td>
<td>Employment and Labour Relations Act</td>
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<td>ENVIROCARE</td>
<td>Environmental Human Rights Care and Gender Organization</td>
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<td>FBOs</td>
<td>Faith Based Organisations</td>
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<td>FGM</td>
<td>Female Genital Mutilation</td>
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<td>GN</td>
<td>Government Notice</td>
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<td>HC</td>
<td>High Court</td>
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<td>LEAT</td>
<td>Lawyers’ Environmental Action Team</td>
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<td>LEGAL-NET</td>
<td>Network of Legal Aid Providers</td>
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<td>LHRC</td>
<td>Legal and Human Rights Centre</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>LRCT</td>
<td>Law Reform Commission of Tanzania</td>
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<td>Misc.</td>
<td>Miscellaneous</td>
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<td>MVCCs</td>
<td>Most Vulnerable Children’s Committees</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NOLA</td>
<td>National Organization for Legal Assistance</td>
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<td>Pc</td>
<td>Primary Court</td>
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<td>PW</td>
<td>Prosecution Witness</td>
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<td>R</td>
<td>Rule</td>
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<td>R.E</td>
<td>Revised Edition</td>
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<td>SGD</td>
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<td>TAMWA</td>
<td>Tanzania Media Women Association</td>
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<td>TANLAP</td>
<td>Tanzania Network of Legal Aid Providers</td>
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<td>TANLET</td>
<td>Tanzania Legal Education Trust</td>
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<td>TAWLA</td>
<td>Tanzania Women Lawyers Association</td>
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<td>TLR</td>
<td>Tanzania Law Report</td>
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<td>TLS</td>
<td>Tanganyika Law Society</td>
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<td>V (Vs.)</td>
<td>Versus</td>
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<td>WiLDAF</td>
<td>Women in Law &amp; Development in Africa</td>
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<td>WLAC</td>
<td>Women’s Legal Aid Centre</td>
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List of Cases Cited

5. Bibie Mauridi vs. Mohamed Ibrahimu 1989 TLR 162
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List of Statutes Referred

1. Employment and Labour Relations (Code of Good Practice) G.N. No. 42/2007,
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Preface

The focus of this book is to provide materials and selected cases on legal aid provision in Tanzania.

The Legal and Human Rights Centre has been assisting people with legal problems to access justice since 1997. Some had to go to courts of law and hence there are cases of such clients which need to be documented. The Legal and Human Rights Centre has decided to compile this book to show the importance of legal assistance and how it helps the indigent and marginalized groups in the society to access their justice.

Advocate fees are too high for a common Tanzanian who lives under one dollar a day to afford. Among the initiatives by LHRC to enable people of all income to access justice was to establish legal aid clinics (in Arusha, Buguruni and Magomeni – the later two were recently joined to be Kinondoni Model Legal Aid Clinic). The clinics have been very instrumental for tapping Human Rights Issues for advocacy.

In 2013 for instance, Legal Aid Clinics were among other things able to tap the following issues; High fees for District Land Tribunals, Abuse of girls rights to education by parents due to patriarchy, increasing land conflicts, problems in execution Court Decrees and inheritance problems for people and children born under presumption of marriage. After tapping those issues, normally the next step is to advocate for change to the respective authorities.

The compilation of the legal aid client cases will be good resource on issues which would have not seen the courts but the legal aid clinics had made it possible. It is also an area of jurisprudential growth from the legal aid.

The LHRC aims among other things to strengthen model legal aid clinic to improve its ability to identify gaps/shortcomings for changes through research and strategic litigation of public interest cases. Furthermore, LHRC empowers paralegals to help access to justice by poor at the grassroots level.

All cases reported in this compilation are of clients assisted at the Legal Aid Clinics of the Legal and Human Rights Centre (Mobile and Kinondoni as well as Arusha). There are also cases assisted by Paralegals at their initial stages and thereafter forwarded to the mentioned Legal Aid Clinics. Paralegals are situated
in 28 Districts of Tanzania and have grown to be able to assist clients to access justice in their districts.

This is the first volume in a series of volumes to come and it is divided into three categories of cases namely labour, land and general civil cases.

1 Tunduru, Nyasa, Mbinga, Namtumbo, Tandahimba, Nanyumbu, Mtwarra rural, Newala, Masasi, Ludewa, Makete, Mvomero, Kilosa, Kiteto, Hanang, Simanjiro, Serengeti, Tarime, Geita, Maswa, Ukerewe, Bariadi, Ngorongoro, Babati, Meatu, Mbulu and Singida rural.
About LHRC
The Legal and Human Rights Centre is a Non Governmental Organization, non partisan and non-profit registered under Chapter 212 of the laws of Tanzania as a company without share.

The organization was founded from a Human Rights Project of Tanzania Legal Education Trust (TANLET). LHRC has its main office in Dar es Salaam and a sub office in Arusha.

Since its inception in 1995 LHRC has been growing steadily keeping up with a social economic pace in the country. The centre works throughout Tanzania through its Human Rights Monitors located in each districts of Tanzania. There are also paralegals in 29 districts of Tanzania.

Through these grassroots volunteers, LHRC has a capacity to influence policies, laws and issues of practice at the National and International levels.

Vision of the LHRC
The LHRC envisions a Just and Equitable society.

LHRC’s Mission statement
LHRC strives to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information, sound legal research, advice, monitoring and follow-up of Human Rights violations, advocacy for reforms of policies, laws and practices to conform to international human rights standards.

Governance
The LHRC is a membership organisation with 150 members from all over Tanzania. The members form the Annual General Meeting which is the highest governance organ of the LHRC. The AGM appoints a Board to govern and direct policies of the LHRC. Currently there are nine (9) board members chaired by Professor Geoffrey Mmari. The Board recruits the Executive Director who is the Chief Executive Officer. The Executive Director works with a management team with three Directors and a staff representative. Currently the LHRC has 61 full time staff and ten volunteers.
INTRODUCTION

Legal Aid and Access to Justice in Tanzania

Access to Justice

Access to justice is considered as a fundamental component of rule of law. There is an Indian decision that states that:

"the rule of law does not mean the protection of law must be available only for a fortunate few ... The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality."

Plainly, the term “access” means the right to enter a place, use something, see someone etc; how easy or difficult it is for people to enter a public building, to reach a place, or talk to someone; the way you use to enter a building or reach a place; have access to that you can use; the legal right to see or succeed in entering a place or in seeing someone or something. The word “justice” plainly mean the system by which people are judged in courts of law and criminals are punished; fairness in the way people are treated; the quality of being right and deserving fair treatment.

In Tanzania, access to justice has had a long way. In spite of the existence of the Judiciary as a constitutional institution for administration of justice, still right to access to justice in Tanzania came to be recognised as a human right protected by the Constitution after the inclusion of Bill of Rights in the

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2 JULIUS ISHENGOMA FRANCIS NDYANABO Vs. THE ATTORNEY GENERAL. CIVIL APPEAL NO. 64 OF 2001 Samatta, C.J., Kisanga, J.A. and Lugakingira, J.A.: (Appeal from the majority decision of the High Court of Tanzania at Dar es Salaam (Hon. Kyando, Ihema JJ and Kimaro J) 29th June, 2001 - Miscellaneous Civil Cause No. 2 of 2001 [ Herein after referred to as Ndyanabo’s Case]
3 PUDR v. Union of India AIR 1982 SC 1473, 1477 [ Indian Supreme Court]
4 Longmans Dictionary of Advanced Learners’ English.
5 Ibid.
Tanzanian Constitution in 1984. Article 13(1) of the United Republic of Tanzania Constitution of 1977, now states that all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law. This Article is similar to Article 14 of the International Covenant on Civil and Political Rights [ICCPR] which Tanzania ratified in June 1977. The ICCPR provides five minimum standards that must be met if access to justice has to be secured.\(^6\) It requires availability of independent and impartial tribunals or courts; secondly, there must be competent and accessible tribunals or courts with sufficient resources such as numbers of judges, magistrates, court rooms, and other facilities necessary for the court to administer justice. Thirdly, there must be good laws which are understood by majority of the people; fourthly, there must be available sufficient and qualified lawyers to represent those who cannot defend themselves in courts of law and tribunals. Lastly there must be timely and fair trial to all regardless of their socio economic and political status.

In short, the Tanzanian Courts have plainly stated that right of access to justice means that judicial organs should be open to all those whose rights have been affected.\(^7\) That is to say inter alia that, individuals who are victims of violative actions by state or non state individuals should be able to challenge such violations in proper entity which administer justice freely without fear favor. Such aggrieved individuals should easily reach the courts of law and the available remedies in a way that accessibility should be devoid of undue technicalities which defeat the ends of justice.\(^8\) Moreover, accessibility to justice is inseparably interlinked with the availability of meaningful and reasonable remedy. Finally, all citizens should be treated equally and fairly – no person should be regarded as being above the law.

### 1.1.1 Access to Justice by Children

Following strong pressure by the society, in 2009 Tanzania enacted a law to cater for child rights among other things.\(^9\) Protection of children and especially girl child is still a challenge. It is recorded that in 2009 there were incidences of Female Genital mutilation (FGM), early marriages, pregnancies at early age, and incidences of gross cruelty against children, sexual abuse and desertion. By the coming of the new Law it is expected that various actors such as Civil Society Organisations (CSOs), Faith Based Organisations (FBOs), and government

\(^6\) General Comment 13 – 21st session Geneva 1984- Compilation of the general comments and general recommendations Adopted by Human Rights Treaty Bodies . UN. Doc. HRI/GEN/1Rev.1 at 14 (1994)
\(^7\) Ndyanabo Case Op Cit.
\(^8\) Ibid
\(^9\) The Law of the Child Act, 2009
agencies will work together in order to ensure maximum protection of children rights. Section 5(1) and (2) of the Employment and Labour Relations Act, 2004 provides that, no person shall employ a child under the age of fourteen (14) years. The Subsection (2) of Section 5 of this law states that, a child of fourteen years of age may only be employed to do light work, which is not likely to be harmful to the child’s health and development; and does not prejudice the child’s attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child’s capacity to benefit from the instruction received. The law also prohibits the engagement of the less than 18 year child in hazardous working places. Section 5(3) states that “child under eighteen (18) years of age shall not be employed in a mine, factory or as crew on a ship or in any other worksite where work conditions may be considered hazardous by the Minister.” Despite all these, the records in 2006 showed that, there were 2.5 million orphans in Tanzania. There was no viable system of taking care these vulnerable children and potential child labourers.

No wander that Child labour was on its increase since 2001. UNICEF comes up with a strategy of community justice facilitators and formation of the Most Vulnerable Children’s Committees (MVCCs) in the rural areas. Moreover, most legal aid providers among them being LHRC are using mobile legal aid clinics in order to reach out remote population where children are most vulnerable. Such efforts can be replicated and yield the achieve objective of access to justice by poor.

LHRC has been keen in promoting access to justice by children. One of the remarkable cases was the case called Mkombozi Street Children Case. LHRC, EALS and others were arguing for the repeal of the Township (Removal of Undesirables Persons) Ordinance, the Destitute Persons Act, and a Declaration that sections 14(h) and 28(b) of the Criminal Procedure Act and sections 176(2) and 177 of the Penal Code were unconstitutional and therefore of no legal effect. This was an attempt to end the long-standing practice in many Tanzanian Municipalities of rounding up street children, on the ground that such children were undesirable.

1.1.2 Society and Access to Justice by Women in Tanzania

The society has been keen to advocate for women rights. Women in Tanzania become very vulnerable to violations due to various factors among them being gender inequality and disempowerment occasioned by the prevailing socio-

10 Commonly referred to as Street children’s case (Mkombozi for Street Children, EALS and LHRC Vs AG.) the Matter is pending at the Court of Appeal of Tanzania.
economic, political, cultural and legal setbacks. Like other countries, in an effort to ensure protection of women's rights, Tanzania became a party to global commitments set under the Millennium Development Goals of 2000-2015, which call for promotion of gender equality and empowerment of women. Similarly, it has adopted a number of policies, strategies and laws in order to create gender equality, which is seen as a major necessity to socioeconomic progress. Nevertheless, the set of laws which discriminate women in Tanzania are still not being amended.

Civil Society organisations have repeatedly called for and appealed to the government for their repeal. Instead, the government remained silent even where the report recommending legal reform of the discriminatory laws, was submitted by the Law Reform Commission of Tanzania (LRCT) in 1994 – that is 15 years ago. This trend is contrary to Tanzania’s obligation to the international human rights instruments. For instance, the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) require state parties, including Tanzania, to take all appropriate measures, including legislation, to modify or abolish laws that impede economic, social cultural or political development of women. In Tanzania, stakeholders should join hands in order to campaign for repeal of the laws which discriminate against women which include: the Customary Law Declaration Order, 1963 which, prohibits the widow to inherit land from her deceased husband; the Tanzania Citizenship Act, 1995, which states that a woman who is married to a Tanzanian citizen is entitled to be naturalized, but the opposite is not possible and that, a person whose father was a Tanzania citizen at the time of birth is entitled to naturalization; the Law of Marriage Act, 1971 which allows marriage for young girls of even below 15 years; The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2000, which calls for the elimination of practices that are harmful to women, including FGM. LHRC is currently pursuing a case against Citizenship Law that has provisions discriminatory to women.  

1.1.3 Access to justice for people with disabilities in Tanzania

In March 2009, Tanzania ratified the Convention on the Rights of Persons with Disabilities, 2006. The convention aims to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities. It addresses a number of key areas such as universal accessibility of services, personal

\[11\] This is the Famous Sion Gabriel’s Case.
mobility, health, education, employment, and rehabilitation, participation in political life, equality and non-discrimination. Moreover, it does not provide for protection of new rights; but, it addresses the needs of the people with disabilities in a more special way. Very recently in April 2010 the Parliament passed a law that domesticated the Convention. It is expected that stakeholder will popularise the said law and widely disseminate so that the content and be known and respected by all for the benefit of the persons with disability. Among new features brought about by the convention and the law is the principle of universal accessibility. It would require all public facilities including court rooms to be accessible by all especially people with disability. Therefore the entrances, the facilities, and even the services provided it would even require judgments, laws, public documents to be in brail if a party is a blind person, of sign language if a person is deaf. Etc, all these efforts will enhance access to justice by this group of marginalized people.

LHRC as well filed a case suing the government of Tanzania for failure of protecting people with Albinism in Tanzania. The Constitutional case endeavours among other things to remind the government to fulfil its obligations in regard to persons with albinism who of recently have been a target of mutilation due to superstitious beliefs. The ultimate result of this Albino case was speeded up ratification of the Convention on the Rights of Persons with Disability. The wording of the tabled bill was a replica of the LHRC position stated in the petition for the need of protection of persons with disability. The Case is still pending in Court. Moreover the trend of Albino killings showed successful decrease whereas the government started to prosecute suspected murderers. The data shows the slowed down trend of the killings.  

1.2 Legal Aid and its Provision in Tanzania

1.2.1 Judicare Legal Aid

Legal aid provision in Tanzania as an integral part of access to justice had its unique history. And has been considered by the judiciary, the Parliament, the Executive and the Civil Society. The Colonial government used to have the poor prisoners Ordinance cap 21 which applied in cases of murder. However with Independence the Parliament considered legal aid to indigents on serious

12 LHRC Annual report 2009 shows that in 2007 – 20 albinos were killed, in 2008 -25 albinos were killed and in 2009 - 5 albinos were killed.
13 The observations of the E.A.C.A. in the Mohamed s/o Salim’s Case are relevant though they concerned the provisions of s. 3 of the replaced Poor Prisoners Defence Ordinance Cap. 21 because these provisions are similar to s. 3 of the Act No. 21 of 1969 except that while Cap. 21 applied to capital offences only, the 1969 Act applies to all serious offences as herein indicated above.
offences by enacting a law in 1969 when the Legal Aid (Criminal Proceeding) Act, now Chapter 21 of the R.E. 2002 of the Laws of Tanzania was enacted. This law provides that where in any proceeding it appears to the certifying authority that it is desirable, in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued, the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the preparation and conduct of his defence or appeal, as the case may be. This law has been a key legislation in allowing free legal service in the name of interest of justice where the courts discretion applies. As a result it has only been the serious offences such as Murder where the accused person becomes entitled to legal aid. The government does not provide legal aid in civil cases or even in criminal cases of lesser penalties. This segregation of cases rendered big portion of poor citizens unable to handle their cases, loose their cases and even abuse the ends of justice.

The unquenchable demand for legal aid led a number of civil society organisations to establish legal aid scheme in order to serve the indigents who do not have financial means to engage advocates. Moreover, the government through the LSRP is still contemplating on the viable way of having a state funded legal aid scheme in order to ensure access to justice by poor.

Practically, the Judiciary in Tanzania has been very active in promoting legal aid. The Judiciary recognises the problem of unrepresented clients and its effect to the ends of justice. The court has always treated the right to legal representation with passion. In one case the court held that where legal aid is unreasonably refused by the certifying authority or where the trial magistrate has omitted to send the proceedings to the certifying authority for consideration of legal aid, the trial will be held to be a nullity.\textsuperscript{14}

On another case the Court of appeal allowed the appeal and quashed the conviction by holding that the appellant did not and could not get a fair trial without legal assistance.\textsuperscript{15} With the same trend the court held that the trial is a nullity because the appellants who are indigent were denied of their statutory and constitutional right to legal representation paid for by the state; and the trial was also a nullity because the appellants were not informed of their right

\textsuperscript{14} Mwalusanya J. in HARUNA SAID v REPUBLIC 1991 TLR 124 (HC)
\textsuperscript{15} Kisanga JJA, Mnzavas JJA and Mfalila JJA in LEKASI MESAWARIEKI v REPUBLIC 1993 TLR 139 (CA)
to have legal representation.\textsuperscript{16} All what the court has been doing is to ensure that legal aid is available for serious offences and this is obvious in respect to criminal cases. In principle the Court has bee very vocal as far as right to legal representation is concerned.

The court imposes duty to the magistrate or judge in a hearing of a case as a certifying authority not to depend on the accused having raised or applied for legal aid. The trial court has to raise it on its own motion.\textsuperscript{17} The Court in a fate of the case where legal aid was unreasonably refused by the certifying authority or was not considered at all? The Judgement of Samatta J. said that Legal representation for an accused is a right which is almost universally recognized.

In some jurisdictions the right is a constitutional right.\textsuperscript{18} In Tanzania the right is provided for in s. 190 of the Criminal Procedure Code (now s. 310 of Criminal Procedure Act). That right is so jealously guarded by the law that if an accused is deprived of it, through no fault of his own and through no fault of his advocate and he is in the end convicted, that conviction cannot be allowed to stand on appeal. It must be quashed.\textsuperscript{19} In 1982 when that judgment was delivered, the right to legal representation was only statutory right, right now it is Constitutional right incorporated in the Constitution Vide Act No. 15/1984. The right to a fair hearing under Art. 13 (6) (a) of Tanzanian Constitution carries with it the right to a legal representation.\textsuperscript{20} This position is emphasised by Mwalusanya J. in \textit{Haruna Said v. Republic}.\textsuperscript{21}

\textsuperscript{16} Mwalusanya J in \textit{THOMAS MJENGI v REPUBLIC} 1992 TLR 157 (HC)
\textsuperscript{17} E.A.C.A. in the Mohamed s/o Salim v R. Case at p. 204 had the following to say: We would add that we consider that it is the duty of the trial judge or magistrate to ascertain that the question of provision of legal aid has been duly considered by the proper authority... in which the accused appears before him unrepresented.
\textsuperscript{18} Peter, C.M. \textit{Op.Cit.}
\textsuperscript{19} (as he then was) in the case of A. Kalumbeta v R. [1982] T.L.R. n. 328 where at pp.300 - 332
\textsuperscript{20} 1991 TLR p132
\textsuperscript{21} Mwalusanya J. in \textit{HARUNA SAID v REPUBLIC} 1991 TLR 124 (HC) Therefore where legal aid is unreasonably refused by the certifying authority or where the trial magistrate has omitted to send the proceedings to the certifying authority for consideration of legal aid (in the two instances mentioned above) the trial will be held to be a nullity. There is no question as to whether the irregularity has B occasioned a miscarriage of justice or not; the point is that the irregularity is to fundamental that the trial is automatically a nullity. In fact that is what the Tanzania Court of Appeal had to say in the case of Laurent s/o Joseph v R. [1981] T.L.R. n. 351 where Makame J.A. said at p. 352: We cannot say that if he had been legally represented a different picture would not possibly have emerged. That is the point. This is because the quality of justice we got when an accused is not legally defended is bus-standard. It is not every man who has the ability of defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. E He cannot examine or cross-examine witnesses intelligibly. The quality of justice, surely improves where there is legal representation.
Right to access to justice in civil cases was addressed with same emphasis but on different note by the judiciary in Tanzania in the famous case of Ndyanabo. The Parliament of Tanzania continued to enact pieces of legislation that impeded access to justice. A notable case was when the Parliament in Electoral Laws (Miscellaneous Amendments) Act, 2001 amended section 111 of the Act to require a deposit of 5,000,000/- by any one who wanted to challenge the results of election declared by the National Election Commission. Subsection (2) reads that “The Registrar shall not fix a date for the hearing of any election petition unless the petitioner has paid into the court, as security for costs, a sum of five million shillings in respect of the proposed election petition.” This provision was successfully challenged as one that was inhibiting access to justice.

In Ndyanabo case the requirement to deposit shs.5 (five) million as security for costs was declared unconstitutional, on the ground that it is arbitrary, discriminatory and unreasonable and therefore it constitutes an unjustified restriction on the right of a citizen to be heard by the Court on his complaint against illegalities or irregularities in the conduct of a parliamentary election. The court held that Access to courts is, undoubtedly, a cardinal safeguard against violations of one’s rights, whether those rights are fundamental or not. Without that right, there can be no rule of law and, therefore, no democracy. A court of law is the “last resort of the oppressed and the bewildered”. Anyone seeking a legal remedy should be able to knock on the doors of justice and be heard. The remaining clog to access to justice and legal aid in Tanzanian courts remain the strict adherence to procedural law and legal technicalities at the detriment of substantive justice. If the procedures are simplified to pave way to substantive justice, the legal aid and access to justice in entirety would then be meaningful.

1.2.2 Legal Aid Provision by Non State Actors

In Tanzania there are several CSOs that provide legal aid to indigents. To mention a few, these include CCBRT (with a Legal Aid Certificate), DOLASED, LHRC (with a Legal Aid Certificate), LEAT (with a Legal Aid Certificate), nola (with a Legal Aid Certificate), TAWLA (with a Legal Aid Certificate), WLAC (with a Legal Aid Certificate), WiLDAF, TAMWA, TLS Envirocare etc. Very recently, TAWLA reported to have provided legal aid to 10,000 clients in the year 2009, on its part, LHRC in 2007 attended 14,088, in 2008 attended 12,877 and in 2009 it attended 10,257 clients. It means therefore, if two organisations attended more

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that 20,000 clients in 2009 then collectively all legal aid providers in Tanzania must have attended more than 100,000 clients in 2009. If we assume that every client would pay minimum legal fees of 500USD, it would mean therefore that in monetary terms, the NGOs providing legal aid have saved the public from spending more than 50,000,000USD for legal fees in 2009. The role of such organisations should not be underestimated.

The need to have a network of legal aid providers in Tanzania was expressed since early 1990s. This was reflected in the report of Judge Mark Bomani. The first network of legal aid providers was established in 1997 which was known as LEGAL-NET whose members were TLS, LHRC, TAWLA, TAMWA, WLAC, Legal aid Committee of University of Dar es salaam and ENVIROCARE. It was a loose network which operated without registration. The network collapsed in 2000 following want of financial support. It was until 2006 when NGOs that provide legal aid in Tanzania under the leadership of WiLDAF decided to establish TANLAP. This new network was established on basis that there was an unquestionable need for an active and autonomous network of bringing together all legal aid providers as a collective forum for participation in policies and law reforms. This network would on the way build members’ capacity, to harmonize the modus operandi of their legal aid services and their ethical conduct.

There has been a sort of dilemma, where the non governmental organisations which are providers of legal aid would be required to be members of a network established by a government. There is a doubt if that arrangement would not compromise their independence and autonomy as non governmental organisations. The LSRP requires an adoption of code of conduct for legal aid providers. Under the coordination of TLS, the code of conduct has been prepared but it has not come into force because the network envisaged by the LSRP has not yet been established. Currently the final report of the consultants engaged to conduct the efficacy study has been circulated to all legal aid providers before the CSOs adopt the modalities of the said network.

LABOUR LAW CASES

2.1 Introduction

Right to Work at the International Law

The Right to Work according to the Universal Declaration of Human Rights\textsuperscript{24}, is a concept that people have the right to work, or engage in productive employment, and may not be prevented from doing so. The right to work as enshrined in the Universal Declaration of Human Rights is also recognized in international human rights law through the International Covenant on Economic, Social and Cultural Rights, where the right to work emphasizes economic, social and cultural development. The International Covenant on Economic, Social and Cultural Rights states in Part III, Article 6 that, “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

The African Charter on Human and Peoples’ Rights also recognizes the right, emphasizing conditions and pay, i.e. labour rights. Article 15 of the Convention states that, every individual shall have the right to work under equitable and satisfactory conditions, and shall receive work. According to article 7 of the same Convention the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind among other things.

\textsuperscript{24} Article 23
The Right to work in Tanzania

The Constitution of the United Republic of Tanzania of 1977 is an important tool for the protection and promotion of human rights. It explicitly refers to the Universal Declaration of Human Rights in requiring Tanzania to preserve and uphold human dignity. The Constitution enables Tanzania to translate international agreements into domestic law, and obliges all branches of government to respect and ensure the rights it enunciates. Article 22 of the Constitution of the United Republic of Tanzania provides for the right to work whereby every person has the right to work and entitled to equal opportunity and right to equal terms to hold any office or discharge any function under the state authority. The same Constitution provides for the right to remuneration to every person working according to their ability shall be remunerated according to the measure and qualification for the work.

Tanzania overhauled its Employment and Labour Laws in 2004 when it enacted the Employment and Labour Relations Act of 2004 and the Labour Institutions Act of 2004 whereas the Employment Act provides for Labour Standards, rights and duties and the Labour Institutions Act constitutes the governmental organs charged with the task of administering the Labour Laws. Subsequently in 2007 several pieces of legislation were promulgated to facilitate the enforcement of labour rights and standards stipulated in the Employment Act. One of the most significant of these is the Employment & Labour Relations (Code of Good Practice) Rules G.N No. 42 of 2007.

Challenges to the application of the laws:

- Specific time for contracts of employment are for professionals and often last for several years and unspecified time contracts are designed for non professional.
- Many employers do not deduct Social Security from their employees’ wages and do not make the required employer contributions and those who deduct sometimes fraudulently misuse the funds deducted from daily workers.
- The Employment and Labour Relation Act of 2004 does not define a contract of service and a contract for service.
- The Employment and Labour Relation Act of 2004 is silent as to what happens when the employer is insolvent.
- After expiry of the second 63 days entitled to sick leave to an employee

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25 Article 9(f)
the Employment and Labour Relation Act of 2004 is silent to whether an employer is obliged to pay an employee half wages or not.

- The Employment and Labour Relation Act of 2004 does not confer to the Legal Officers and the Industrial Court to determine complaints.

Recommendations to the right to work as provided under the Employment & Labour Relations Act of 2004 are as follows:

- The Government should ensure that the Commission for Mediation & Arbitration (CMA) deals with all workers complaints in a timely manner and that reasons are given for decisions.

- Increase transparency and worker access to Social Security Funds through the regulation of the scheme by the Government and easy access for employees to their Social Security Funds with aim of building employees trust and employer compliance with mandated contributions.

- The Government should adopt legislation to require that all work related injuries or illness are paid for by National Workers Compensation Scheme.

- Increase the time limit for filling unfair termination complaints with the Commission for Mediation & Arbitration (CMA) to more than 30 days or in the alternative and create a more permissive standard for deadline extension.

- The minimum wage law should be reviewed so as to conform to the current cost of living.

- The Government should reform the Employment and Labour Relation Act of 2004 to prohibit sexual harassment in the work place.
2.2 CASES

GABRIEL ANTONY DEWA vs. TANZANITE ONE MINING, Revision No. 30 of 2011, High Court of Tanzania (Labour Division) at Arusha

BRIEF FACTS

The Applicant was an employee of the Respondent. On the 25th day of January 2007 his services were terminated. His attempt to challenge the said termination before the Commission for Mediation and Arbitration were fruitless. Aggrieved by the decision of the Commission he made an application for revision before the High Court of Tanzania (Labour Division) and the Court quashed the Commission’s decision and ordered re-trial.

His second attempt at the Commission proved futile again. He was still aggrieved by the Commission’s decision and decided to challenge the same before the High Court of Tanzania (Labour Division); hence this application for revision.

POINTS TO NOTE FROM THE CASE

1. As per Rule 13(3) of Employment and Labour Relations (Code of Good Practice) G.N. No. 42/2007, an employer is required to notify the employee of the disciplinary hearing in a reasonable time, which shall not be less than 48 hours.

2. As per Rule 13(12) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42/2007, an employer is required to keep records for each employee specifying the nature of any disciplinary transgressions, the action taken by employer and reasons for the actions.

3. The law requires every employer to give his employee the right to be heard before he/she terminates the employee’s services. Where the employee has been denied that right, it becomes a clear violation of the long standing principle of natural justice; Audi alteram partem principle.
JUDGMENT

IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT ARUSHA

REVISION NO. 30 OF 2011
(Original CMA/ARS/ARB/2008)

GABRIEL ANTONY DEWA ........................................... APPLICANT

VERSUS

TANZANITE ONE MINING ................................. RESPONDENT

RULING

27/8&6/9/2012

SUMARI, J.

The applicant is an erstwhile employee who worked in the respondent’s mining company as a driller. On 25/01/2007 the applicant together with his fellow employees, were terminated from their contract of employment on several grounds amounting to misconduct. Having been aggrieved the applicant knocked the door of this honourable court twice. At the first instance the applicant successfully applied for revision of the decision given by Hon. Raphael Milinga, Arbitrator in 2008 upon which my brother, His Lordship, Mwaipopo, J. (as he the was) quashed the decision of the said arbitrator and ordered retrial of the applicant’s case before another Arbiterator.

The applicant again experienced his second defeat at the CMA; hence this revision whereby he is asking this court to quash the CMA award and order for his reinstatement. During the hearing the applicant appeared in person unrepresented whereas the respondent was represented by Mr. Buhoma, learned counsel.

It is the applicant’s complaint that the Arbitrator erred in reaching the decision because the applicant was charged on different offence other than the one that led to his termination. Also that the commission did not properly evaluate the documentary evidence tendered before it.
Responding to the applicant’s submission, Mr. Buhoma, learned counsel argued that the CMA decision was correct as it based on the evidence available on record. That in CMA Form No. 1 the applicant complained about procedural irregularity that occasioned to his termination but did not complain for the reasons for his termination. The learned counsel was of the view that the applicant was satisfied with the reasons of termination.

Mr. Buhoma criticized the applicant’s argument that the offence that he was charged with was distinct to that led his termination. He was of the view that on 28/08/2006, the respondent wrote the applicant a letter “Exh D1” informing him the charges he was subjected to respond in the disciplinary hearing, that the said hearing was postponed and scheduled on 02/09/2006, which also was not conducted. It was on 25/01/2007 when the applicant was found guilty upon which he was terminated. He was of the view that out of the typing errors the letter of termination shows that the offence was committed on 19/01/2007 the fact which was countered by the applicant during rejoinder. The central issue to be ascertained and determined by this honourable court is whether the Commission for Mediation and Arbitration erred in deciding in favour of the respondent.

The law is very clear that before terminating a person from employment the employer shall notify the employee of the hearing in a reasonable time which shall not be less than 48 hours. This is provided for under Rule 13(3) of Employment and Labour Relations (Code of Good Practice) G.N. No. 42/2007. The respondent neither produced sufficient oral evidence nor written evidence to show that the applicant was duly notified of his case.

According to the record available, the last correspondence between the respondent and applicant over the dispute was on the letter dated 02/09/2006. This letter shows that the disciplinary hearing would be heard on 6/09/2006. Nothing took place from 6/9/2006 till 25/1/2007 when the respondent emerged from nowhere and terminated the applicant’s employment on 25/01/2007 which is about four to five (4 – 5) months from the date the applicant received last notice.

The respondent has failed to show that he conducted a disciplinary hearing before terminating the applicant. This is contrary to Rule 13(12) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42/2007 which provides;
“Employers shall keep records for each employee specifying the nature of any disciplinary transgressions, the action taken by employer and reasons for the actions.”

There is no doubt therefore that the respondent did not conduct the disciplinary hearing, the act which have not only violated the provisions of the law but also violated the fundamental principles of natural justice “Audi alteram partem rule.” The requirement that a party to proceedings must be given the opportunity to state his views is a fundamental principle of natural justice. The true legal position on this is as correctly stated by the Supreme Court of India in Tellis and Others v. Bombay Municipal Corporation and Others [1987] LRC (Const) 351. Speaking through Chreachud, C.J. and the Court said at pp 377:

“The proposition that notice need not be given of a proposed action because here can possibly be no snaser to it, is contrary to the well-recognised understanding of the real import of the rule of hearing. That proposition overlooks that.”

The applicant further complained that he was charged on a different offence other than that led to his termination. On this Mr. Buhoma, learned counsel submitted that the difference was occasioned by typing errors. He cemented that the applicant was charge with the same offence that led to his termination. Let me point out at this juncture that, on a very careful examination I have noted that on 28/08/2006 the applicant and others were issued a letter by the respondent containing the following words “This is to inform you that on Thursday night of 24/08/2006 you were among the employees who allegedly carried out illegal mining contrary to instructions given by your supervisor.” But again on 25/01/2007 the applicant was issued with termination letter titled: TERMINATION OF YOUR SERVICES WITH TANZANITE ONE MINING LIMITED. The kernel of the said letter was as follows:

This is to inform you that your employment with Tanzanite One (hereinafter referred to as “the company”) stands cancelled with effect from January 25th 2007 for the following reasons:

1. That the company has lost faith and trust in your ability to render services to the company as you were part of the crew that was found to be breaking and entering into level 18, a productive area on the night of the 19th January 2007.

2. That the above incident perpetuated by members of your crew has resulted in the following ……
From the above, it is obvious that the respondent terminated the employment of the applicant on the incident that he alleges to have occurred in 19/01/2007 and not what the respondent’s counsel presupposes to be i.e. 24/08/2006. I am so convinced because, PW1, PW2 and PW3 respectively testified that on 22/01/2007 they were all arrested by policemen and released a day after, that is 23/1/2007 and that on 25/1/2007 they were terminated.

From the above premises, the submission of Mr. Buhoma, learned counsel that it was typing error is not correct. It does not bring sense at all that the applicant who was firstly alleged to commit theft on 24/8/2006, after five months is being arrested on 22/1/2007 and terminated on 25/1/2007. The respondent has also failed to adduce evidence that the Disciplinary hearing was made against the applicant. I therefore agree that the Arbitrator grossly erred in deciding in favour of the respondent without taking account that the offences allegedly committed by the applicant were distinct offences.

It is further submitted by Mr. Buhoma, learned counsel for the respondent that the applicant in CMA Form No. 1 was only aggrieved by the procedure and not reasons for termination which I fully agree. Even though, this does not change the position that, CMA arbitrator erred in deciding in favour of the respondent.

From the above premises, I hereby quash and set aside the CMA decision and pursuant to section 40(1) (a) of Employment and labour Relations Act, No. 6 of 2004, I order the applicant to be reinstated and the respondent is subject to pay the applicant his unpaid salaries from the date he was unlawfully terminated to the date of reinstatement.

Ordered accordingly.

A.N.M. Sumari  
JUDGE  
At Arusha  
06/09/2012
ODEKA ASIGO OKEYA v. THE MANAGING DIRECTOR, SIMBA PLASTICS LTD, Civil Appeal No. 115 of 2008, High Court (Labour Division) at Dar es Salaam

BRIEF FACTS
The appellant, Odeka Asigo Okeya, was an employee of the Respondent company from the 16\textsuperscript{th} day of June 2000 at a salary of Tshs. 46,000/=. His services were terminated without notice on the 30\textsuperscript{th} day of November 2005. He was paid a total of Tshs. 311,500/= and thereafter he was not informed anything.

Following the said uncertainty, he decided to refer his matter to the labour officer who, under section 141 of the Employment Act, Cap 366 [R.E 2002], referred the same to the Resident Magistrate’s Court of Dar es Salaam at Kisutu for determination.

A POINT TO NOTE FROM THE CASE
Notwithstanding, the nature contract entered between the employer and employee, be it oral or written, upon termination of the said agreement the employee is entitled to be paid all terminal benefits as per the law.

JUDGEMENT

MIHAYO, J
The Appellant unsuccessfully sued the Respondent in the lower court for various claims emanating from termination of his employment. The case in the lower court had been filed through the labour officer under section 141 of the Employment Act, Cap 366 [R.E 2002].

The facts are short and undisputed. The Appellant was employee of the Respondent from 16/6/2000 at a salary of Tshs. 46,000/=. His services were terminated without notice on 30/11/05. He was paid a total of Tshs. 311,500/= and thereafter he was not informed anything.

In dismissing the suit the lower court said;

"According to the evidence the Plaintiff tells that he was employed orally and on termination he was paid only 311,500/= He did not tell the detail of these payments or purpose therefore (sic). No documentary evidence was shown to prove these payments (sic) and the remaining balance
I do not think the learned resident magistrate was correct. The appellant was being paid monthly and on termination he was paid only Tshs. 311,500/= and told to go. He was not told what the money was for. There was no one from the Respondent to refute this. Although this was an oral contract of service, the appellant worked for close to 5 years and was being paid a monthly salary. What he said in court was not controverted, therefore it has to stand.

On the foregoing I hold that the appellant was an employee of the Respondent. He is therefore entitled to payment of terminal benefits in respect of notice, untaken leave, severance allowance, repatriation and overtime as claimed. This appeal is allowed with costs.

T.B MIHAYO,
JUDGE
Sgnd
19/11/2009
WILFRED MAPUNDA v. K. K SECURITY, Revision No. 44 OF 2011, High Court (Labour Division) at Dar es Salaam

BRIEF FACTS
The Applicant herein made an application before the High Court (Labour Division) seeking to challenge the award of the Commission for Mediation and Arbitration.

POINTS TO NOTE FROM THE CASE

2. Filing and application without citing enabling provisions of the law renders the application incompetent before the court.

JUDGEMENT
This is a notice of application for revision of the Commission for Mediation and Arbitration (CMA) award and proceedings filed under no enabling provisions; and accompanied with a Chamber Application brought only under section 91 (1) (a) of the Employment and Labour Relations Act, 6/2004. The same was drawn gratis by for the applicant by the Legal and Human Rights Centre (Legal Aid Services) and filed in court on 17th March 2011.

May be it is not out at this juncture that hearing of this application was concluded on 16/11/2011 and ruling scheduled for scheduled for 14/2/2012. The same could not be delivered as scheduled due to reasons beyond my control.

At the hearing, the applicant appeared in person while the respondent was represented by Ludovick advocate. Unfortunately this decision is not dependent on the parties’ pleadings and submissions at the hearing but rather on the issue of a material irregularity I noted suo mottu.

The applicant’s notice of application was brought without citing enabling provisions of the law (an empty notice of application); and the Chamber Summons was only made under section 91 (1) (a) of the Employment and Labour Relations Act, no 6/2004.
It is now a trite law of practice that improper or non citation of enabling provision makes the application incompetent before the court, that is, the court is not properly seized with jurisdiction to entertain. This is the position held by the Court of Appeal of Tanzania (CAT). In the case of **Chama cha Walimu Tanzania vs. AG**, Civil Application 151/2008, (a case originating from this court) the CAT emphasized its long held position:-

"... the omission in citing the proper provision of the rule relating to a reference and worse still the error in citing a wrong and inapplicable rule in support of the application is not in our view, a technically falling within the scope and purview of article 107A(2)(e) of the Constitution. It is a matter which goes to the very root of the matter. We reject (the) contention that the error was technical."

The court’s power to revise CMA arbitration awards is provided under section 91(1) of the **Employment and Labour Relations Act**, 6/2004 (the Act,) read together with rule 28 and 24 of the **Labour Court Rules**, GN 106/2007. This is the legal position consistently taken by this court; see among other: - **Said Mohamed & 9 Others v. M/S Mees Ltd**, Revision 9 of 2011 delivered on 25th November 2011 at Morogoro.

Having reasoned as above, I find this application incompetent and is struck off. In cases with similar anomaly, this has in practice held that in the interest of substantive justice, the applicant be given extension of time of 14 days from the date of delivery of the ruling or after the applicant is served with the same to file a proper application. I make a similar order.

**R.M. RWEYEMAMU**  
Sgnd  
28/02/2012
ABDI MAGAMBAZI v. ZOHRANS ENTERPRISES, Revision No. 25 of 2010, High Court (Labour Division) at Dar es Salaam

BRIEF FACTS
The Applicant herein filed an application for extension of time to file Notice of Application out of time. The reasons for his delay were that he was seeking pro bono legal assistance.

POINTS TO NOTE FROM THE CASE
Improper citation of the enabling provisions of the law renders an application incompetent before the court.

RULING
S.C. Moshi, J.

The applicant filed an application for extension of time to file Notice of Application out of time; for the reasons that he delayed to file it in time as he had to seek “Pro bono” legal assistance. The application was preferred under section 91 of Employment and Labour Relations Act, No. 6/2004 and Rules 24(1), (2), (3) and 28(1)(e) of the Labour Court Rules, GN No. 106/2007.

The Respondent objected the application on ground that the enabling provision for extension of time is Rule 56 of the Labour Court Rules, GN 106/2007. Hence the applicant has cited wrong provisions of laws make the application defective. The defect which is not curable. Wrong citation of the enabling provision of the law renders the Court incompetent for being improperly moved.

On the other hand, I decline to side with respondent’s submission that the application is for Revision. It is apparent on the face of record by looking at the Notice of Application and supporting affidavit that the prayers sought is for extension of time to file Notice of Application.

I wherefore, basing on the above reasoning, find that the application is incompetent due to wrong citation of the enabling provisions of the law.

The application is struck out accordingly.

R/A explained.

S.C Moshi
JUDGE
Sgnnd
12/08/2011
JOSEPH HAMISI v. CHINA RAILWAY JIANCHANG ENGINEERING (CAJE) CO, Revision No. 92 of 2008, High Court (Labour Division) at Dar es Salaam

BRIEF FACTS
The Applicant herein was aggrieved by termination of his service. He referred his matter before the Commission for Mediation and Arbitration (CMA). The matter was heard ex parte after the Respondent failed to turn up on the date set for mediation of the dispute.

POINTS TO NOTE FROM THE CASE
Where there is uncertainty on the records on the proceedings of the CMA, the Labour Court is justified to quash the proceedings and the subsequent award thereto where the Court is satisfied the said uncertainty would occasion injustice to the parties.

RULING
This application was filed in this court on 9/6/2008; issues for decision in the matter are best understood in light of the flowing background facts;

1. The applicant/employee’s appeal against the employer’s termination decision was heard ex parte by the Commission for mediation and Arbitration (CMA) after the respondent failed to turn up on the date set for mediation of the dispute. In its ex parte award dated 5/3/2008 (herein the 1st award), the arbitrator decided that the applicant was unfairly terminated and therefore entitled to benefits specified by section 44(1) of the Employment and labour Relations Act, 6/2004 (the Act) which he proceeded to enumerate as;
   - Salary in lieu of notice 3500 x 4 = 14,000/=  
   - Payment for 28 days leave = 98,000/=  
   - Severance pay being 7 days salary x 5 x 3500 = 122,500/=  
   - Total Tshs. 234,500/=  
   - And a certificate of service

2. After the case proceeded concurrently before this court and the CMA. Let me first deal with the process in this Court.

3. Aggrieved by the 1st award although it was procured ex parte; the employee filed an application for its revision in this court on 9/6/2008.
That application was filed out of time. Why? The award was procured on 5/3/2008 and the application for its revision filed on 9/6/2008, about 90 days later, contrary to section 91(1)(a) and (b) of Act which prescribes 6 weeks for filing such an application. No leave was granted by the Court to file the same out of time. I hasten to state that in view of that, this court has no jurisdiction to deal with the application filed out of time and without leave. The same is hereby struck off.

4. Concurrent with the above proceedings, hearing of the dispute was proceeding in the CMA where the employer had applied to have the ex parte decision of 5/3/2008 set aside. That application was granted on 1/9/2008 and the CMA ordered that mediation of the dispute should proceed inter partes. The matter proceeded as I shall soon explain.

Before doing that however, I wish to point out that from the flow of events above, it is apparent that this court and the CMA have concurrent jurisdiction in settlement of a dispute commencing at the CMA. That phenomena arise from the ambiguity in procedure created by provisions of section 86(8) of the Act which states; and I quote:

"Notwithstanding the failure to resolve a dispute within the period stipulated in subsection (4), the mediator shall remain seized with the dispute until the dispute is settled and may convene meetings between the parties to the dispute in order to settle the dispute any at time before or during any strike, lockout, arbitration or adjudication."

It appears to me that the implication of the above provision is that in a dispute unsuccessfully mediated at the CMA, the CMA retains jurisdiction to have it mediated even where the matter is already in this court for revision or even adjudication. It is my opinion that the said provision, in absence of a rule governing procedures for its application, is bound to create confusion. In my reading of the law, I have not come across such a rule.

Fortunately, the decision turns on something else. While perusing the CMA record for purpose of deciding the now struck off application, I noted that there was an anomaly in the second process referred to above. Since this court has general revision powers vested under Rule 28 of the Labour Court Rules, I find it necessary to explain with the noted anomaly.

After an order was made on 1/9/2008 to have the dispute mediated inter parties, the parties appeared a number of times for mediation; finally on 16/10/2008...
the dispute was marked as successfully mediated. The anomaly I have noted is that the CMA record file contains two contradictory documents which make the status of the dispute in the 2nd CMA proceedings unclear.

The 1st document is statutory Form No. 5 dated 16/10/2008: The part on that document asking whether the dispute has been resolved,’ is answered in the positive yet, on the part written mediator’s comments, the words entered are; ‘Parties has (have) agreed that the complaint be referred to arbitrator.’ That certificate is signed by a mediator one Mr. Philipo Mahenge.

But there is a 2nd document titled AGREEMENT TO RESOLVE THE DISPUTE UNDER MEDIATION. The document is not dated; it is signed by both parties and the same mediator. That document indicates that the parties have agreed to resolve the dispute as follows;

“*The employer shall pay the employee (complainant) the sum of Tshs. 200,000/= which includes therein notice, severance pay and leave payment, - such payment have been effect on 30/10/2008. No further claim relating to this matter shall be arose thereto.*”

Clearly from the contents of the two documents above, one cannot reasonably tell whether the dispute between the parties was successfully mediated or not. No wonder even after that said ‘mediated settlement’; the parties continued to attend court on an application in respect of the 1st award while, based on one of the documents above, the dispute had already been settled. It is my impression that something was amiss and the actual status of the dispute between the parties remains unclear, as a result, and I cannot be certain justice was done in the matter.

Due to my said holding, I quash the two issued certificates of mediation or non-mediation above; order the CMA to commence mediation afresh. If any payments had been made pursuant to the above quashed process, the same shall be taken into account when either reaching a final agreement or in the award.

**R.M. RWEYEMAMU**

**JUDGE**

_Signed_

25/2/2011

*Legal Aid Cases and Materials*
JOSEPH PAUL TUKAI v. SECURITY GROUP (T) LTD, Revision No. 291 of 2010, High Court (Labour Division) at Dar es Salaam

BRIEF FACTS
The Applicant herein filed an application for revision before the Labour Court seeking to challenge the decision of the CMA dismissing his application for condonation for a late referral of his dispute before the CMA.

POINTS TO NOTE FROM THE CASE
The law directs that any dispute arising from termination of employment has to be referred to the CMA within 30 days from the date of its happening. Where a complainant does not do so as directed by the law, but still wishes to refer the same to the CMA, he/she has the burden of proving before the CMA that the late referral was beyond his/her control. If the complainant succeeds in convincing the CMA, his lateness would be condoned but where he/she fails, then the complaint shall be dismissed.

RULING,
S.A.N WAMBURA, J
The applicant is seeking revision of the decision of the Commission for Mediation and Arbitrator (CMA) which was delivered on 18/10/2010. CMA dismissed the applicant’s application for condonation. The applicants services with his employer were terminated on 20/02/2010 and he referred the dispute to CMA on 29/07/2010.

The reference of the dispute was accompanied with a condonation form, supported by an affidavit setting reasons for the delay. CMA considered the grounds adduced but found that the applicant had failed to give sufficient reasons to move it to condone a late referral of the dispute, which according to the law it is mandatory to refer the same within 30 days as provided for under Rule 10(1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules GN 64/2007 so dismissed the application.

Being aggrieved the applicant has brought this application under section 91(1) and (2) of the Employment and Labour Relations Act, No. 6/2004 and Rules 24(1), (2), (3) and 28(1)(e) of the Labour Court Rules, 2007. It was submitted by the applicant who appeared in person that he was communicating with the Respondents who promised to pay him but they did not honour their promise.
He thus decided to go to CHODAWU. That was on 08/03/2010 when the 30 days provided for the law to file his complaint at CMA had in fact lapsed. When he did not get any assistance at CHODAWU is when he went to CMA.

Mr. Khadai who represented the respondent alleged that the applicant did not adduce good reasons for the delay at CMA and so its decision cannot be challenged citing the decisions of court in cases of MATAYO LOISHIYE SOKOITAWI vs. INTELLIGENCE SECURICO, Revision No. 30 of 2009 and FABIAN MAKOYE vs. KNIGHT SUPPORT (T) LIMITED, Revision No. 210 of 2010. He prayed that CMA’s award be accordingly upheld.

Now Rule 10(1) of GN states that to refer a dispute to CMA it has to be done within 30 days from the date of termination. If one is late then under Rule 29(4) of the same, one has to adduce clear and concise grounds for condonation.

The issue is whether there was good cause which the arbitrator allegedly ignored. I would not say so. As pointed out earlier the applicant went to CHODAWU to seek assistance 40 days after he was unlawfully terminated. It is not possible that for the 40 days he was still negotiating with the employer who continuously gave him false promises. I would have found this reason to be sufficient had he gone to CHODAWU immediately after being terminated. But did not do so.

As said by the arbitrator one has to account for each day of the delay as was held in the case of DAUDU HAGA vs. JENITHA ABDAN MACHAJU, Civil Reference No. 1/2000 but that has also not been done. That is he did not do so before he went to CHODAWU and after going to CHODAWU where the matter is alleged to have been left pending for some three months.

I find no reason to fault the arbitrator decision as no good reason has been adduced for the said delay. The applicant has adduced reasons but they do not go to show sufficient grounds to move this court to review the arbitrator’s decision. We have to adhere to the time limit set by law and not come to court when one chooses to as was held in the case of Tanzania Fish Processors Ltd vs. Christopher Luhangangula, Civil Appeal No. 161 of 1994. I accordingly dismissed the application.

S.A.N WAMBURA
JUDGE
Sgnd
3/08/2012
JUMA MAKUNDA & THREE OTHERS, Revision No. 256 of 2010, High Court (Labour Division) at Dar es Salaam

BRIEF FACTS
The Applicants herein were challenging their termination on the reason that the same was unlawful. There first attempt at the CMA was unsuccessful. Aggrieved, they filed an application for revision before the Labour Court hence this ruling.

POINTS TO NOTE FROM THE CASE
1. Termination of employment must be fair and lawful. Where it is proved before the CMA of the Labour Court that the same was unfair and unlawful, the Commission or the Court cannot hesitate to term the same as unfair and unlawful and therefore award the complainant/applicant the statutory terminal benefits.

2. It is improper as well as an irregularity for parties to an application to omit to sign a legal document to be filled before the CMA or Labour Court.

RULING

S.A.N WAMBURA, J
The applicants being JUMA MAKUNDA & 3 OTHERS have brought this application under section 91(1) and (2) of the Employment and Labour Relations Act, 2004 (ELRA) as well as Rules 24(1), (2), (3) and 28(1)(e) of the Labour Court Rules, 2007 praying that this court revises and sets aside the award of the Commission for Mediation and Arbitration (CMA) delivered on 23/08/2010. That the respondents NAMANGA BUREAU DE CHANGE LTD be ordered to pay all dues as presented before the Commission. The application was supported by a joint affidavit of the four applications.

Whereas the applicants appeared in person, Mr. Bashaka Advocate appeared for the respondent.

It is alleged by the applicants that there was unlawful terminated because procedures for terminating them were not complied with and thus demanded to be paid their terminal rights including 12 months compensation. The respondents however claim that they terminated the employees after failing to run the business which does not amount to unlawful termination. They are
willing to pay them their terminal benefits but excluding the 12 months salary as compensation. Mr. Bashaka also alleged that though the applicants alleged the application was supported by a joint affidavit only two applicants signed the said affidavit while all the four signed the reply to the counter affidavit. Therefore it should be noted that there are only two applicants. The issue is whether their termination was lawful or not.

I have had the opportunity of going through both the joint affidavit and reply to the counter affidavit and observed that there are only two applicants, that is Majaliwa Omari and Ally Limbetu as they remaining two only had initials instead of signatures on the joint affidavit. I understand that they did so hurriedly to make sure that the application was filed in time, but what is needed in an affidavit is ones signature as signed in their reply to the counter affidavit and not initials. One wonder as to what is the effect of this application as it was the 1st applicant who was representing his colleagues as such I expected him to respond to the issue and he did not meaning that he conceded to the same. Be as such we legally have only two applicants in this matters.

Now as for the merit of the application itself, it is in record that theft occurred at the respondent’s premises and had to close down the business. Police reports and photos of the scene after the theft were tendered in court as Exhibit D1 & D2 respectively. The applicants have alleged that theft occurred near and not at the respondent’s place. That they were not involved nor charged of the said theft. CMA found that the contract of employment had been frustrated and so the termination could be said to be lawful.

Section 37(2) of ELRA provides that termination has to be fair and for a valid reason. Theft of the office premise could be a fair and valid reason.

However, a close look at the photographs reveals that the shop which was robbed was running the business of selling alcohol that is wines and spirits and not dealing with cash which is the business of bureau de change.

I thus agree with the applicants that from the evidence in record theft did not occur at the premises which deals with cash though it could be at the Respondent premises. The applicants were not charged and convicted of the said theft. Thus termination on their part was basically unlawful.

It has also been alleged that the procedure taken to terminate them was not lawful. It is in record that the applicants were negotiating with the respondents
through CHODAWU were being given there months leave without pay (Exhibit D4). Before negotiations, were though they were served with letters of termination of employment on 7/14/2009. I find that as a mutual agreement was not arrived at, as it is evidenced by Exhibit D5, the termination procedures were not adhered to.

As there was unfair termination both substantively and procedurally. The respondent was willing and had paid the first instalment of their terminal benefits. To date the final instalment has not been paid as the applicant filed a complaint. They are willing to pay the remaining instalments. They should be paid all their terminal benefits. That amongst the payment the applicants expected to be paid was 12 months salary for unlawful termination. I also grant the 12 months compensation to the two applicants, whose application is legally before this court. It is so ruled.

S.A.N. WAMBURA
JDGE
Sgnrd
10/08/2012
IGNAS GEWE v. MINT MASTER SECURITY, Revision No.69 of 2010, High Court (Labour Division) at Dar es Salaam,

BRIEF FACTS
The Applicant’s attempt to have his lateness in making a referral of his complaint to the CMA condoned by the CMA was not fruitful. Unsatisfied by the CMA’s refusal to condone his lateness, he sought a revision of the CMA’s decision before the Labour Court.

POINTS TO NOTE FROM THE CASE
The law directs that any dispute arising from termination of employment has to be referred to the CMA within 30 days from the date of its happening. Where a complainant does not do so as directed by the law, but still wishes to refer the same to the CMA, he/she has the burden of proving before the CMA that the late referral was beyond his/her control. If the complainant succeeds in convincing the CMA, his lateness would be condoned but where he/she fails, then the complaint shall be dismissed.

RULING
MOSHI J,

The applicant is seeking revision of the Commission for Mediation and Arbitration (CMA) decision which refused his application for extension of time to file a complaint for unpaid terminal benefits. The applicant termination of employment was effected on 19/02/2008; he preferred the complaint Form No.1 for unpaid benefits to the CMA on 9/9/2008; the complaint was filed together with Form No.7 which is an application form for condonation.

The CMA found that the applicant failed to show good cause for the delay. By then, one and a half year had expired since the cause of action arose. So referring if on that date was contrary to R. 10 (1) and (2) of the Mediation and Arbitration Rules GN No. 64/2007, which provides that:-

(1) “Disputes about the fairness of an employee’s termination employment must be referred to the Commission within thirty from the date of termination or the date that the employer made a decision to terminate or uphold the decision to terminate.

(2) All other disputes must be referred to the Commission sixty days from the date when the dispute arose.”
Now, before me, the same reasons which were advanced before the CMA were reiterated in this court. The reasons were that 1st, he was following up with his employer so he could be paid the terminal benefits, 2ndly he was taking care of his grandmother who by then was sick and later she died.

Considering the CMA record, the applicant never stated that he had to travel to Arusha, never did he talk of the difficulty in obtaining fare for travelling to Arusha neither did he say that they had to go to Musoma Rural for his alleged grandmother’s burial.

I am, therefore of the view that the CMA was justified to hold as it did. I also of the opinion that the facts which were stated before this Court are just an afterthought. Had he really gone through that, the 1st place to explain the ordeal was the CMA which is the first court.

Having said so, I find that the application failed to show good cause for the delay. I thus find that the CMA did correctly find that there was no good cause shown for the delay and therefore the application for condonation was correctly dismissed.

I consequently dismiss the application for lack of merit.

Right of appeal explained.

S.C. Moshi,
JUDGE
Sgnd
18/5/2012
SALOME MUSSA LYAMBA v. K. K SECURITY (T) LTD, Revision No. 278 of 2010, High Court (Labour Division) at Dar es Salaam,

BRIEF FACTS
The Applicant came before our clinic seeking legal assistance with respect to her matter. She was challenging her termination by her employer.

POINTS NOTE FROM THE CASE
1. Reasons for condonation of a late referral of a dispute to the CMA are three fold, viz,
   a. promptness,
   b. valid explanations for the delay, and
   c. lack of negligence.

2. While giving reasons for a late referral, the applicant must account for each day forming part of the time lost.

RULING
S.A.N WAMBURA, J

The applicant one SALOME MUSSA LYAMBA has filed this application under the provisions of section 91(1) and (2) of the Employment and Labour Relations Act, (herein to be referred to as ELRA), Rule 24(1),(2) and (3) as well as Rule 28(1)(e) of the Labour Court Rules, 2007 praying that this court revises and sets aside the decision of the Commission for Mediation and Arbitration (herein referred to as CMA) issued on 11/10/2010 which dismissed her application for condonation. The application is supported by the applicant’s affidavit. The respondents K.K SECURITY (T) LTD filed their counter affidavit in response. Upon the suggestion of the respondents counsel Mr. Ludovik hearing of the matter proceeded by way of written submissions.

It was briefly submitted by the applicant that the arbitrator dismissed her application for condonation while she had adduced strong arguments which were not considered and thus prayed that the application be granted to enable her to file her application out of time.

In his reply Mr. Ludovik challenged the application for reasons that the application did not adduce good reasons for the delay citing the case of PETER FRANCIS MASANJA vs. K.K SECURITY, Rev. No. 92/2010. That the
applicant’s sickness for merely five (5) days could not justify the delay for two hundred and fifty four (254) days. That they arbitrator found that no sufficient grounds were adduced to grant the sought condonation. That it has not been shown that the award was illegally, unfairly and unprocedurally procured and that there is no ruling which needs to be revised. He thus prayed that the application be accordingly dismissed with costs. A rejoinder was not filed. I thank all the parties for their submissions.

Let me start by pointing out that as correctly stated in the respondent submissions, the applicant was supposed to file her complaint at CMA within 30 days from the date of termination as provided for under Rule 10(1) and Rule 11(3) of the Labour Institutions (Mediation and Arbitration) Rules. Rule 31 of the same provides for extension of time by the arbitrator to file the complaint but only where good cause has been adduced for delay. It was therefore not necessary to rely on the Law of Limitation Act, 1971 because under the provisions of section 43(f) and 46 of the same use of the Limitation is ousted as there is a specific time limit set by the Labour Institutions Rules.

Having said so then, it is worth looking into whether the said provisions for condonation were complied with. I would say they were not because the applicant filed both form No. 1 for a complaint and form No. 7 for condonation. And in her affidavit in support of an application for condonation she equally stated reasons for her complaint as well as the delay to file the same. This was wrong. She ought to have applied for condonation and adduce reasons for the same only. If granted leave to file the complainant, then the reasons would accordingly be filed thereto.

The same mistake has been repeated while filing the present application by stating reasons for the delay and review and not why her prayer for condonation ought to have been granted.

Assuming that the arbitrator ignored the complainant file under form No. 1 one then has to look into whether good reasons have been adduced for the delay in applying for condonation. The reasons adduced have been stated above. In the case of CRDB LTD vs. GEORGE KILINDU, Civil Application No. 162 of 2006 three principles were laid down in granting applications for extension of time being promptness, valid explanations for the delay and lack of negligence. I agree with the arbitrator and the respondents counsel that these conditions were not met. The applicant had a valid reason for being sick, but it was only for some time. That the parties were negotiating to reinstate her but she refused
to undertake training. She was also negligent as she could file the complaint while continuing with negotiations, so this can also not be a valid reason. That she had travelled to Mwanza, she could have also filed the same at Mwanza registry where she purports to reside. Most likely this was an after thought and cannot be said to be a valid reason for the delay.

Moreover in the case of DAUDI HAGA vs. JENITHA ABDAN MACHANJU, Civil Reference No. 1 of 2000 the Court held that parties have to account for each day’s delay in showing cause for the delay. This has unfortunately not been done.

I thus find no valid reason in granting this application as it would amount to an abuse of court procedures as was held in the case of TANZANIA FISH PROCESSORS LTD vs. CHRISTOPHER LUHANGALA, Civil Appeal No. 161 of 1994 (unreported) that limitation is there to ensure that a party does not come to court as and when he chooses. In the circumstances I dismiss the application with no orders for costs.

S.A.N WAMBURA
JUDGE
Sgd
7/9/2012
JORAM MOLLEL vs. EVEREST CHENESE, Civil Appeal No. 24 of 2008, High Court of Tanzania at Arusha

BRIEF FACTS
The Applicant herein was aggrieved by the decision of the District Court of Arusha at Arusha delivered by A.A Shakale in Employment Cause No. 28 of 2001. He therefore opted to prefer an appeal against the said decision before the High Court of Tanzania at Arusha, hence this appeal.

POINTS TO NOTE FROM THIS CASE
Section 28 of the Employment Act, 1964 ousted the jurisdiction of the court in cases of summary dismissal, proposed summary dismissals and salary deductions as a disciplinary penalty. However, where there was a triable matter to be determined, notwithstanding the case involved summary dismissal, a court was obliged to entertain the matter before it.

JUDGMENT

IN THE HIGH COURT OF TANZANIA
AT ARUSHA
CIVIL APPEAL NO. 24 OF 2008
(C/F Employment Cause No. 28 of 2001 before the District Court of Arusha at Arusha)

BETWEEN

JORAM MOLLEL .............................................................. APPELLANT

AND

EVEREST CHENESE.................................................. RESPONDENT

Date of last Order: 13/04/2012
Date of Judgment: 12/07/2012

JUDGMENT
A.C. NYERERE, J.
Aggrieved by the Ruling in Employment Cause No. 28 of 2001 before A.A. Shakale, DM in the District Court of Arusha at Arusha, the Appellant herein preferred the present appeal on the following grounds of appeal;
1. That, the trial District Magistrate erred both in law and in fact in holding that the trial District Court had no Jurisdiction to entertain the matter basing on an authenticated wage voucher/master roll.

2. That, the trial Magistrate erred both in law and in fact by failure to take into consideration the period worked by the appellant which would have raised his status that of an employee.

3. That, the trial Magistrate erred both in law and in fact by failure to take into consideration the circumstances of the case for necessary of hearing the matter on merits, instead of resorting to dismissal of the case on a Preliminary Point of law without justifiable cause.

4. That, the trial Magistrate erred both in law and in fact in holding that the appellant deserved to be summarily dismissed with any such proof neither in law nor in fact having been presented the matter in court and without venturing the other avenues of law which gives remedy to the appellant to challenge the said dismissal and secure his rights as provided for by the laws.

In the present appeal, it was agreed for the matter to be disposed of by way of Written Submissions whereas the Legal Aid Unit of the Legal and Human Rights advocated for the appellant with the respondent enjoying the services of Makange Chambers Advocates. Addressing the grounds of appeal, the appellant argued that his matter before the trial court was dismissed without being afforded an opportunity to be heard.

Arguing for Court not to be driven by technical points of law and procedure, the appellant made reference to the case of RAMADHANI NYONI vs. M/S HAULE & COMPANY, ADVOCATES [1996] T.L.R. 71 where the High Court observed:

“.... That procedural rules are intended to serve as the hand maiden of justice and not to deal or frustrate it ......”

Praying formatters to be heard on merits, the appellant cited the case of FREDRICK SELENGE AND ANOTHER vs. AGNES MASELE [1983] T.L.R. 99 where the High Court of Tanzania held that;

“(i) Whenever possible suits should be determined on the merits.”

At last, the appellant prayed for mercy of this Court to hear and grant the prayers prayed and contained in the Petition of Appeal the appeal which again
makes reference to the rights accruing in favour of the appellant as prayed in the plaint.

In rebuttal, the respondent’s learned Counsel submitted that the matter before the trial court was not heard on merits rather ended on legal technicality meaning on Jurisdiction. The respondent’s learned Counsel argued that since the matter has bases on Summary Dismissal without Notice; under such circumstances courts of law lacks Jurisdiction to entertain the same as observed in the case of KITUNDU SISAL ESTATE vs. SINGO MSHUTI & OTHERS, [1970] E.A. 557.

The Respondent’s learned counsel added that the matter in the trial court was dismissed for want of Jurisdiction meaning that the same was not heard on merits unlike the grounds and written submissions advanced by the appellant. Arguing against the issue of seeking mercy of the court by the appellant, the respondent’s learned counsel cited the case of LADORE vs. OLOBAYO [1992] 8 NWLR PT 261 AT PAGE 605 that;

“It should always be borne in mind that a court of law is not a charitable institution, its duty, in civil cases is to render unto everyone according to the proven claim.”

The senior learned Counsel added by citing the observations med by the same court in the same case of LADORE vs. OLOBAYO (supra) that;

“It is trite law that Court is not a Father Christmas and so ought not to go about granting to parties, relief which they have not asked for. A Court is powerless to award to a claimant what he did not claim or grant an unsought relief.”

Ultimately; the respondent’s learned Counsel prayed for the appeal to be dismissed with costs.

After going through the Court records and the respective submissions by the parties therein, this court has the following in disposal of the appeal. In the first place, as rightly submitted and argued by Makange Chambers Advocates, the only ground of appeal fitting the present matter is only the 1st ground which can be determined in hand with the 3rd ground from the reason that the said matter was never heard on merits so to accommodate the other remaining grounds of appeal that is the 2nd and 4th grounds of appeal. Thus, being the case this court
will straightly address the 1st and 3rd grounds of appeal for the immediate above given reason.

Though the appellant raised the issue of Jurisdiction in his Petition of Appeal, yet, the said appellant did not address the same. For that matter, failure to address such an issue amounts into failure to address such an issue amounts into failure to address the appeal as earlier stated that out of the alleged four grounds of appeal, only that of Jurisdiction stands a ground of appeal known in law from all that is on record. But in the interest of justice, this court found it important to address the issue of Jurisdiction albeit not addressed by the appellant.

It has been the general position of the law that summary dismissal, proposed summary dismissal and salary deductions cannot be challenged in a normal civil court. In the case of KLM ROAL DUTHCH AIRLINES vs. JOSE XAVIER FERREIRA [1994] T.L.R. 230 the court of appeal of Tanzania held that;

“(i) Section 28 of the Employment Act, 1964, ousts the jurisdiction of the court in cases of summary dismissal, proposed summary dismissals and salary deductions as a disciplinary penalty; ....”

On the other hand, in the case of DAVID KAMUGISHA MULIBO vs. BUKOP LTD – BUKOBA [1994] T.L.R. 217 the Court of Appeal of Tanzania when determining an issue in which the appellant sued the respondent for wrongful termination of employment whereas at the commencement of the trial the respondent raised a preliminary objection to the effect that the trial court had no jurisdiction because the appellant had been summarily dismissed in which the trial court struck out the case as incompetent in law the bases of the matter having been made on summary dismissal; on appeal, the Court of Appeal of Tanzania in the same case held that

“(iii) As there was a triable issue before the court, i.e. whether or not the appellant was wrongly terminated by the respondent, the suit was in no way incompetent.”

The same Court of Appeal of Tanzania in the case of DAVID KAMUGISHA MULIBO vs. BUKOP LTD – BUKOBA (supra) observed at page 221 that;

“Another observation is that in his concluding remarks Masanche, J said – I order that this case be struck out as incompetent in law. With respect, the suit was in no way incompetent. There was a triable issue i.e. whether or not the appellant/plaintiff was wrongfully terminated by the respondent/defendant from his employment .....”
To this Court, the immediate above underscored amounts into triable issues needing attention of the court. Denying a party to an employment with such an opportunity before a court of law will amount into arbitrary usurp of a weaker party to an agreement as once one is dismissed, then; that marks the end of his claim of right thus leaving payment of such dues at the mercy of the stronger party which does not stand the position both on earth and heaven.

Now, a minor issue that follows is whether the appellant ever challenged the said summary dismissal. From the appellant’s written submission, there is nowhere the same showing the appellant challenging the said termination. Additionally; vide the report from the labour Division filed in the trial court on 26/09/2001 clearly proves the same as hereunder;

“2. That after having terminated verbally, he was not paid his terminal benefits, i.e. notice, arrears of wages, severance allowance, overtime for public and rest days and for normal weekly working hours.

3……………

4. WHEREFORE: The complainant employee is claiming from the said employer as follows’

One month pay in lieu of notice – 22,000/-
Arrears of wages Tshs. 3,000/- @ 12 – 36,000/-
Severance allowance – 13,2000/-
Overtime for Public & Rest days – 214,038/-
Overtime for 1907 hrs – 302,488/-
Interest at 30% for the Total amount of 587,726/-

From the immediate quoted, it becomes clear that the appellant has not in any way attempted to challenge the very dismissal rather, asking for payment of his rights accruing from his employment.

From the above then, this court holds that there were triable issues which the trial court ought to have addressed as above narrated. Further, as rightly submitted by the respondent’s learned Counsel, the matter before the trial court was never heard on merits. Thus, since the said triable issues were not tried by the said trial court, this court being an appellate court to the District Court cannot step into the shoes of the said trial court and adjudicate the same.
The reasons wherefore, the grounds of appeal by the appellant are hereby dismissed. BUT from a different tangle, this court finds that the trial court erred in law and in fact for failure to address the matter on merits as the appellant never challenged the said summary dismissal as above observed. Consequently; this court remits back the file to the trial District Court for the matter to be heard before another trial Magistrate with competent Jurisdiction to try the same.

Since the matter has been in court for over ten (10) years now, the trial court should bear the matter in the speediest time possible in the interest of justice. Being an employment matter, this court makes no order as to costs. Order accordingly.

Sgd; A.C. NYERERE
JUDGE
12/07/2012

Judgement delivered in chambers this 12th day of July, 2012 in the presence of the appellant in person and in the presence of Mr. Njema learned counsel holding brief for Mr. Makange learned counsel for the respondent.

SGd: - A.C. NYERERE
JUDGE
12/07/2012

I hereby certify this to be a true copy of the original.

DISTRICT REGISTRAR
ARUSHA
12/07/2012
3.1 Introduction

(Challenges to land ownership, Land laws applicable, challenges of the laws and recommendations)

The main applicable laws in Tanzania as the land issues are concerned are, the Land act No 4 of 1999 and Land Act No 5 of 1999 followed with the Land Dispute Court Act of No 2 of 2002 which established special land court and the High court Land Division as the current land law and land dispute mechanism applicable in Tanzania.

In Tanzania there are two types of ownership of land recognized by the law under the Land Act No 4. Of 1999 and Land Act No.5 of 1999, customary land tenure and granted land tenure. The major challenges of ownership of land in accordance with the findings and issues commonly come into the attention of the LHRC legal aid clinics are;

i. **Trespass to land.** These have been the most common problem in both rural area and urban area whereby one person trespass into the land of another person and claim to be the lawful owner without justification. Sometimes the people who claim ownership dispose the land to another person and acquire money without having the good title. In other hand trespass to land happen when the true owner of the land abandon or fail to develop the same for the reason which led to the land is issued to another person by the local government without justification or by another person with unlawful intention. The LHRC legal aid clinic in the course of attending clients has noticed most of the land disputes to be disputes emanates from unlawful trespass to land.

ii. **Unlawful eviction.** This is most common when the government is implementing most of the development projects. There a number of cases which are reported at the Legal Aid Clinic whereby the government do evict people from their common residence and demolish their houses without following proper legal procedure of the law. In most cases eviction are made to pave way for road construction, installation of sewage and water system and electrical installation and other economic activities.
iii. **Increase of investment to land.** Tanzania through investment policy has increased the number of investors who are willing to invest in land. The government in the process of allocating land for investors commonly tends to neglect most of the necessary procedure of the law. People are being evicted from their common land without compensation and sometimes compensation is issued but is not sufficient in comparison to the development made in land. In other hand the established investment does not benefit the local people surrounding in their local capacity the reason which most of the time lead to the increased of unresolved disputes. Investment companies and individual investors against small producers in the villages are in the severe land use conflicts due to the loss of oversized hectares of land in the hand of few people leaving the majority without land for cultivation and livestock keeping, Procedural misconduct during land allocation and unfinished promises provided by the investors. This type of the land dispute are so common around the mining area where the big part of land has turned into mining and people are around the are so poor after being evicted from their fertile for agriculture land without compensation.

iv. **Double Allocation.** The procedure of acquiring land in surveyed land is made though operation of the law whereby the land is surveyed and the offer to buy or being allocated with the land is issued depending on the local authority around the land. The challenge arise where the one plot of land is allocated to more than one person the reason which lead to un-endless land disputes.

v. **Luck of countrywide land use plan.** In Tanzania Farmers and livestock keepers are the main users of what is termed as Village Land and General Land. They grow crops and rear animals on the land. As a matter of fact, their economic and social development to a large extent depends on the availability of land. Land scarcity is mainly caused by overpopulation and people not willing to move to new areas where land is not a problem. Past and current land conflicts in Tanzania are caused by the absence of a countrywide land use plan, which indicates clearly the demarcation and utilization of every piece of land. Traditional nomadic pastoralists and agriculturalists are in serious land use conflicts all over the country partly because of alienation of range lands for large scale farming.

vi. **Lack of knowledge (education) among land users about proper land management and judicious utilization.** Major land users include: farmers, livestock keepers, foresters, miners, to mention but a few.
Efforts to forge ahead in economic development based on agriculture must therefore address challenges of land accessibility, and ensure equal opportunity in accessing it by small farmers and big investors. Land laws provide for equal ownership of land which means whoever needs a land should access it and make use of it according to his/her needs without jeopardizing the interests of other users. Unfortunately, the rules are most of the time not adhered to. This is where the problem starts. This normally results to verbal crashes among neighbours, or sporadic tribal fights, and in some cases localized wars across borders.

**Challenges of the Law and Practice**

Legal and Human rights Centre through its Legal Aid Clinics has noted that, the establishment of the land laws in 1999, Land Act number 4 and Village Land Act number 5, paved the way for the creation of the new land dispute resolution organs. These includes the Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court(Land Division), and the Court of Appeal of Tanzania. The challenge is, since 2002 when these organs established and function it is almost 9 years now. The situation in the country on the land use conflicts is highly horrifying as they tend to increase each day involving more land user groups. It is either at certain point the organs have failed in resolving land conflicts or the formation of these organs according to the laws is not properly implemented.

### 3.2 CASES

**KIMEI SAID vs. ROSE MALINGA, Misc. Land Application No. 19 of 2008, High Court of Tanzania (Land Division) at Dar es Salaam**

**BRIEF FACTS**

The Applicant had lodged an application in court asking the court to extend time for leaving for him to make an application for review of the court’s decision delivered on the 2nd day September, 2008; hence this application.

**POINTS TO NOTE FROM THE CASE**

1. It is a procedural irregularity to merge two distinct prayers in one application, especially where one prayer is dependent upon the other. (Omnibus application).

2. It is the Applicant’s duty to properly move the court to grant the prayers sought in an application; failure of which renders the application incompetent before the court.
JUDGMENT

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM
MISC. APPLICATION NO. 19 OF 2008
(From the decision of the District Land and Housing Tribunal or Ilala
District at Ilala in Land Case Appeal No. 75 of 2005)

KIMEI SAID ……………………………………………… APPLICANT

VERSUS

ROSE MALINGA ……………………………………………… REPONDENT

RULING

A.A. Nchimbi, J.

The applicant has filed an application under section 95 and Order XKII rule 1 of the Civil Procedure Code Cap. 33 R.E. 2002. He prays for the following orders:

(i) That the Honourable Court be pleased to extend time for leaving for the applicant to make an application for review of his Lordship’s decision delivered on the 2nd day September, 2008;

(ii) That the applicant has adequate and reasonable grounds for him to make an application for review;

(iii) Other reasons for late application to be adduced in the affidavit attached hereto.

This application was argued orally whereby the applicant decided to adopt what has been deponed in the affidavit filed in support of the application. It is stated in the affidavit that leave to file an application for review for the decision is necessary because the evidence in the ward tribunal was not fully considered. He has been late to file this application for review because he was making consultation with various people on how to handle the matter.

In view of the above, I am bound to dismiss this application on the following grounds.

First of all the applicant has decided to marry two unrelated prayers in one application which is not proper. The first prayer is for extension of time for leave to file an application for review out of time and the second prayer is for review
of the decision of this court delivered on 2nd day of September, 2008. Since the two prayers are distinct from one another differ the merging them into one application is not proper. More so because the second prayer is dependent upon outcome of the first prayer. Clearly the time required by the law as provided under the first schedule, Part III item 3 of the Law of Limitation Act Cap. 89 R.E. 2002 has expired. So the applicant should have filed an application for extension of time first.

Another reason for dismissing this application is that the applicant has pegged the application on order XLII rule 1 and section 95 of the Civil Procedure Code Cap. 33 R.E. 2002. These provisions of the law allow only aggrieved person to file an application for review. There is no proviso for extension of time as prayed for by the applicant in his chamber application. Perhaps he should have sought guidance from other statutes. Under the circumstances, the applicant has failed to properly move this court to entertain his prayer for extension of time to file an application for review because he has not cited any provision of the law to support his application. The proper citation of the law for extension of time has been provided for under section 14 of the Law of Limitation Act Cap. 89 [R.E. 2002]. It has been stated time and again that wrong citation of the provision of the law renders application incompetent. See the case of CHINA HENAN INTERNATIONAL COOPERATION GROUP VS SALVAND K.

RWEGASIRA Civil Reference No. 22 of 2005 Court of Appeal of Tanzania (unreported) whereby the court held; and I quote.

“It is now settled that wrong citation of the provision of the law or rule under which an application is made renders the application incompetent.”

The same position was taken in the a case of CITY BANK TANZANIA LTD VS TAZAMA TELECOMMUNICATION LTD & 4 OTHERS Civil Application No. 64 of 2003; Court of Appeal of Tanzania (Unreported) among other cases. This application cannot be an exception.

Let me also say that there are two main ingredients of an application under Order XLII namely:-

First, discovery of new and important matter or evidence which was not within the applicant’s knowledge or could not be produced by him at the time when the decree was made or order made. Second, some mistake or error apparent on the fare of record.
I am quick to say the applicant has not been able to meet the above two requirements.

For the reasons stated above, the application is dismissed with costs. Since the judgment and decree of this court are appealable, the applicant may wish and indeed, is at liberty to lodge an appeal to the Court of Appeal if limitation of period is on his side.

A.A. Nchimbi  
JUDGE  
3/11/2010

MAZOEA NACHINUKI vs. ELIZABETH JOHN, Land Appeal No. 120 of 2008, High Court of Tanzania (Land Division) at Dar es Salaam

BRIEF FACTS
The Applicant herein was aggrieved by the decision of the District Land and Housing Tribunal of KINONDONI District at KINONDONI in Land Case No. 288 of 2006 and lodged an appeal before the High Court of Tanzania (Land Division) at Dar es Salaam. In her Reply to the Memorandum of Appeal filed by the Appellant, the Respondent filed a notice of preliminary objection; hence this decision.

POINTS TO NOTE FROM THE CASE
1. According to section 38 (2) of the COURTS (LAND DISPUTES SETTLEMENTS) ACT, [2002], it is mandatory for every appeal from the District Land and Housing Tribunal to the High Court (Land Division) to be by way of petition; any other way of referral other than renders the appeal incompetent.

JUDGEMENT
IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM

LAND CASE APPEAL NO. 120 OF 2008  
(From the decision of the District Land and Housing Tribunal of KINONDONI District at KINONDONI in Land Case No. 288 of 2006)
MAZOE NACHINUKI .................................................. APPLICANT

VERSUS

ELIZABETH JOHN..................................................... RESPONDENT

RULING

R.E.S. Mziray

By notice contained in the reply to the memorandum of Appeal filed by the respondent, she intimated that on the first day of hearing the appeal she will raise a preliminary objection on point of law and shall pray for the appeal be dismissed with costs on ground that the memorandum of appeal is misconceived and incompetent.

In support of her contention, the Respondent in her written submission argued that as this is the second appeal, it ought to have been brought under section 38(2) of the Land Disputes Courts Act, 2002 which mandated a petition of appeal instead of memorandum of appeal. The Respondent supported her argument by citing the case of Omary Dando Vs. ashura Juma Dando – Misc. Land Appeal No. 76 of 2007, High Court of Tanzania, Land Division, Dar es Salaam (Unreported). The Respondent went on to argue other matters which goes to the root of the appeal, on which I think if I entertain them it will be as if the court is dealing with the merits of the appeal. I will therefore confine myself to the point of law raised.

In reply, the Appellant objected to the point of law raised. He went further to raise some arguments which touch the merits of the appeal. In fact, he submitted as if he was arguing the grounds of appeal raised in his “memorandum of appeal. If I entertain such arguments, it will be a misdirection on my part. I will therefore confine myself to the argument that he is objecting the point of law raised.

The preliminary point of law raised is based on the point that a Memorandum of Appeal is filed instead of Petition of Appeal taking into consideration that the appeal emanated from the Ward Tribunal and this is a second appeal.

The governing provision of law is section 38(1) of the Land Court Disputes Act, 2002 which reads;

“Any party, who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or
revisional jurisdiction, may within sixty days after the date of the
decision or order, appeal to the High Court (Land Division).”

Basically this section deals with appeals of matters originating from the Ward
Tribunal. Under the provisions of sub section (2) it clearly states that the appeal
shall be by way of petition this is mandatory. Any appeal brought therefore in
other mode than by way of a petition cannot be entertained by the court. The
decision of Omary Dando cited above is very precise on this point and I have
no reasons whatsoever to depart from this sound decision.
As the appeal is not brought by way of a petition, it is therefore incompetently
before the court. Accordingly I struck out this appeal with costs. There is liberty
to restore.

R.E.S. Mziray
JUDGE
Right of appeal explained.
R.E.S. Mziray
JUDGE
27/11/2009

MAZOEA NACHINUKI vs. ELIZABETH JOHN, Misc. Land Appeal No.
176 of 2009, High Court of Tanzania (Land Division) at Dar es Salaam

BRIEF FACTS
This appeal was lodged on 1/12/2009 against the decision of the District Land
and Housing Tribunal for Kinondoni District delivered on 26/5/2007. The
judgment was certified on 31/7/2007. The Respondent herein filed a notice
of preliminary objection to the effect that the same was filed out of time and
without leave of the court.

POINTS TO NOTE FROM THE CASE
1. According to section 38 (1) of the COURTS (LAND DISPUTES
SETTLEMENTS) ACT, 2002, every appeal to the High Court (Land
Division) from the District Land and Housing Tribunal has to be filed
within 60 days.
2. Without leave of the court, every appeal to filed out of time shall not be
entertained.
RULING

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM

MISC. LAND APPEAL NO. 176 OF 2009  
(From the Decision of the District Land and Housing Tribunal of  
Kinondoni District at Kinondoni in Land Appeal No. 288 of 2008 and  
Original Ward Tribunal of ... Ward in application No. .... Of 2009

MAZOEA NACHINUKU ....................................... APPELLANT

VERSUS

ELIZABETH JOHN ......................................... RESPONDENT

RULING

A.A. Nchimbi, J.

This appeal was lodged on 1/12/2009 against the decision of the District Land and Housing Tribunal for Kinondoni District delivered on 26/5/2007. The judgment was certified on 31/7/2007.

There is no explanation why the appeal was lodged on 1/12/2009 and this is the concern raised by the Respondent by way of a preliminary point of objection that the appeal is time barred.

I quite agree that the appeal is barred by time. I, however note that the appeal was originally filed in the court on 23/10/2010. On realizing that the appeal originated in matter from the Ward Tribunal but was brought by way of Memorandum of Appeal the Respondent raised a preliminary point of objection which was ordered sustained by the court. This court held as follows:-

“As the appeal is not brought by way of a petition, it is therefore incompetently before the court.

Accordingly I struck out this appeal with costs. There is liberty to restore.”

The restoring of the appeal on 1/12/2009 did not validate it either although the appellant was not given specific period within which to exercise his liberty to file it. The reason is this. The decision appealed against was delivered way back on
26/5/2007. It was on a first appeal from the Ward Tribunal of Mwananyamala. The grounds in the petition of appeal reflect this fact.

The limitation period on a second appeal is governed by the provisions of S. 38(1) of the Land Dispute Court Act [Cap. 216 R.E. 2002]. The section stipulates:

“38(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High court ….

Provided that the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.”

Clearly it cannot be said the appeal was within the 60 days when he filed the appeal on 1/12/2009 counting from the date of judgment on 26/5/2007. Even if it were said the appeal was in respect of the ruling of the District Land and Housing Tribunal delivered on 18/9/2008 on an application for execution, the lapse of the statutory time cannot be found to be in favour of the appellant without any explanation. In my view the appellant should have sought for extension of time to file the appeal.

For the foregoing reasons, I sustain the Respondents preliminary point of objection that this appeal is time barred and it is consequently, dismissed with costs.

A.A. Nchimbi
JUDGE

ALLEX L. YAMBI vs. FARAJI K. NCHIMBI, Misc. Land Appeal No. 106 2011, High Court of Tanzania (Land Division) at Dar es Salaam

BRIEF FACTS
The Respondent unsuccessfully sued the Appellant before the Kunduchi Ward Tribunal. Dissatisfied with the decision of the trial tribunal, he appealed before the District Land and Housing Tribunal of Kinondoni, and his appeal was allowed. The Appellant was not satisfied with the appellate tribunal’s decision
and therefore through assistance of his counsel, Mr. Cleopas Manyungu, he filed an appeal before the High Court of Tanzania (Land Division).

Before the appeal could be determined on merits, the court moved itself *suo moto* to determined whether or not the appeal is properly before it; hence the ruling bellow.

**POINTS TO NOTE FROM THE CASE**

1. Every appeal to the High Court (Land Division), from the District Land and Housing Tribunal, has to be filled within 60 days from the date of judgement. In the event the appellant wishes to make a late referral, the same must be made with the leave of the court upon adducing of sufficient evidence.


3. For appeals in matters originating from Ward Tribunals, the filing process is complete when an appeal is filed at the District Land and Housing Tribunal upon payment of the requisite fees. Attachment of copies of such as decree and judgments is a condition precedent in instituting appeals originating from the District Land and Housing Tribunals, and not those originating from Ward Tribunals.

**JUDGMENT**

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPEAL NO. 106A OF 2011**

(Appeal from the Decision of the District Land and Housing Tribunal of Kinondoni District at Kinondoni in Land Case Appeal No. 87 of 2010)

ALEX L. YAMBI .................................................. APPLICANT

VERSUS

FARAJI K. NCHIMBI ........................................... RESPONDENT

RULING

MGETTA, J.
When this appeal was called on for hearing on 27th September, 2012, the respondent appeared. Neither the appellant nor his Advocate, Mr. Cleopas Manyungu, the learned advocate appeared with notice. I adjourned the matter in order to have sufficient time to satisfy myself with some legal issue(s).

I, *Suo Moto*, took time to very carefully go through the entire record of this appeal and have to ask myself one pertinent question; is the present appeal properly before me? As I have, on a number of occasions stated in other cases of the similar nature, to answer this question, I have to go to what the law provides.

First and foremost, this is a second appeal. The matter started at the Ward Tribunal of Kunduchi (henceforth the trial tribunal), where the present respondent, Faraji K. Nchimbi, was a complainant. Aggrieved by the decision of the trial tribunal, Faraji K. Nchimbi appealed to the District Land and Housing Tribunal of Kinondoni (henceforth the district tribunal) which on 20th May, 2011 allowed his appeal. Aggrieved by the District Tribunal’s decision, through a legal service of Mr. Manyangu, the appellant, Alex L. Nyambi preferred this appeal to this Court by way of filing a petition of appeal on the 1st November, 2011 as per exchequer receipt No. 44579893 dated 1st November, 2011.

According to section 38(1) of the Land Disputes Courts Act, No. 2 of 2002 (henceforth the Act of 2002), an appeal against the decision of any District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, lies to this court within sixty (60) days after the date of the decision. However, according to the proviso to section 38(1) of the Act of 2002 (supra), if the intended appellant feels that he would not be able to file petition of appeal within the prescribed period of sixty (60) days or if he is late to file it within sixty (60) days, he/she is allowed to seek extension of time from this court to file petition of appeal outside the prescribed period of sixty (60) days by showing good and sufficient cause. This was not done by the appellant and or his advocate. As it is the appellant filed his petition of appeal in the district tribunal as law requirement, on 1st November, 2011, after the expiry of 163 days from the date the decision was delivered by the district tribunal. I am of the settled view that the time begun to run from 20th May, 2011 when the decision was passed by the district tribunal. Sixty days expired on 19th July, 2011. So when the appellant filed his petition of appeal on 1st November, 2001, he was already late by 103 days. According to the proviso to section 38(1) of the Act of 2002 (supra), what the appellant ought to have done before the expiry of sixty (60) days has already expired without filing petition of appeal, what he ought...
to have done is not to file petition of appeal, but rather to apply for extension of
time by showing good and sufficient cause as to why he was late.

A very important legal position to always bear in mind is that according to the
provisions of section 52(2) of the Act of 2002 (supra), the Law of Limitation
Act does not apply where the appeal brought before this court originates from
a Ward Tribunal. Subsection (2) of section 52, reads:

“(2) The Law of Limitation Act 1971 shall apply to proceedings in the District
Land and Housing Tribunal and the High Court in the exercise of their respective
original jurisdiction; and not in the exercise of their respective appellate or
revisional jurisdictions.” (Bold Supplied)

Now, since the Law of Limitation Act does not apply when this court is exercising
its appellate jurisdiction in land disputes, the provision of section 19(2) of the
Law of Limitation Act, 1971 regarding computation of time cannot successfully
be invoked. As the law stands in my view, for appeals in matters originating
from Ward Tribunals, the filing process is complete when the petition of appeal
is filed at the District Land and Housing Tribunal upon payment of the requisite
fees. Attachment of copies of such as decree and judgements is a condition
precedent in instituting appeals originating from the District Land and Housing
Tribunals, and not those originating from Ward Tribunals.

For the foregoing reasons, I find that the present appeal is not properly before
me as it was filed after the expiry of sixty (60) days prescribed by the law. The
same is accordingly struck out with costs.
It is so ordered.

J.S. MGETTA
JUDGE
2/10/2012
COURT
This ruling is delivered today this 2nd October, 2012 in the presence of both parties.

J.S. MGETTA
JUDGE
2/10/2012

SALUM MBWERA vs. CURL SIMON NKYA, Misc. Land Appeal No. 116 of 2010, High Court of Tanzania (Land Division) at Dar es Salaam

BRIEF FACTS
The Appellant herein was sued by the Respondent before the Goba Ward Tribunal. The dispute was that the Appellant had trespassed upon the land belonging to the Respondent who bought the same from the late Ngonyani and cultivated part of it and built a house thereon. The decision of Ward Tribunal was in favor of Respondent; on the evidence that, the Respondent bought the said land from the late Ngonyani, and it follows therefore he was the lawful owner of the disputed plot.

The Appellant was aggrieved by the said decision. Before lodging his appeal he found himself time barred and therefore he filed an application for extension of time within which to appeal out of time before the District Land and Housing Tribunal for Kinondoni, the application of which was dismissed. Aggrieved, he has filed this Appeal before the High Court of Tanzania (Land Division).

POINTS TO NOTE FROM THE CASE
1. For a party to be granted leave to appeal out of time, good and sufficient course has to be shown by the applicant.

JUDGMENT

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPEAL NO. 116 OF 2010
SALUM MBWELA .................................................. APPELLANT

VERSUS

CURL SIMON NKYA ............................................. RESPONDENT

JUDGMENT

MUTUNGI, J.

This matter commenced in the Ward Tribunal of Goba. Before that Tribunal, the Respondent lodged his complaint that the Appellant had trespassed upon the land belonging to the Respondent who bought the same from the late Ngonyani and cultivating part of it and built a house therein. The decision of Ward Tribunal was in favour of Respondent; on the evidence that, the Respondent bought the said land from the late Ngonyani, and it follows therefore he was the lawful owner of the disputed plot.

The Appellant was aggrieved by the said decision. Before lodging his appeal he found himself time barred and therefore he filed an application for extension of time within which the appeal out of time.

The said application was dismissed a decision which aggrieved the appellant hence he has filed four grounds of appeal namely:-

1) That the trial chairman erred by dismissing the application for extension of time in law.
2) That the chairman erred in law by dismissing the application for filing out a time because the leave which was granted by Kaale did not limit or ascertain the time limit for filing.
3) That the chairman erred in his decision by relying on technicalities which caused the Appellant to be brushed aside and not heard on merit.
4) That the chairman erred in law by dismissing the application without being heard which caused injustice to the appellant.

Therefore he prays for the following:-

i. The appeal be upheld with costs;
ii. The court to nullify the District Land and Housing Tribunal’s decision before Mzava;
iii. Costs of this appeal;
iv. Any other relief as deemed fit by this court.
At the hearing, the Applicant was represented by Mr. Msumi learned counsel while the Respondent defended himself.

Mr. Msumi learned counsel argued that the appeal originated from the Ward Tribunal and it revolved around a dispute over a piece of land which was being used by the family of Salum Mbwela as their property. It is used as a grave yard of the said family.

The learned counsel proceeded to submit that, the Respondent alleged that he bought the said piece of land from other people and not the Appellant. At the Ward Tribunal the Appellant was dissatisfied by its decision and appealed to the District Land and Housing Tribunal. The learned counsel submitted that the Appellant failed to get a copy of judgment on time and as a result he prayed for leave to file out of time and the application was granted.

Mr. Msumi went further by submitting that the matter was fixed before Mzava who dismissed the same. It is on the above basis that his client has now decided to appeal to this court.

In respect of the first ground, Mr. Msumi submitted that on 10/2/2010 Chairman Kaale had granted leave for the Appellant to file his application of extension of time so by dismissing the same Mzava was going contrary to the order granted by the same tribunal.

Coming to the second ground, the learned counsel submitted that the Chairman erred because the leave granted by Kaale did not limit or ascertain the time limit for filing, so the dismissal order was null and void.

Skipping to the third ground, it is Mr. Msumi submission that the Chairman relied on technicalities which caused the Applicant to be brushed aside and not heard on merit. The Learned Counsel contended that the need of hearing a case on merits and avoiding technicalities was elaborated in the case of D.T. DOBIE (T) LTD vs. FANTOM (1985) of Court of Appeal No. 131 (Unreported).

Mr. Msumi learned counsel submitted that the above case established a principle which is to be found in the Constitution which gives directions to the court to pay due respect to substantial justice and the same to avoid technicalities.

On the last ground the learned counsel submitted that Mzava erred in dismissing the application without being heard which has resulted into injustice on the part of the Appellant.
In reply to the submission made by learned counsel for the appellant Respondent replied that, the disputed land did not belong to the Appellant’s family. They have their grave yard which has no dispute.

Regarding the copy of judgment respondent submitted that, there was no delay. He is the one who requested for the same so it was Appellant’s negligence. Responding on the first ground, Respondent submitted that the Chairman was right in dismissing the application as the Appellant was out of time. Leave was granted on 10/2/2011. The appellant filed the application on 13/5/2011, 93 days after the leave which was granted. It is Respondent’s contention that it is obvious the Appellant was negligent. Respondent went further by submitting that even if the appellant was not given a time limit, the law lays a burden on him to file his application within 21 days or 45 days the time set for an appeal. Furthermore, it is Respondent’s submission that the Chairman did not error in dismissing the application filed as the case was properly adjudicated upon as per the proceedings.

Respondent further maintained that the Chairman was right in dismissing the application as it is clear the Appellant was negligent and so he prayed that the appeal be dismissed with costs.

In rejoinder, Mr. Msumi learned counsel submitted that in respect of the issue of the grave yard, he asked the court to re-call witnesses to get a clear picture on this aspect.

As regards the issue of leave, he maintained that it was granted by Kaale and not Mava so Mzava over looked the leave granted and wrongly dismissed the filed application.

He further submitted that at the District Land and Housing Tribunal his client had represented himself and is an old man, so it is not wise for the court to dwell on technicalities for a situation where a lay man is involved without being heard.

He still insisted that this appeal be upheld with costs.

Upon carefully digesting the submissions made by Mr. Msumi learned counsel as well as the submission by Respondent, I am of the view that the entire appeal hanged on the following issue which need to be resolved.

*Whether the Chairman erred in law by dismissing, the application for extension of time.*
I have gone through the decision of the District Land and Housing Tribunal before Mzava, and a page 3 paragraph four of the decision of Chairman it states that, I quote;

“… this is because on 10/2/2010 the Applicant withdrawn his appeal which was filed out of time without leave of the court and he was granted leave to file application for extension of time to file out of time but to show that he is not serious and he employees delay tactics in this matter, the applicant stayed for more than 90 days without filing this application until on 13/5/2010 when he filed it.”

Therefore as noted from the above paragraph of the decision of the District Tribunal I do find that the decision exhausted very clearly that leave was granted, but the Appellant chose to file the application after 90 days.

Now the question is whether the leave granted by Kaale Chairperson had a time limit or did not ascertain the time limit to file the application as alleged by the appellant’s counsel.

I find it difficult to follow the line of reasoning adopted by the Appellant’s learned counsel that leave granted had no limit or ascertained time limit to file the same.

The position of law is well provided under Part III item 21 of the Law of Limitation Act, Cap. 89 R.E. 2002, that time limit for filing an application is 60 days. As per item 21 Part III of the Cap 89 R.E. 2002 which provides:-

“Application under the Civil Procedure Code, the Magistrate Court Act or other written law for which no period of limitation is provided this Act or any other written law is …. 60 days”.

I find no substance in the justification submitted by learned counsel due to the fact that the appellant slept on his right for 93 days contrary to item 21 Part III of the Law of Limitation Act.

The decision of the District Land and Housing Tribunal was sound and proper and I do not find any error needed to be corrected by this court on that decision. The justification in regard to the fact that Appellant is a layman as well as an old man no doubt bears no weight. 30 days over and above the statutory limit had elapsed and without justification from the Appellant. The Appellant’s counsel
relied on mere assertions that the appellant was an old man but did not proceed to show proof of the alleged old age. As the court did not have the opportunity to physically see the appellant cannot rely on the word of the learned counsel. In the upshot the appeal is found to have no merit, and is hereby dismissed with costs.

B.R. MUTUNGI
JUDGE
29/3/2012

Read this day of 29/3/2012 in presence of the respondent and is absence of appellant dully notified.

B.R. MUTUNGI
JUDGE
29/3/2011

IGNATIO DILLIWA vs. HASHIM HAMIS, Misc. Land Appeal No. 115 of 2009, High Court of Tanzania (Land Division) at Dar es Salaam

BRIEF FACTS
The Appellant herein, IGNATIO DILLIWA, was a resident of Bunju Ward within Kinondoni District in Dar es Salaam region. He had a dispute over a piece of land with one HASHIM HAMIS. The dispute was that he had bought a piece of land from one ABASI RAMADHANI while HASHIM HAMIS claimed to have bought the same piece of land from SEFU MATIBWA.

He referred the dispute to Bunju Ward Tribunal for deliberation and he worn. HASHIM HAMIS was not satisfied with the trial tribunal’s decision and he preferred and appeal to the District Land and Housing Tribunal for Kinondoni at Kinondoni, but he lost again. He appealed to the High Court of Tanzania at Dar es Salaam, hence this appeal.

POINTS TO NOTE FROM THE CASE
The appellate court may in rare circumstances interfere with the trial court findings of facts. It may do so in instance where the trial court had omitted to consider or had misconstrued some material evidence or had acted on a wrong principle or had erred in its approach to evaluate evidence.
JUDGMENT

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPEAL NO 115/2009
(from the decision of Land and Housing Tribunal of Kinondoni District
in appeal no 83 of 2005 and original ward of Bunju in application no
26/2005)

IGNATIO DILLIWA .................................................. APPELLANT

VERSUS

HASHIM HAMI..................................................... RESPONDENT

JUDGMENT

A.F. NGWALA, J.

The Appellant is dissatisfied with the decision of the Kinondoni District Land and Housing Tribunal. He has raised four grounds of appeal as follows;

1. That the land chairman erred in law and facts in not considering that the appellant is the lawful owner of the land in dispute.

2. That, the land chairman erred in law and in facts in declaring that the land in dispute belongs to the respondent.

3. That the land tribunal chairman erred in law and in facts in entertaining the contradictory evidence of the respondent which lack credibility.

4. That, the land trial tribunal erred in law and in facts in not considering that the appellant was the bonafide purchaser of the land in dispute.

The disputed plot is in Boko, Dar es Salaam; the suit originates from the Bunju Ward Tribunal where the appellant successfully sued the respondent for trespass.

The appeal is basically on matters of facts. There was no certainty as who was the lawful owner of the land in dispute. It is clear from the tribunal’s records, that the suit is concerned with the boundary of plots belonging to the parties to this suit.

The facts of the case simply stated are that the appellant bought the land in dispute from one Abas Ramathan. The respondent on his side bought the land
from Seif Mtibwa. The records show that the disputed plot passed hands from various people before it reached the parties in this suit.

The trial Ward Tribunal had carefully examined the evidence of the parties. The Ward Tribunal made a finding that; the applicant (appellant) had a good title to the plot. The appellate tribunal reversed the appeal on the ground that the appellant (the respondent in the appellate tribunal) had failed to prove his case. The trial Ward Tribunal had analyzed and evaluated the evidence and found it was corroborated. The appellate Tribunal failed to honour the findings of the appellant Tribunals saying that it had to call more witnesses. It did not consider that, the trial tribunal had a total of eight witnesses; each party had called four witnesses in testimony.

In my considered opinion, the appellant Tribunal erred in reversing the trial tribunal’s decision and declaring the respondent herein the rightful owner of the disputed plot. The appellate tribunal had no reason for justification to reverse the decision of the trial Tribunal without having new findings. This is in accordance with to several High Court decisions amongst many, like the holding of the Moshi, J. (as he then was) in Materu Leison and J. Foya versus R. Sospeter (1998) T L R 102 where he held that;

"The appellate court may in rare circumstances interfere with the trial court findings of facts. It may do so in instance where the trial court had omitted to consider or had misconstrued some material evidence or had acted on a wrong principle or had erred in its approach to evaluate evidence”

It is my findings therefore the appellate Tribunals decision was not based on evaluated evidence or discovered new facts. The trial tribunals decision was based on the material facts before it and in accordance with the principle of balance of probabilities (preponderance of evidence), rightly as required in civil litigations. In the end results, the four grounds of appeal has merit. The decision of the District Land and Housing Tribunal is set aside, and the decision of the Ward Tribunal is restored.

Accordingly appeal is allowed with costs.

A.F. NGALA
JUDGE
09/11/2011
AUGUSTINA NYIMBO vs. ROBERT NYIMBO, Misc. Land Appeal No. 48 of 2010, High Court of Tanzania at Dar es Salaam

BRIEF FACTS
The Appellant is the Respondent’s uncle. After the death of the Respondent’s mother the Appellant was appointed an administrator of the deceased’s estates, the late Eraswida Nyimbo, vide Probate and Administration Cause No. 60 of 1992 at Magomeni Primary Court.

The Respondent and his sister, one Jane Nyimbo, were still very young at the time their mother passed away. So it is the Appellant who brought them up. They started claiming for their rights when they attained the age of majority and their uncle claiming that his deceased sister left everything to him.

POINTS TO NOTE FROM THE CASE
An administrator of the estates does not have ownership over the estates he is administering. He holds the same in trust for the beneficiaries.

JUDGMENT

IN THE HIGH COURT OF TANZANIA (LAND DIVISION)
AT DAR ES SALAAM
MISC; LAND APPEAL NO; 48 OF 2010
(From the decision of the District Land and Housing Tribunal of Kinondoni District at Magomeni, in land appeal no: 12 of 2009 and original Ward Tribunal at Mburahati)

AUGUSTINA NYIMBO ........................................ APPELLANT

VERSUS

ROBERT NYIMBO............................................ RESPONDENT
JUDGMENT

R. E. S. MZIRAY, J.

The Respondent in this appeal lodged a complaint at Ward Tribunal of Mburahati, where it was decided in her favour. The Appellant was aggrieved hence he appealed to the District Land and Housing Tribunal of Kinondoni at Magoment where he lost again. This is now a second appeal where the appellant appealed on three grounds namely that;

1. That the first appellant tribunal failed into error of the tribunal when it ordered the transfer of ownership of the property in plot no. 2176 to the Respondent merely because forty corrugated iron sheets donated by the Respondent’s mother covered that house;

2. That the suit property standing on the plot no 2176 was never the subject of the probate and administration case no 60 of 1992 before the Magomeni Primary Court;

3. That the interest of the justice, the justice of the case would have been met if all beneficiaries including the Respondent to the estate of the late Hereswida is cover the suit premises;

4. Briefly, what the Appellant is all about is that the Appellant be declared the owner of the premises that is, plot no. 2176.

Before going into the merit of the case, let me reproduce the facts that transferred hence institution of the complaint at the Ward Tribunal. The Appellant is the uncle of the Respondent. After the death of the Respondent’s mother, the Appellant was appointed an administrator of the deceased estate late Hereswida Nyimbo, vide probate and administration cause no. 60 of 1992 at Magomeni Primary Court. The Respondent and his sister, one Jane Nyimbo, were still very young when their mother passed away so it is the appellant who brought them up. After attaining the age of majority the deceased’s children started claiming their mothers properties but the uncle alleged that the properties belongs to him because his sister left everything to him and that he is the one who raised the children; further to that he is an administrator of estate. It is from this argument that the respondent decided to file a complaint before the Ward Tribunal of Mburahati. Both parties argued the appeal by way of oral submission.

In support of the grounds of appeal the appellant argued that, he prays for the court to deliver judgment in his favour relying on the grounds of appeal raised in his petition of appeal.
Relying to the appellant’s submission the respondent submitted that he prays for the court to go through the record and dismiss this appeal with costs.

Having gone through the entire record of this case from the Ward Tribunal were it originated, my argument will base on the following issues;

1. Whether the disputed land/premises were the properties of the deceased one Hereswida Nyimbo;
2. Whether the appellant was appointed to the administrator of the estate of the late Hereswida Nyimbo;
3. Whether being appointed administrator of the estate entitles the administrator the owner of the deceased estate.

On the first issue, the evidence and the testimonies given by the witnesses at the Ward Tribunal makes this court believe undoubtedly that the suit land was the property of the respondents mother the late Heriswide Nyimbo, it seems that the deceased had good relationship with her brother Augustino Nyimbo (appellant) that is why he trusted him and trusted him take care of her property. But that does not mean that she gave him her property to own while knowing that she had children.

On the second issue, it is on record that the appellant one Augustino Nyimbo was appointed as administrator of the estate of the late Hereswida Nyimbo on 28th July 1992.

On the third issue, the mere fact that a person is appointed as administrator of the estate does not make that person the owner of the estate of the deceased. The records shows that, in the letter of administration granted to the appellant, the persons who are entitled to the division of the estate of the deceased Heraswida Nyimbo are her children;
1. Jane Nyimbo;
2. Robert Nyimbo.

Section 36 of the Probate and Administration of Estates Act, Cap. 352 R.E. 2002 provides that, where a minor would be but for his minority be entitled to probate letters of administration with or without the will annexed may subject to the provision of subsection one of the section 22 be granted to guardian of the person and the property of the minor, or to such person as the court think fit, limited until the minor comes of age and obtain a grant to himself.
(2) Where there two or more minors executors or persons so entitled any grant made under subsection (1) of this section shall be limited until on or other of them shall obtain a grant.”

In the instance case it is the respondent or his sister who were entitled to be granted the probate letters but since they were still minors it was proper for their uncle to be granted the same as their guardian. Now that the children have attained the age of majority, they are entitled to be granted and obtain their properties back.

The wise assessors Mr. Morris and Mrs Helen Joseph in their opinions advised that the appeal be dismissed and the decision of the lower tribunal be upheld. I agree with them.

Having said all that, I find this appeal to have no merit and hereby uphold the decision of the lower tribunals.

Appeal dismissed with costs.

R.E.S. MWIRAY
JUDGE
17/4/2012

Right of appeal explained.

R.E.S. MWIRAY
JUDGE
17/4/2012

ZAINABU ZIHIMBE vs. AMINA JUMA, Land Appeal No. 153 of 2008, High of Tanzania (Land Division), at Dar es Salaam

BRIEF FACTS
The dispute in this matter relates to a house. The Appellant successfully sued the Respondent before the Kipawa Ward Tribunal, within Ilala District. Aggrieved by the said decision, the Respondent challenged the Ward Tribunal’s decision before the Ilala District Land and Housing Tribunal. The appellate tribunal decided the appeal in the Respondent’s favour. The Appellant was dissatisfied with the decision and sought to challenge the same before the High Court of Tanzania (Land Division); hence this appeal.
During this second appeal, parties were heard and the Court was preparing to deliver a decision. However, in the course of writing the judgement, it came to the attention of the Court that the Appeal contained an anomaly which had to be addressed. The Court moved itself *sou moto* and wrote a ruling to that effect; hence this ruling.

**POINTS TO NOTE FROM THE CASE**

From the provisions of section 38 of the COURTS (LAND DISPUTES SETTLEMENTS) ACT, [2002], four things are certain about appeals from District and Housing Tribunals to the High Court (Land Division),

a. A petition of appeal must be lodged within sixty days after the date of the decision or order;

b. An appeal must be by way of petition;

c. A petition of appeal must be filed in the District Land and Housing Tribunal from which the decision or order was given;

d. A petition of appeal together with the records from the Ward Tribunal and the District Land and Housing Tribunal has to be dispatched to the High Court by the later tribunal.

**RULING**

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO 153 OF 2008**

(From the decision of the District Land and Housing Tribunal of Ilala District at Ilala in Land case no 77 of 2008)

**ZAINABU ZIHIMBE.................................................. APPELLANT**

**VERSUS**

**AMINA JUMA .............................................. RESPONDENT**
RULING

A.A. NCHIMBI, JUDGE

This appeal stems from a matter which had been preferred in the Ward Tribunal of Kipawa Ward. It relates to a house. The Ward Tribunal decided in favour of the appellant a decision which was turned down by the District Land and Housing Tribunal of Ilala in Land Appeal No. 77/2008. This is, therefore, a second appeal.

In the course of writing a judgment, I discovered one anomaly which must be dealt with at the outset. The appeal had been registered as Land Appeal No: 153/2008. It was filed in this court on 11/12/2008 as confirmed by the exchequer receipt no. 33658529. The appeal is lodged by way of petition of appeal.

In this context my attention is drawn to the provision of section 38(2) and (3) of the Land Disputes Courts Acts (Cap 216 RE 2002) which spell out as follows:-

(2) Every appeal to the High Court (Land Division) shall be by way of petition and shall be filed to the District Land and Housing Tribunals from the decision, or order of which the appeal is brought.

(3) Upon receipt of the petition under this section, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the records of the proceedings in the Ward Tribunal and in the District Land and Housing Tribunal to the High Court (Land Division).

Section 38 above governs appeals of the matter which originate from the Ward Tribunal. It requires three things. First, under section 38(1) of the Land Disputes Courts Act (Cap. 216 R.E. 2002) the appeal must be lodged within sixty days after the date of the decision or order. Secondly, the appeal must be by way of petition. Thirdly, the appeal must be filed in the District Land and Housing Tribunal from which the decision or order was given (S. 38 (2); Fourthly, the appeal together with the records from the Ward Tribunal and the District Land and Housing Tribunal has to be dispatched to the High Court by the later tribunal ( s 38 (3)).

As pointed out this appeal was filed in this court. It is against the law. It has been preferred by way of petition while it is registered as land appeal. It is, likewise, against the law. This being the second appeal it should have been registered as
miscellaneous land appeal. And for an appeal which originate from the District Land and Housing Tribunal in the exercise of its original jurisdiction it is to be filed by way of memorandum of appeal.

The anomaly pointed above vitiates this appeal. It is not competently before this court. Consequently, it is ordered, struck out with costs.

A.A. NCHIMBI
JUDGE

SAUDA RASHID vs. AZIZA RASHID, Misc. Land Appeal No. 1 of 2011, High Court (Land Division) at Dar es Salaam

BRIEF FACTS
The Appellant was the Respondent in the proceeding before Sandali Ward Tribunal and Aziza Said was the Complainant. The Appellant and the Respondent are neighbours having bought the two pieces of land from one, Salma Saidi Nongwa. Aziza Saidi had complained that the Appellant had trespassed into her land by building a pit latrine.

Sauda Rashidi, being dissatisfied with the decision of the trial tribunal lodged an appeal before the District land and Housing Tribunal for Temeke at Temeke. The appellate tribunal quashed the trial tribunal’s decision. Dissatisfied with the decision of the District land and Housing Tribunal for Temeke, Aziza Saidi preferred an appeal to the High Court (Land Division) challenging the decision of the appellate tribunal, hence this appeal.

POINTS TO NOTE FROM THE CASE
When an appellate body decides to overturn the decision of a lower court/tribunal, the said decision should be supported by justifiable reasons.

JUDGMENT
IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO 1 OF 2011
SAUDA RASHID ................................................................. APPELLANT

VERSUS

AZIZA RASHID ................................................................. RESPONDENT

JUDGMENT

LATIFA MANSOOR, J.

The appellant was the respondent in the proceeding before Sandali Ward Tribunal and Aziza Said was the complainant. Aziza Saidi had complained that, the appellant had trespassed into her land by building a pit latrine. She did not however give measurement of the exact area which has been trespassed. The appellant and the respondent are neighbours having bought the two pieces of land from a person known as Salma Saidi Nongwa. Salma Saidi Nongwa, had first sold the piece of land to the appellant. The sale agreement which is dated 26/09/2004, which form part of the record before the Sandali Ward Tribunal had stated that the land sold to the appellant is a garden containing mipapai, mobahaz, mihogo, etc. The agreement did not state the exact measurement or the size of the land sold to the appellant. Again on 24/07/2008, Salma Said Nongwa sold a piece of land to the respondent, this land is a different land sole to the appellant; the sale agreement which is on record states that, the land sold to the respond contains contains mihogo and pera (guava) tree. Again this sale agreement did not give exact measurement of the land sold to the respondent. The Sandali Ward Tribunal had visited the locus and cuo and examined witnesses, and the Ward Tribunal had condemned the seller of this piece of land for causing the confusion for not showing the buyers the exact boundaries of the land she sold to each of them. The Ward Tribunal had made the finding that the mperq (guava) tree be the boundary between the two lands.

The respondent herein was not happy with the decision of Sandali Ward Tribunal, she appealed to the District Land and Housing Tribunal of Temeke the Tribunal where the decision of Sandali Ward Tribunal was over turned and the small piece of land where the guava tree is located was declared to be owned by the respondent.

The petition of appeal contained four grounds of appeal, however during submission grounds (c) and (d) where dropped and ground (a) and (b) were
argued together. The submissions by the appellant were that, the District Tribunal erred in basing its decision solely on the evidence given by Salma Saidi Nongwa, the seller of the piece of land. She submitted that, the Ward Tribunal had the opportunity of hearing and examining the testimony of this witness and had concluded that this witness was not a credible witness as she gave a contradicting evidence and that, her interest in the matter was to sell the land and get the money. Dr. Lamwai who was representing the appellant in this appeal went ahead and submitted that the District Tribunal being the first appellate court had jurisdiction to review the evidence presented before the Ward Tribunal, but it was wrong to over turn the Ward Tribunals decision and especially on the credibility of this witness. To support this argument he cited the case of *Japan International Cooperation Agency vs. Khaki Complex Ltd*, Civil Appeal no. 107/2004 and the case of *Dinkerrai Ramkrishnani Apandya vs. R.* (1957) EA 336, and the case of *Peters vs. Sunday Post Limited* (158) EA 424. In all these cases it was decided that when the appellate court reviews the evidence presented before the trial court, the jurisdiction should be exercised with caution, and when over turning the decision of the trial courts, it must give reasons for doing so. He submitted that, the chairman in District Tribunal did not give any reasons to support his findings.

In reply the respondent had submitted that the chairman of the District Tribunal properly evaluated the evidence presented before the trial tribunal, and the District Tribunal had also visited the *locus in quo* and had ascertained the area of dispute and when overturning the finding of the Ward Tribunal it gave the reasons for its findings. She further submitted that the chairman of the District Tribunal did not rely solely on the evidence of the seller of the two pieces of land but it had also taken into consideration the testimonies of the neighbours of the disputed land when visited the *locus on quo* and have also examined the sale agreements presented before the Ward Tribunal and before it.

I find no error carried out by the chairman of the District Land and Housing Tribunal in reaching to its decision and that he reached to his decision after due and proper evaluation of the evidence and reached a decision which was supported by the evidence. The chairman of the District Tribunal gave reasons for overturning the decision of the trial tribunal. He was right when he considered the evidence of the seller, and that her evidence carried more weight as she is the one who sold the pieces of land to the appellant as well as to the respondent and she knew the boundaries. The sale agreement also supports the testimony of the seller that the *mpera* (guava) is located in the land of the respondent. In the sale agreement for the appellant there was no mention of the guava tree.
The documentary evidence tendered before the Ward Tribunal as well as before the appellate tribunal strongly confirmed the respondent’s case that the land in dispute is part of her land. I find no error committed by the first appellate tribunal in its decision and its findings, hence this appeal must fail.

I therefore, uphold and confirm the decision of the chairman of District Land and Housing Tribunal for Temeke.

Appeal dismissed with costs.

LARIFA MANSOOR, J.
14 SEPTEMBER, 2012

DEOGRATIOUS BONIVENTURE vs. GAYA JUMANNE, Land Appeal No. 149 of 2009, High Court of Tanzania (Land Division) at Dar es Salaam

BRIEF FACTS
The appellant herein unsuccessfully sued the Respondent before the District Land and Housing Tribunal for Kinondoni at Magomeni. The facts of the case are that the Appellant, Deogratias Bonaventura, bought a piece of land from one Gaya Jumanne in 1998, the Respondent. The said piece of land was 40 to 40 paces.

The Appellant developed the land and in 2006 the Respondent invaded his land. It is from this invasion that the Appellant decided to go to the District Land and Housing Tribunal for determination. His attempt to challenge the invasion was unsuccessful in the trial tribunal and he decided to prefer an appeal to before the High Court (Land Division).

POINTS TO NOTE FROM THE CASE

When a property is obtained through fraud, title does not pass.

JUDGEMENT

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO. 149 OF 2009
DEOGRATIOUS BONIVENTURE ........................................APPEALLANT

VERSUS

GAYA JUMMANNE.........................................................RESPONDENT

JUDGEMENT

R.E. MZIRAY, J

This is an appeal against ruling and order of The District land and Housing Tribunal of Kinondoni at Magomeni in land Application No. 211/2007 which was delivered on 17th Sempember, 2009. In the Trial Tribunal the Appellant had successfully sued the respondent for a plot located at plot No. 629 block G Kinondoni Municipality. The application was dismissed for the reasons that the Applicant obtained the disputed land through fraud.

Aggrieved by the decision she is now appealing to this court. She has raised two grounds of appeal:

1. That, the Hon. Chairman erred in law and fact for ruling out that the appellant cheated to obtain an offer and certificate of occupancy of the land in dispute without considering other evidence which led lawful owner of the said land;

2. That, the Hon; Chairman erred in law and fact for failure to consider the fact that the respondent is the vendor of the land in dispute to the appellant.

Basically the Appellant is pleading that she be declared the rightful owner of the suit land.

Before going to the merit of this appeal I will first reduce brief facts which led to this appeal. The Appellant purchase lands in dispute from one Gaya Jumanne in 1998 the respondent being the vendor of the said plot which was 40 to 40 paces. The appellant developed the land. In the year 2006 the respondent evaded the appellants land. It is from that evasion that the appellant decided to file an application before the District land and Housing Tribunal of Kinondoni at Magomeni. The trial Tribunal decided in favour of the respondent on the reasons that the Appellant obtained the disputed Land through fraud thus he had no lawful claims. It is from that decision that this appeal is brought.
Both parties obtained to argue the appeal by way of written submission. On the first ground of appeal the appellant submitted that the Certificate of Occupancy and the Offer could never be obtained if she is not a legal owner. He further submitted that he obtained the ownership the day the responded decided to dispose the said land to him. The Appellant also submitted that on the hearing he was not given a chance to tender his documentary evidence to prove his ownership.

The Respondent on the other hand submitted that she gave the appellant the disputed land out of love without being paid any single cent. The respondent further submitted that the Appellant has no any further evidence to substantiate his allegation and could not produce any evidence before the honourable chair man to support his claims.

The respondent went on to say that the oral and documentary evidence she tendered in court portrayed she is the legal owner of the said land. She finally submitted that the honourable chairman was very right as he considered all evidence tendered in court and findings after visiting the suit premise to reach to his right decision.

I have gone through the record of this appeal from where it originates and submissions made by both parties on appeal. I find that the first ground of appeal heavily depends on the weight of evidence and this court being an appellant court is the court of records it cannot interfere with the evidence of the trial tribunal. In circumstance therefore I find the first ground of appeal to have no merits and hereby dismiss the same.

On the second ground of appeal the appellant submitted that the seller of the land was the Respondent herself and she decided to sell the land to him has according to the agreement. The appellant further submit that the respondent was there when the survey was made and she was aware that the appellant was recognized by the National Housing Cooperation as the Legal owner of the Land.

The Respondent on the hand submitted that she was not the vendor has she neither sold the disputed land to the appellant nor entered into the agreement to dispose the disputed piece of land to him.
Having gone through submission of both parties on the second ground of appeal again I found it to have no merit has it has shown on the record that the appellant fail to prove through evidence that he is the rightful owner of the disputed plot.

I have gone through the record of this case and submission of both parties and in my view I find that the honourable chairman of the District land and Housing tribunal was right to decide that the appellant obtained the disputed land through fraud.

For these reasons I find that this appeal is devoid of any merit therefore the appeal be and is hereby dismissed with costs.

R.S. Mziray, J.
10/05/2011

Right of appeal explained.

R.S. Mziray, J.
10/05/2011
OTHER CIVIL CASES GENERALLY

4.1 Introduction

What are civil cases?

Civil law systems, which trace their roots to ancient Rome, are governed by doctrines developed and compiled by legal scholars. Legislators and administrators in civil law countries use these doctrines to fashion a code by which all legal controversies are decided. These are all cases other than criminal cases; different from criminal cases which are charges pursued by prosecutors for violations of criminal statutes. Civil cases are those cases involving disputes between people/individuals regarding the legal duties and responsibilities they owe each other and are not attracted penal penalties in defaults, these include contracts, Tort, Insurance, Banking, judicial review, etc.

Types of civil cases

There are number of civil cases but few of them can be elaborated as follows:

(a) Tort Cases

This type of cases arises from the breach of a duty primarily fixed by the law; this duty is towards persons generally and its breach is redressible by an action of unliquidated damages. Thus, tortuous duties exist by the virtue of the law itself and are not dependent upon the agreement of consent of the persons subjected to them. Such as duty not to trespass, not to slander, for breach of which tortuous liability imposed. The breach of such a duty gives rise to a remedial duty for example a duty to make redress and this is always owed to a specific person or persons whatever the source of the liability.

(b) Contract Cases

A contract is a legally binding agreement made between two or more parties with consent. Thus, a party’s failure to fulfil an end of the bargain under a contract is known as a “breach” of the contract. Depending on the specifics of

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26 http://criminal.findlaw.com/ 26/05/2014
27 Jolowics, J.A, Winfield And Jolowics on Tort,(1971) Sweet And Maxwell pg 11
the contract, a breach can occur when a party fails to perform on time, does not perform in accordance with the terms of the agreement, or does not perform at all. Accordingly, a breach of contract will usually be categorized as either “material” or “immaterial” for purposes of determining the appropriate legal solution or “remedy” for the breach. Contract cases arises when a party or parties breaches a contract one or both of the parties may wish to have the contract enforced on its terms, or may try to recover for any financial harm caused by the alleged breach. When an individual or business breaches a contract, the other party to the agreement is entitled to relief (or a “remedy”) under the law. The main remedies for a breach of contract are (1) damages, (2) specific performance, (3) or cancellation and restitution.

(C) Insurance
A contract whereby, for specified consideration, one party undertakes to compensate the other for a loss relating to a particular subject as a result of the occurrence of designated hazards.

The normal activities of daily life carry the risk of enormous financial loss. Many persons are willing to pay a small amount for protection against certain risks because that protection provides valuable peace of mind. The term insurance describes any measure taken for protection against risks. When insurance takes the form of a contract in an insurance policy, it is subject to requirements in statutes, Administrative Agency regulations, and court decisions.

CHALLENGES BEING FACED IN CIVIL CASES
The following are some of the common challenges frequent faced in civil proceedings

(a) Time limit
This has becoming a major challenge due to the following issues, firstly, ignorance of legal knowledge to parties of civil suit and therefore most of the time they lately presented their issues to the responsible bodies and secondly, is legal services costs, this has been a huge challenges as the government has not dedicated to curter these kind of cost and private legal counsels charge higher so most of people waste time while stressed to find affordable legal assistance;

(b) Technicalities
In civil proceedings there a lot of technical procedures legally imposed which if not adheres may render the civil application disqualification; moreover these technical terms and procedures are only known to lawyers; however, due to frequent amendments even lawyers are most of the time captures within technical hurdles.

(c) Time consuming
The experience shown that most of civil cases are taking long in courts before their disposition, this is contributed both by time limitation which involves number of administrative procedures at the first place to have a valid application and technicalities which mostly hinder speedy disposition of cases; some of these technical issues attracted a lot of preliminary objections

4.2 CASES

MWINYI KAMBI MOHAMED vs. RUKIA WILLIAM, Misc. Civil Application No. 53 of 2011, High Court of Tanzania at Arusha

BRIEF FACTS
The Applicant, Mwinyi Kambi Mohamed, aggrieved by the decision of Hon. Justice A.C. Nyerere delivered on 7th day of June, 2011, in the High Court of Tanzania at Arusha in (PC) Civil Appeal No. 37 of 2010, filed an application seeking leave to appeal to the Court of Appeal of Tanzania against the said decision.

POINT TO NOTE FROM THE CASE
Before a matter originating from the Primary is admitted as an appeal to the Court of Appeal, the High Court has to certify that indeed there is a point of law to be determined by the Court of Appeal.

JUDGEMENT

IN THE HIGH COURT OF TANZANIA
AT ARUSHA
MISC CIVIL APPL. NO. 53 OF 2011
(Originating from H/ Court Civil Appeal No. 37/2010 Arusha, D/Court 42010 & a
Arusha urban primary Court matrimonial, cause No. 82/2009)
The applicant, Mwinyi Kambi Mohamed filed this application for orders that-
(a) Leave be granted for him to appeal to the Court of Appeal of Tanzania against the whole decision/judgement of Hon. Justice A.C. Nyerere delivered on 7th day of June, 2011, in the High Court of Tanzania at Arusha in (PC) Civil Appeal No. 37 of 2010.
(b) Costs of this application

This application is duly supported by the affidavit of the applicant Mwinyi Kambi Mohamed. The chamber summons was served upon the respondent, Rukia William, who instantly lodged her counter affidavit in respect of the law. The applicant again filed in court his reply to the said counter affidavit.

This application was ordered to be argued by way of written submission; the appellant repeated what he said in the lower courts and in this court when the respective appeal was being heard by the learned Judge, Honourable A.C. Nyerere, on the ownership of the house in dispute. The respondent also maintained that the house in issue is matrimonial property as per the holding of the Court of appeal of Tanzania in the case of Bi. Hawa Mohamed v. Ally Seif (1983) T.L.R 32. In the rejoinder, the applicant repeated stating that the house belongs to her mother in law, one Halima Mwinyi Kambi. The applicant submits that ownership of the said house is the point of law he prefers to be considered by the Court of appeal of Tanzania, and hence this applicant.

Thereupon, I carefully read the judgment of the learned lady Justice, Hon. A.C. Nyerere, Judge, and noted that she extensively answered the issue of ownership over what the two lower courts had propounded on the same aspect. There’s nothing to be further considered by the Court of Appeal. I do not detect any scintilla of light to revel that there’s a point of law to be certified for consideration by the highest court on the land. This application is devoid of merits in all fours.
In the upshot, and given what I have stated herein above, I do dismiss this application in its entirety with costs.

SGD
K.M.M. SAMBO
JUDGE
27/5/2012

Delivered in chambers this 29th day of May, 2012, in the presence of both parties in person.

SGD
K.M.M. SAMBO
JUDGE
29/5/2012

MWINYI KAMBI MOHAMED vs. RUKIA WILLIAM, Civil Appeal No. 37 of 2010, High Court of Tanzania at Arusha

BRIEF FACTS
The Appellant, MWINYI KAMBI MOHAMED, being aggrieved by the decision of the RM, Hon. H. Mnguruta in Civil Appeal No. 4 of 2010, dated 13/10/2010 appealed against the said decision, hence this appeal.

POINTS TO NOTE FROM THE CASE
1. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie upon on any other person;
2. Since the welfare of the family is an essential component of the economic activities of a family man or woman, it is proper to consider contribution by a spouse to the welfare of the family as contribution to the acquisition to the acquisition of matrimonial or family assets.

JUDGEMENT

IN THE HIGH COURT OF TANZANIA
AT ARUSHA
P.C CIVIL APPEAL NO. 37 OF 2010
(Originating from District Court of Arusha, Civil Appeal No.4 of 2010)
MWINYI KAMBI MOHAMED......................................................APPELLANT

VERSUS

RUKIA WILLIAM.................................................................RESPONDENT

Date of last order: 15/4/2011
Date of Judgement: 07/06/2011

JUDGEMENT

Before: A.C. NYERERE, J.

The Appellant MWINYI KAMBI MOHAMED being aggrieved by the decision of the RM, Hon. H. Mnguruta in Civil Appeal No. 4 f 2010, dated 13/10/2010 appealed against the whole decision on the following grounds:

1. That the Resident Magistrate erred in law and fact holding that the house is matrimonial property, while there is no any evidence to the same;

2. That the resident magistrate erred in law and fact in considering that one Halima Mwinyi Kambi is the lawful owner of the House;

3. That the resident magistrate erred in law and fact in considering that the respondent herein never challenged the evidence of Halima Mwinyi Kambi;

4. That the resident Magistrate erred in law and fact in the decision which contracting;

5. That the Resident magistrate erred in law and fact in awarding the respondent herein to be paid Tshs. 6,000/= as bride and Tshs. 180,000/= as Eda costs while according to the claim filed there was no any claim filed for Eda an bride price;

6. That the Resident magistrate erred in law and fact in not considering that the Appellant sold one of the house on instruction of the owner of the same who is Halima Mwinyi Kambi and build the same on instruction of the owner to wit Halima Mwinyi Kambi;

7. That the resident Magistrate erred in law and fact in holding that the appellant sold house because the appellant is the lawful owner, while there is no evidence in record which shows that the same is property of the appellant;

8. That the Resident Magistrate erred in law and fact in not considering the evidence of one Halima Mwinyi Kambi and the evidence of the Appellant herein regarding the ownership of the house.
WHEREFORE the appellant prays to this Honourable Court the appeal be allowed with costs.

Both parties to this appeal appeared in person and agreed to argue the appeal by away of written submissions, the prayer which was conceded the court.

During the submission the appellant abandoned the 4th ground of appeal, and argued jointly the 1st, 2nd and 3rd ground of appeal, and the 6th, 7th and 8th ground of appeal were submitted jointly. In submitting the 1st, 2nd and the 3rd grounds of appeal the appellant contented that the house in question is not a matrimonial property. The house in question is the legal property of one Halima Mwinyi Kambi who appeared and testified before the trial court, and that evidence was not challenged by the Respondent herein. Thus, the trial court erred in law in allocating the house in question to be matrimonial property.

Submitting on the 5th ground of appeal contended that according to the evidence in the trial court, there is no any claim regarding the bride price and Eda, thus the trial court erred in law and fact in awarding the respondent to be paid Tshs. 6,000/= as bride price and Tshs. 180,000/= as Eda, the costs which were not prayed for.

With regards to 6th, 7th and the 8th grounds of appeal, the appellant adopted the submission of 1st, 2nd and 3rd grounds of appeal; in addition the appellant submitted that according to the trial court record there is no any evidence which shows that the appellant is the owner of the house in question. He therefore prayed this court to allow the appeal with costs.

In rebuttal the respondent submitted that although Halima Mwinyi Kambi alleged that the house belongs to her, she never proved up to this moment to that effect. She further added that according to Section 110 of the Law of Evidence Act, Chapter 6 R.E 2002 it was her legal duty to prove that the house belongs to her. It is her submission further that the house which the witnesses of the appellant alleges to be hers in the property which if there is any dispute on it should have been challenged to the land tribunals which have been vested with jurisdictions to try and hear complaints concerning the land. She further added that if Halima MWINYI KAMBI has any interest then should have taken legal steps to claim her rights, but so far has done nothing.

It is the submission of the respondent that since the trial court held that the marriage has broken down irreparably and granted the divorce, then the respondent was
entailed to be given one house as she did efforts to contribute acquiring of those five houses in the period of twenty one years (21) of marriage. To support her contention she cited the case of Bi. Hawa Mohamed vs. Ally Sefu 1983 TLR 32 CA to support the contention that the division of matrimonial property is an equitable right to the woman due to her contributions made during their marriage.

With regards to the award of Tshs. 180,000/= as costs for Eda and Tshs. 6,000/= as bride price, the respondent submitted that the appellant being a Muslim understands what the requirements are the divorce of a wife. As the letter from BAKWATA instructed the respondent to get the Tshs. 180,000/= for Eda, it is the appellant who supposed to provide that amount as the Islamic law instructs. The respondent therefore prayed this court to dismiss this appeal with costs and upheld the decisions of the lower courts.

In rejoinder the appellant reiterates what was submitted in the submission in chief, and instead that the house in question is among the estate of the deceased Halima Mwinyi Kambi who passed away on 6/4/2011.

Having gone through the submission of both parties and upon a perusal of the lower court records, the main issue before me now is whether the house in question is a matrimonial property. It is not disputed in this case that the appellant and the respondent were husband and wife before the issue of divorce. They contracted an Islamic marriage on 14/4/1988 and the divorce was issued on 2009. This means that they lived together as husband and wife for the period of twenty one (21) years.

The appellant claims that all the time of their marriage they were living in a family house and they did not manage to acquire any matrimonial property. The house in which they were living belonged to one HALIMA MWINYI KAMBI (the mother of the appellant) hence it was not subject to division as a matrimonial property. After going through the records of the lower courts I have failed to come across with any evidence to prove that the house in which the appellant and the respondent were staying during their marriage belongs to HALIMA MWINYI KAMBI. Neither the appellant nor HALIMA MWINYI KAMBI produced a title deed to prove that the house belongs to Halima. It is provided under Section 112 of the law of Evidence Act [Cap 6 R.E 2002] that;

“the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie upon any other person”
That being the position of the law, then since the appellant claims that the said is not a matrimonial property as it belongs to HALIMA and the said HALIMA appeared before the court to state the same, then the duty to prove the alleged facts lied on them. Short of that the court cannot relied on mere allegation without proof to the fact that the house was not a matrimonial property.

Basing on the fact that the appellant and the respondent were dully married and lived together in the said house for the whole period of 21 years without any interruption as to the ownership of that house, then this court presumed that house to be a matrimonial property. Although the respondent did not adduce evidence to prove to what she contributed towards the acquisition of that house, her performance of domestic duties for the whole period of 21 years amounts to contribution towards the acquisition of that house. This position is supported by the case of Bibie Mauridi vs. Mohamed Ibrahimu 1989 TLR 162 (H.C). Further the case of Bi. Hawa Mohamed vs. Ally Sefu 1983 TLR 32 (CA) stated that;

“Since the welfare of the family is an essential component of the economic activities of a family man or woman it is proper to consider contribution by a spouse to the welfare of the family as contribution to the acquisition to the acquisition of matrimonial or family assets;

The “joint efforts and ‘work’ towards the acquisition of the asserts’ have to be construed as embracing the domestic “efforts” or work of husband and wife.”

Having stated so, I am satisfied that the said house is matrimonial property hence subject to division. Since it is stated that the parties during their marriage managed to acquire five (5) houses, then I uphold the decision of the lower courts that the matrimonial house be awarded to the respondent in respect to the awarding of Tshs. 6,000/= as bride price and Tshs. 180,000/= as Eda costs, I wish to state that although the said costs were no prayed for by the respondent, the court has discretion to award any other costs which it deem fir and just to grant. On top of that the said costs were granted to the respondent according to Islamic religious as the letter from BAKWATA indicated.

For the circumstances and basing on the reasons as afore stated, I therefore dismiss this appeal with costs and hereby uphold the decision of the lower courts.
Order accordingly.

(SGD)
A.C. Nyerere
JUDGE
07/06/2011

Judgement delivered in Chamber this 7th day of June, 2011 in the presence of the Appellant in person ad in the presence of the respondent in person.

(SGD)
A.C. Nyerere
JUDGE
07/06/2011

I hereby certify this to be a true copy of the original.

SGD
DISTRICT REGISTRAR
ARUSHA
07/06/11

JULIUS SILAS KIMUTO vs. ERIKA SALAS KIMUTO, Misc. Appeal No. 18 of 2011, High Court of Tanzania at Arusha

BRIEF FACTS
The Appellant herein successfully applied for letters of administration of the estates of the late Silas Kimuto before the Maji ya Chai Primary Court in Probate and Administration of Estate Cause No. 9 of 2010. The Respondent, through Civil Appeal No. 72 of 2010 before the District Court of Arusha at Arusha, challenged Appellant’s appointment as an administrator. The District Court decided in the Respondent’s favour.

Dissatisfied with the decision of the District Court, the Appellant decided to appeal before the High Court of Tanzania at Arusha, hence this appeal.

POINTS TO NOTE FROM THE CASE
Where there is disagreement as to who should administer the estates of the deceased in any case, it is the duty of the court of law to intervene and direct the parties to act in a manner that would not cause future problems.
JUDGMENT

IN THE HIGH COURT OF TANZANIA
AT ARUSHA
CIVIL APPEAL NO. 18 OF 2011
(C/F the District Court of Arusha at Arusha in Civil Appeal Case No. 72 of 2010 originating from Maji ya Chai Primary Court in Probate and Administration of Estate Cause No. 9 of 2010)

BETWEEN

JULIUS s/o SILAS KIMUTO ........................................ APPELLANT

VERSUS

EKARI w/o SILAS KIMUTO ................................. RESPONDENT

Date of Last Order: 18/11/2011
Date of Judgment: 14/02/2012

JUDGMENT

A.C. NYERERE, J.

Being aggrieved by the Judgment delivered by A. Kirekiano, RM; the appellant herein one Julius s/o Silas Kimuto preferred a Petition of Appeal on the following three (3) grounds of appeal;

1. That, the learned 1st appellate Court Magistrate erred in law and in fact for failure to consider that the appellant was properly appointed by the trial court to be an administrator of the estate of the late Silas Kimuto;

2. That, the learned 1st appellate Court Magistrate erred in law and in fact in disregarding the evidence adduced before the trial court;

3. That, the learned 1st appellate Court Magistrate erred in law and in fact for failure to analyze the whole evidence on record.

When the matter came for hearing, parties agreed to argue the appeal by way of written submissions whereas the appellant was ordered to file his written submission by 08/12/2011, the respondent to a reply by 29/12/2011 and a rejoinder by the appellant (if any) by 06/01/2012. Both parties in this appeal appeared in person.

Arguing for the appeal, the appellant submitted that he was duly appointed by the trial Court to be an administrator of the estate of the deceased Silas Kimuto
a declaration that was subsequent to a proposal met by their clan members, in a duly composed clan/family meeting. The appellant contended that; it was after an advertisement was made in a newspaper when his step mother appeared and raise an objection in court against the appellant being appointed an administrator, an objection that was rejected by the trial court.

The appellant further submitted that the Court records reveals that the late Silas Kimuto passed away in 2008 whereas the said death was confirmed by a report dated 22/02/2010 from Maroro Ward within Meru District. The appellant argued that it was the respondent herein who purposely refused to attend the said clan meeting.

Further, the appellant submitted that the appellant is the 1st son to the deceased whereas according to the Wameru customs, he is a legal heir to the deceased’s estate a fact that was discredited by the 1st appellate court magistrate. He further argued that it is a basic principle in a judgment that before reaching a decision, a court has to consider and demonstrate how it considered all the evidence on record failure of which amounts into a serious misdirection.

The issue of analyzing the whole evidence let the appellant referring this Court to the case of ELIAS STEPHEN VS. R [1992] 313. Further reference was made to the case of AMIR MOHAMED vs. R [1994] T.L.R. 138 where the Court of Appeal of Tanzania held that;

“Every magistrate or judge has got his or her own style of composing a judgment, and what vitally matters is that the essential ingredients should be there, and there include critical analysis of both the prosecution and the defence.”

In rebuttal, the respondent submitted that the letters of administration of the deceased’s estate were revoked after the 1st appellate court discovered that he appellant was unfit to administer the same and as the appellant had/has personal benefits in administering the deceased’s estate. The respondent argued as to how fit can be for a person who knows nothing concerning the deceased and or his estate (let aside that he does not know even his brothers and sisters in the inheritance lineage) be capable of administering the deceased’s estate.

The respondent further argued that there is no evidence of a clan meeting that they real appointed or consented for the appellant to be an administrator of the deceased’s estate apart from the letter from the Ward Executive Officer that can even be obtained by usually means. The respondent argued the referred cases in this appeal irrelevant as they do not support the appeal at hand.
In rejoinder, basically; the appellant prayed to reiterate what he submitted in chief arguing that the evidence of the step mother (the respondent herein) which was relied upon by the 1st appellate Court is weak with just an intention of denying the appellant hi status of being a son to the deceased.

This court has gone through the respective submissions by the parties herein on one hand and the available court records with the following in deliberation. The issue before this court is who among the two (the appellant or the respondent) in the present appeal stand properly to step in the shoes of the deceased so to administer the deceased’s estate.

Reading the proceedings of the trial court it becomes clear that there is a serious controversy, misunderstandings, untrustworthiness or rather enmity between the appellant and the respondent herein resulting into each claiming the other to be unfit to administer the deceased’s estate.

The respondent herein has gone further that he is unaware that the appellant is a son to the deceased with further assertions that the deceased have already distributed all his estate to his lawful heirs meaning that there is nothing left to be distributed.

In addition, the appellant has stated that he is the 1st son to the deceased whereas according to the WAMERU customs, he is a legal heir to the deceased’s a fact that promulgate that the motive behind the appellant in petitioning for the letters of administration was just for the purposes of inheriting and not administering the deceased’s estate amongst all lawful heirs to the deceased’s estate.

Further, it is notable on record that there was an alleged clan meeting held b some clan members appointing the appellant to be an administrator of the deceased’s estate through no minutes were tendered in the Primary Court in proof. It is un-drotunate that the said clan meeting did not involve the respondent who is alleged to be legally married to the deceased where the couple was blessed with a total of ten (10) issues.

Further, one wonders as to how the appellant is uncertain regarding the exact date of his fathers death to an extent of securing conformity of the death of his own father from a Ward Office bearing in mind that they were not living so far from each other and in such a modernized and globalized world.
In addition, the appellant seems not conversant with the estate left by the deceased and or the number and names of all the lawful heirs to the deceased’s estate. Again, the fact that the appellant was raised in some other places as the appellant’s mother separated from/divorced he deceased Silas Kimuto creates doubts regarding his fitness to administer the deceased’s estate.

Under such circumstances, it is clear that a fair and rightful administration of the deceased estate involving either of the parties herein will be a nightmare. In other words, the present circumstances require one; a neutral person who knows the rights, duties and responsibilities of an administrator of a deceased’s estate who does not necessarily need to be a beneficiary to the deceased’s estate.

Two’ a person who knows the whereabouts of the deceased’s estate for the purposes of collecting, paying all outstanding debts to all debtors (if any) and finally distributed the remainder to the lawful heirs to the deceased’s estate. From that reasoning, I find no reasons to fault the findings of the 1st appellate Court.

Thus, reasons were of, this court make orders for all those concerned with the estate of the deceased Silas Kimuto to concede a clan meeting for the purposes of appointing a reliable trustful and capable person (can even be more than one) who will step into the shoes of the deceased’s estate and administer the deceased’s estate amongst the lawful heirs if at all there is a remaining estate to administer and then file a petition for letters of administration in the due process that the court may declare him/her/them administrator/s of the deceased’s estate. Consequently, the appeal is hereby dismissed but from the circumstances of the matter, I make no order as to costs.

It is so ordered.

SGD: - A.C. NYERERE
JUDGE
14/02/2012

Judgment delivered in chambers this 14th day of February, 2011 in the presence of the appellant in person and in the presence of the Respondent in person.

SGD: - A.C. NYERERE
JUDGE
14/02/1012
JOACHIM SHIRIMA vs. GREGORY WILLIAM CHARLES, Misc. Civil Application No. 22 of 2010, High Court of Tanzania at Arusha

BRIEF FACTS
The Applicant herein was aggrieved by the decision of the Arusha Resident Magistrate’s at Arusha, in Civil Case No. 30 of 2006. He however filed his appeal challenging the said decision out of time and consequently the High Court of Tanzania at Arusha dismissed his appeal for being brought out of time without leave.

To remedy the situation, he elected to file an application before the High Court of Tanzania at Arusha seeking, among other remedies, to be granted leave to file an appeal against the Arusha Resident Magistrate’s Court out of time; hence this ruling.

POINTS TO NOTE FROM THE CASE
Waiting for a copy of decree is not a justified reason for delay in filing an appeal within the time prescribed by the law. In the event the decree is not availed to the appellant within time, the appellant may,

a. to file the incomplete Decree and at the same time pray for leave to make substitution of the same by the time he receive the proper decree, or

b. He could opt not to annex any decree at all by invoking the provisions of Rule 1 of Order XXXIX of the Civil Procedure Code, [CAP. 33 R.E. 2002] that reads;

“Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as “the court”) or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the court dispenses therewith) of the judgment on which it is founded.”
JUDGEMENT

IN THE HIGH COURT OF TANZANIA
AT ARUSHA
MISC. CIVIL APPLICATION NO. 22 OF 2010
(C/F Arusha District Court at Arusha in Civil Case No. 30 of 2006)

BETWEEN

JOACHIM SHIRIMA ..................................................................APPLICANT

AND

GREGORY WILLIAM CHARLES ................................. RESPONDENT

Date of Last Order: 04/08/2011
Date of Ruling: 22/09/2011

RULING

A.C. NYERERE, J.

This is a ruling in respect of an application by the applicant under the provisions of section 14(1) of the Law of Limitation Act, [CAP. 89 R.E, 2002] for orders;

(a) That, the applicant cited herein be granted extension of time within which to file his appeal against the decision of Arusha Resident Magistrate’s Court at Arusha Civil Case No. 30 of 2006.

(b) Costs to follow the event.

In the present application, the applicant was represented by Mr. Steven J. Lawena learned Counsel while the respondent appeared in person. It was agreed for the application to be argued by way of written submission. The Chamber Summons was supported by an affidavit sworn by the applicant JOACHIM SHIRIMA stating that judgment of in Arusha Resident Magistrate’s Court at Arusha in Civil Case No. 30 of 2006 was delivered in favour of the respondent on 25/03/2008 whereas he wrote a letter to the trial Resident Magistrate dated 04/04/2008 praying to be supplied with copies of Judgment and Decree.

The applicant averred that it was until 17/07/2008 when the applicant was supplied with a copy of Judgment and unsigned Decree whereas on 25/08/2008 the applicant wrote the Resident Magistrates’ Court that the trial court could sign the said Decree. It was further stated by the applicant in his affidavit that he reminded the trial court of the same prayer through his letter dated
13/10/2008 whereas copies of the signed Decree were supplied to the applicant on 06/01/2009 and ultimately the applicant herein managing to lodge his appeal before the High Court on 30/01/2009.

The applicant further stated in his affidavit that it was until 08/01/2010 when his appeal i.e. Civil Appeal No. 2 of 2009 was dismissed by the High Court before K.M.M. Sambo, J upon ground that the same was time barred hence the present miscellaneous application for an extension of time to file an appeal out of time.

To this court; it is important to note at the outset that the present application was scheduled for the parties to argue before this court by way of written submissions in respect of the filed application for extension of time. Instead, either inadvertently or intentionally, the applicant’s learned Counsel departed from the Court schedule and addresses the very intended Memorandum of appeal as if leave had already been granted and the said appeal has been filed before the High Court.

Thus, since there was no leave granted for the applicant to prefer an appeal before the High Court of Tanzania, to the date of composing and delivering this ruling, there is nothing to argue for in respect of an appeal as the same does not exist. Despite of the above, the wisdom of this court goes that it will be in the interest to justice for this Court to go through the affidavit sworn by the applicant to see to it whether or not there are good reasons worth the applicant to be granted extension of time to file an appeal before the High Court out of time.

Going through the Judgment by my learned brother K.M.M. Sambo, J dated 08/03/2010, the learned presiding Judge in Civil Appeal No. 2 of 2009 had the following to say at pages 2 and 3 of the ruling before he struck out the said appeal. The ruling reads that;

“... This means, by 23rd May, 2008, the decree had been already signed by the trial Magistrate ready for collection. In this written submission, the learned Counsel for the appellant has attached a receipt to the effect that copies of Judgment and decree were supplied to the appellant by the Court on the 17th day of July, 2008. The appellant alleges that on this date, he was supplied with a copy of the decree not yet signed by the trial Magistrate, and sat down comfortably till 25th August, 2008, when he decided to order the court and returned the same, only it as supplied with a signed decree by mid December, 2008.”
The immediate above quoted phrase in the ruling by K.M.M. Sambo, J shows how the applicant did not take trouble in tracing the relevant copies of both Judgment and Decree in the course of ensuring institution of his intended appeal. In hand with the above, deliberation to the position can he hereby elucidated as hereunder.

Going through the applicant’s affidavit, it becomes clear that the applicant filed to prefer an appeal while he was busy in search of what we can call proper Decree. To this Court; such allegations for search of a proper Decree is baseless and yet un-maintainable as the applicant could even file an appeal without necessarily wasting time in trace of the said copy of a proper Decree.

In going about the circumstances under which such pies are unavailable, two options were available with the applicant herein. First, the applicant could file the incomplete Decree and at the same time pray for leave to make substitution of the same by the time he receive the proper decree. Second; the applicant could opt not to annex any decree at all by invoking the provisions of Rule 1 of Order XXXIX of the Civil Procedure Code, [CAP. 33 R.E. 2002] that reads;

“Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as “the court”) or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the court dispenses therewith) of the judgment on which it is founded.”

From the above emphasized words it means that the High Court could even dispense with the requirement of annexing both copies of Judgment and Decree and since what was missing was just the decree to mean that the applicant could prepare his grounds of appeal using the already undisputed supplied copy of Judgment of the trial court and from the fact that even if the said Decree could be a subject in forming an appeal, yet; the applicant could have another opportunity to pray for leave thus to file an amended Memorandum of Appeal so to encompass the other grounds of appeal emanating from the Decree.

To this Court, the applicant had to make sure that he had exhausted all the available avenues available to him within the known principle of law that ‘it is in the interest of the public for litigation to come into an end’, otherwise, endless suits will always find their way in Court unnecessarily against the ends of justice.
From the above, despite the fact that the applicant’s learned Counsel mixed up issues by submitting for an appeal (which is/was not in existence) instead of the application for extension of time, what this court has tried to endeavour regarding the application for extension of time to file an appeal out of time lacks merits in law and the same is hereby dismissed with costs. Order accordingly.

SGD: - A.C. NYERERE
JUDGE
22/09/2011

Ruling delivered in chambers this 22nd day of September, 2011 in the presence of Applicant in person and in the absence of the Respondent whose Attorney is reported to have been admitted at Mount Meru Hospital.

SGD. A.C. NYERERE
JUDGE
22/9/2011

I hereby certify this to be a true copy of the original.

DISTRICT REGISTRAR
ARUSHA
22/09/2011

VERONOCA MARGWE & 2 OTHERS vs. TLWAY GICHIRO, PC Civil Appeal No. 1 of 2005, High Court of Tanzania at Arusha

BRIEF FACTS
In Probate and Administration Cause No. 32 of 1995, the Primary Court of Karatu appointed the Respondent as administrator of the estate of the late Margwe Kwatlema on the 25th January, 1996. But, since then he did not execute his duty as administrator. There was no distribution of deceased’s properties to the heirs, and instead, he inherited them all.

The children of the deceased including the Appellants, complained to the court which appointed Respondent praying that his appointment be revoked. The said court found merits on the complaints, revoked his appointment and appointed Veronica Margwe as administrator. The respondent, being aggrieved by the said
decision, appealed to Mbulu District Court, which reversed the decision on the ground that the normal procedure was not complied with in appointing Veronica Margwe, because she did not receive the consent of other clan members. The decision of the District Court was delivered on 15th September, 2005. Hence, the present appeal.

POUNTS TO NOTE FROM THE CASE
1. Under section 2(a) (b) of the 5th Schedule to the Magistrates’ Court Act, No. 2 of 1984, the Primary Court has power on its own motion to appoint any person as administrator or administratrix of the estate of any deceased;
2. Under section 2(a) of the 5th Schedule to the Magistrates’ Court Act, No. 2 of 1984, the Primary Court has power to revoke any appointment of an administrator for a good and sufficient cause, as was the case in the instant matter.

JUDGMENT OF THE CASE

IN THE HIGH COURT OF TANZANIA
AT ARUSHA

PC CIVIL APPEAL NO. 41 OF 2005
(C/F Mbulu District Court Appeal No. 10/2004 Original Karatu P/C Probate Cause No. 32/2005)

VERONICA MARGWE AND 2 OTHER................................. APPELLANTS

VERSUS

TLWAY GICHIRO .......................................................... RESPONDENT

JUDGMENT

SAMBO, J.
The appellants, Veronica Margwe and 2 others, being aggrieved by the decision of the Mbulu District Court, in Civil appeal No. 10 of 2004, preferred the present appeal, raising eight grounds. But, upon perusal of each of the grounds, I noted that basically there’s only, one ground based on that the District Court erred in law and fact to reverse the decision of Karatu Primary Court which revoked the appointment of the respondent Tluway Gicharo to be administrator of the
state of the late Margwe Kwatlema and instead appointed Veronica Margwe to be administratrix. Though the appellants filed the appeal themselves later they engaged the learned counsel, Mr. Siay, as their advocate.

When the appeal came for hearing, the learned advocate, Mr. Siay told the court that earlier in Probate and Administration Cause No. 32 of 1995, the Primary Court of Karatu, appointed the respondent as administrator of the estate of the said deceased on the 25th January, 1996. But, since then he did not execute his duty as administrator. There was no distribution of deceased’s properties to the heirs, and instead, he inherited them all. The children of the deceased including the appellants, complained to the court which appointed him praying that his appointment be revoked. The said court found merits on the complaints, revoked his appointment and appointed Veronica Margwe as administratrix. The respondent, being aggrieved by the said decision, appealed to Mbulu District Court, which reversed the decision on the ground that the normal procedure was not complied with in appointing Veronica Margwe, because she did not receive the consent of other clan members. The decision of the District Court was delivered on 15th September, 2005. Hence, the present appeal.

The learned counsel submitted further that under section 2(a) of the 5th schedule to the Magistrates’ Courts Act, 1984, the Primary Court on its own decision can appoint anybody to be administrator or administratrix or after being requested to do so. In this regard, Veronica Margwe was rightly appointed.

Notwithstanding what had been stated herein above, the learned advocate proceeded to submit to the effect that by virtue of GN No. 66 of 2005, dated 25th February, 2005, the Mbulu District Court no longer had jurisdiction to entertain matters from Karatu District. That power had been transferred to Monduli District Court. For these reasons, he prays that this appeal be allowed.

In response, the respondent told the court that he was appointed as administrator because he had a will to that effect, and that he distributed the properties to the right heirs and the records are clear in the case file. Given the fact that this appeal was filed in 2004, then the District Court of Mbulu had jurisdiction to entertain the appeal, and its decision is correct.

Thereupon, I have carefully read the judgment of the District Court dated 15th September, 2005. Basically, the honourable District Magistrate do agree that there were sufficient reasons which led the Karatu Primary Court to revoke the appointment of the respondent. This being the case, the argument by the
respondent that he was appointed because he had a will, does not hold water. Also, the reasoning of the District Court that the lower court erred to appoint Veronica Margwe given the fact that she did not object earlier to his appointment, has no merits. The appellant and others went back to the court which appointed him as administrator complaining that he failed to well execute his duties in respect thereof. This was in 2003, while he was appointed in 1996. There was no issue as to whether he was rightly appointed or not.

The other reason advanced by the District Court in reversing the decision of the Primary Court is that the appointment of Veronica Margwe, did not follow or comply with the normal procedure as per the law requirements. He was of that view because she had no consent from other heirs in that estate. The learned advocate, Mr. Siay, rightly submitted that under section 2(a) (b) of the 5th Schedule to the Magistrates’ Court Act, No. 2 of 1984, the Primary Court has power on its own motion to appoint any person as administrator or administratrix of the estate of any deceased. Under the same section 2(a), the Primary Court has power to revoke any appointment of an administrator for a good and sufficient cause, as was the case in the instant matter. For all these reasons, the Karatu Primary Court rightly revoked the appointment of the respondent and was correct in law to appoint Veronica Margwe, as administratrix of the estate of the late Margwe Kwatlema.

Notwithstanding what has been stated herein before, the learned advocate, Mr. Siay, also raised the issue of jurisdiction of Mbulo District Court over matters arising out of Karatu District by 15th September, 2005. He submitted to the effect that the said court had jurisdiction in view of GN No. 64 of 2005, dated 25th February, 2006, and GN No. 66 of the same date. I have examined the said Government Notices, and learnt that by Order in GN No. 64 of 25/02/2005, the Monduli District Court was conferred concurrent jurisdiction over Karatu District. By order in GN No. 66 of 25/02/2005, the Mbulo District Court (concurrent jurisdiction over Karatu District) Order, 1998 was revoked as from that date. This means on 15/9/2005 when the District Court of Mbulo delivered the appealed judgment and decree had no jurisdiction to do so. From the 25th day of February, 2005, all the case files for cases originating from Karatu District were mandatorily supposed to be transferred to Monduli District Court forthwith.

In the upshot, and for the reasons stated, I do allow this appeal with costs, quash the decision of the Mbulo District Court, dated 15th day of September, 2005, and restore the decision of the Karatu Primary Court on this matter.
Delivered in chambers this 27th day of February 2009, in the presence of the respondent in person.

Sgd
K.M.M. SAMBO
JUDGE
27/02/2009

I hereby certify this to be a true copy of the original.

DISTRICT REGISTRAR
ARUSHA
26/3/2009

PETER ISAACK KWEKA vs. REGINA LAWRENCE, Civil Appeal No. 19 of 2011, High Court of Tanzania at Arusha

BRIEF FACTS
The appellant, Peter Isaack Kweka, being aggrieved by the decision of the District court of Arusha in Civil Appeal No. 35 of 2008, opted to lodge the present appeal against the Respondent, Regina Lawrence.

POINTS TO NOTE FROM THE CASE
Anyone who alleges a fact and wants the court to believe on the same, the duty is upon him/her to prove the existence of the said fact to the satisfaction of the court.

JUDGEMENT
IN THE HIGH COURT OF TANZANIA
AT ARUSHA
The appellant, Peter Isaack Kweka, being aggrieved by the decision of the District court of Arusha in Civil Appeal No. 35 of 2008, opted to lodge the present appeal against the Respondent, Regina Lawrence. He raised three grounds based on that the first appellate Court erred in law and fact in not holding that he is the owner of the disputed piece of land, based on exhibits, A, B and C tendered during the trial of the case. Secondly, that the seller, PW3 Siasa Safari was not the lawful owner of the land in dispute and thirdly, that his evidence was not well considered, hence the noted business. The respondent did refuse service and therefore this court preceded ex-parte to hear this appeal.

When the appeal came for hearing the appellant adopted his ground of appeal as submissions in favour of this appeal and prayed that the same be allowed with costs. I then carefully read the judgment of the first appellate Court dated 8th February, 2011, and pursued the proceedings of the trial court, reading the resultant judgement dated 22nd July, 1999, with keen interest.

In all, I noted that the decision of the lower court is correct so far as the issue of who lawfully owns the disputed piece of land is concerned. The said exhibits A, B and C were correctly dealt with by the trial court, which led it to believe and hold that the land in dispute lawfully belongs to the respondent.

The records of the trial court indicate that even the witnesses who were summoned by the appellant did support the respondent in that she is the lawful owner of the piece of land in dispute and lawfully purchased the same. There’s no substantive evidence to establish that the one who sold the land to the Respondent, be it Siasa Safari or anyone else was not the lawful owner of the land in dispute. The records of the testimony adduced at the primary court is clear in that the respondent proved her case to the standard required in civil litigations, that’s, on the balance of probabilities. It is for these reasons that I find the three grounds of appeal being devoid of merits and therefore totally rejected.
In the result and for the reasons stated herein above, I do dismiss this appeal in its entirety.

(SGD)
K.M.M. SAMBO
JUDGE
21/5/2012

Delivered in chambers this 22\textsuperscript{nd} day of May, 2012, in the presence of the appellant alone

(SGD)
K.M.M. SAMBO
JUDGE
21/5/2012

I hereby certify this to be a true copy of the original

(SGD)
District Registrar
Arusha
08/06/12

MWATATU MOHAMED vs. AYUBU MKINI, Probate and Administration Cause No. 3 of 2005, High Court of Tanzania at Arusha

BRIEF FACTS

The appellant, being dissatisfied with the decision of Monduli District Court, in Civil Appeal No. 8 of 2006, challenged it by way of appeal before the High Court of Tanzania at Arusha.

The facts of the matter are that before the late Mwasiti Selemani passed away she left a will. In the said will she noted that she did not have any relatives and therefore she bequeathed everything to the Respondent. The appellant is challenging the said will on the ground she is the rightful heir of the late Mwasiti Selemani’s estate since she is a relative. In the two lower courts the appellant lost and she has now decided to seek redress before the High Court of Tanzania at Arusha. Hence this appeal.
POINTS TO NOTE FROM THE CASE
1. Oral evidence need not be admitted to prove the content of the document, as it is provided under section 100(1) of the Evidence Act, CAP 6 R.E. 2002.
2. Where the testator categorically declares in the will that he/she has no relatives or family members to inherit his/her estates, the court cannot in the later stage come an fault the will on a mere allegation that what was stated on the will was not true.

JUDGMENT

IN THE HIGH COURT OF TANZANIA

AT ARSHA

(Probate and Administration Cause No. 3 of 2006)
(C/F Monduli District Court civil appeal No. 8 of 2006, Original Mto wa Mbu Primary Court)

MWATATU MOHAMED ........................................ APPELLANT

VERSUS

AYUBU MKINI .......................................................... RESPONDENT

(Appel from the decision of RM’S Court Arusha)
(J.J. Mutahyabarwa – RM)
Dated 29th January, 2007
In
Civil Appeal No. 8 of 2006

JUDGMENT OF THE COURT


SAMBO, J.
The appellant, Mwatatu Mohamed, being dissatisfied with the decision of Monduli District Court, in Civil Appeal No. 8 of 2006, preferred the present appeal raising four grounds namely:-
1. That the first appellate court erred both in law and in fact in finding that the will dated 18th December, 2002, is valid;
2. That the first appellate court erred in law and in fact in holding that the law does not place any restriction to the testator to have a limit in bequeathing his property;
3. That the first appellate court as was the trial court erred both in law and in fact in not finding that the evidence of the appellant was more heavier than that of the respondent;

4. That the appellate court erred both in law and in fact in accepting the respondent’s evidence which was not corroborated by the evidence of the witnesses who signed the purported will dated 18th February, 2002.

When this appeal came for hearing on the 24th day of July, 2008, the appellant told the court that her grounds of appeal are self explanatory, and only added that no relative affirmed the said will of the respondent and none of them came to court to testify accordingly. In response, the respondent submitted to the effect that the deceased had no relative and that’s why no one signed as her relative. He went on saying that though he was just a neighbour of the deceased; he took care of her for 13 years till her death which prompted her to issue the said will. However the appellant came out and concluded by saying the deceased was her aunt.

After hearing both parties, I carefully read the judgment of the first appellate court dated 29th day of January, 2007, as well as that of the trial primary court’s decision of 19th October, 2006. I have also attentively examined the disputed will dated 18th December, 2002, I am satisfied that the decision of the first appellate court, dismissing the appeal of the current appellant, was just and fair in all aspects. I am of that opinion because in the said will, the deceased Mwasiti Selemani, categorically stated that she had no relative, son or daughter at Mto wa Mbu, and therefore its no wonder then to note that in the will no relative signed. Nobody should be heard to complain that none of the relatives of Mwansiti Selemani witnessed the will and therefore it be declared a nullity. As it that’s not enough, the deceased bequeathed all of her properties to the respondent Mr. Ayubu Mkini, which included domestic utensils and clothes. The law does not provide a room for another independent person to challenge the will wishes and interest of the testator. We all the time strongly advise people to make wills before their demise in order to solve in advance disputes such as this one which takes place after their death in respect of their properties.

The will of Mwansiti Binti Selemani to Ayubu Ngalakwila Mkini, was concluded, witnessed and affirmed by the primary court Magistrate, Mr. M.J. Fue, of Mto wa Mbu Primary Court; The honourable Magistrate is a commissioner for oath and the said Mwasiti Binti Selemani affixed to the will and stamped on it with the seal of the court of law. She thereafter appointed the Mto wa Mbu Primary Court as the custodian of the said will. This will is self explanatory and it does
not need any other oral evidence to prove or disprove it. The persons, who signed on it was witnesses, need not be necessarily summoned in court to prove as to whether or not they did in fact witness the will be signed. I hold so because they did witness and sign in the presence of the commissioner for oaths. I don’t see anything that would lead this court to doubt the authenticity of the will as a document and the law of evidence is clear in that oral evidence need not be admitted to prove the content of the document, as it is provided under Section 100(1) of the Evidence Act, CAP 6 [R.E. 2002].

In view of the reasons I have ventured to state herein above, it goes without saying that all the grounds of appeal raised by the appellant, Mwatatu Mohamed, have no merits, at all. They are not sufficient to convince this honourable court to think of defaulting the decision of the first appellant court, that’s the Monduli District Court, presided over by the learned resident Magistrate, Mr. J.J. Mutahyabarwa. In consequence thereof, I dismiss the appeal in its entirely. However, I make no orders as to costs.

Sgd
K.M.M. SAMBO
JUDGE
4/9/2008

Delivered in chambers this 15th day of September, 2008 in the presence of both the appellant and respondent.

Sgd
K.M.M. SAMBO
JUDGE
15/9/2008

I hereby certify this to be a true copy of the original.

F.S.K. MUTUNGI
DISTRICT REGISTRAR
ARUSHA
24/9/2008
HAMISI KILIZA vs. TAUSI HAMISI, Misc. Civil Application No. 1 of 2007, High Court of Tanzania at Dar es Salaam

BRIEF FACT
The Applicant was appointed the administrator of the estates of his late father. There was a problem with the distribution of the estates of his late father and as a result he decided to question the same at the Primary Court at Temeke. He was aggrieved by the said Primary Court’s decision and he preferred an appeal against the decision before the District Court of Temeke, which gave a decision in the Respondent’s favour.

He was also not satisfied by the decision of the District Court of Temeke and therefore preferred an appeal before the High Court of Tanzania at Dar es Salaam. The appeal was however struck out on a finding that the matter lacked genuine and legal originator. He rectified the problem and wished to proceed seeking remedy with respect to his matter in a court of law. He therefore filed an application before the High Court of Tanzania, at Dar es Salaam, seeking to be granted leave to file an appeal out of time, hence this application.

POINTS TO NOTE FROM THE CASE
Before a court grants an applicant leave to file an appeal out of time, the applicant must adduce strong reasons to convince the court to grant the order sought.

JUDGMENT
IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION NO. 1 OF 2007
(Originating from Temeke Primary Court, Civil Case no. 25/03)

HAMSI KILIZA……………………………………………………… APPLICANT

VERSUS
TAUSI HAMISI……………………………………………….. RESPONDENT
Date of Last Order: 11/8/2009
Date of Judgment: 20/8/2010

JUDGMENT
NYERERE, J.
The applicant HAMIS KILIZA filed a chamber summons under section 76 and 95 and Order XXXIX Rule 2 of the Civil Procedure Code [Cap. 33 R.E. 2002] and section 14 of the Law of Limitation Act, 1971 together with any enabling provisions of law against the Respondent TAUSI HAMISI praying the court to grant leave to file an appeal out of time.

The chamber summons was supported by the affidavit of the applicant who stated that after the death of the late MASUDI KILIZA who happened to be his father he was appointed the administrator of the Estate of the deceased.

The distribution of the property of the deceased was brought to question in the Primary Court at Temeke by the Respondent who lost and appealed to the District Court of Temeke. The applicant further stated that being aggrieved by the decision of the District Court he referred his appeal within the required time to the High Court which was struck out on a finding that the matter lacked genuine and legal originator. The applicant attached the proceedings and that decision as annexure A1.

He further stated that having the situation been left as it stood at that moment time had already run out beyond legal limits to reconstitute an appeal.

During hearing the applicant stated that he prayed the court to grant his application because the respondent had either appealed to this court and when the matter was before justice Kalegeya the applicant and the respondent both denied to have appealed because by then he had not appealed to the court.

He concluded by instituting the applicant to be considered because he has overwhelming chances to win the appeal if time is granted.

Objecting the application, the respondent stated that it is not true she appealed to this court as claimed by the respondent. It is the applicant who appealed. The applicant did not make follow up and he was ordered to serve him. She served him and both appeared before Honourable Justice Kalegeya and in hearing both denied filing any appeal, so the appeal was struck out.

She further stated that the applicant has not adduced reasons to be granted the application. The applicant is not serious he ignored court procedure. He is not interested in finishing this matter.

The issue is whether the applicant managed to adduce reasonable and sufficient grounds to enable this court to grant him enlargement of time.
The court is of the view that the applicant would appear producing conflicting and contradictory statements. In this affidavit under paragraphs 4 and 5 he stated that being aggrieved by the decision of the District Court he referred his appeal within the required time to the High Court which was struck out on a finding that the matter lacked genuine and legal originator. The situation being left as it stood at the moment time had already run out beyond legal limits to reconstitute and appeal.

At the same time in hearing he denied to have appealed to the court. So the appeal was struck out for lacking genuine and legal originator. This suggests that the applicant has no sufficient reasons to justify his application instead he is just producing mere excuse statements which on top of it are contradicting itself and have no weight. The failure to take necessary steps in filing the application within time was due to his in action and neglect.

It is provided under section 14(1) of the Law of Limitation Act of 1971, that the applicant should give reasonable and sufficient reasons as to justify the extension of time. Furthermore the case of PETER WILLIAM MATOKE V. ABDALLAH CHAMPION, Civil Appeal No. 56 of 1994, Katiti, J. (as he then was) stated that;

“….the proof reasonable or sufficient cause is just a condition precedent for the exercise of the discretionary jurisdiction. So that if reasonable and sufficient cause is not proved then nothing is left to be done. Every delay needs explanation.”

Having observed the proceedings in the subordinate court and the High Court and after considering the evidence that was adduced at the trial, I am of the view that his case has minimal chances of success. That being the circumstance of this case coupled with applicant’s failure to adduce sound reasons i.e. reasonable and sufficient reasons to justify the extension of time and considered chances of success are slim; I hereby dismiss the application with costs to the respondent.

A.C. NYERERE
JUDGE
20/8/2010

Ruling delivered in chamber this 20th day of August, 2010 in the presence of Applicant and Respondent in person.
AMAD JUMA vs. TANZANIA POLICE FORCE & ANOTHER, Civil Case No. 51 of 2010, High Court of Tanzania at Dar es Salaam

BRIEF FACTS
The Plaintiff herein sued the Tanzania Police Force and the Attorney General for false imprisonment, malicious prosecution and permanent disabilities of two fingers of the right hand caused to him due to battery by the Police.

The facts of the case are that on 13/10/2004 at about 23:00 hrs the Plaintiff was returning home, Vingunguti area, coming from his business at Buguruni. While at the bus stop he met a policeman, one Vedaline Jitu, and he claimed that the plaintiff has stolen his mobile phone and identification card. The Plaintiff denied to have done so. The Policeman tried to search his pockets and he resisted and plaintiff started to run but unfortunately he fell down and the Policeman assaulted him. Plaintiff was rescued by people and then the Police run away and Plaintiff was taken to Amana Hospital and later transferred to Muhimbili Hospital. His assailant was arrested but later was released. Thereafter he complained to Police Officials but then was arrested, remanded and charged with an offence of armed robbery before the District Court of Ilala on 16/9/2005 whereby he was remanded for one year and eight months. On 17/05/2007 he was acquitted after prosecution had failed to prove their case.

Therefore the plaintiff claimed for compensation for wrongful confinement, malicious prosecution and loss of business as he was conducting petty business and everyday he had a profit of 25,000/=.

POINTS TO NOTE FROM THE CASE
For a suit of malicious prosecution to succeed the plaintiff must prove simultaneously that:

a) He was prosecuted;

b) That the proceedings complained of ended in his favour;
c) That the defendant instituted the prosecution maliciously;
d) That there was no reasonable and probable cause for such prosecution; and
e) That damage was occasioned to the plaintiff.

JUDGMENT

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL CASE NO. 51 OF 2008

HAMAD JUMA ………………………………………………………… PLAINIFF

VERSUS
TANZANIA POLICE FORCE]

ATTORNEY GENERAL…………………………………… DEFENDANTS

Date of last order: 18/01/2001
Date of Judgement: 23/02/2011

JUDGMENT

MASSENGI, J.

Plaintiff Hamadi Juma is claiming from 1st Defendant TANZANIA POLICE FORCE and 2nd Defendant ATTORNEY GENERAL jointly and severally as follows:-

a) Payment to a tune of Tshs. 40,000,000/= being compensation for false imprisonment, malicious prosecution and permanent disabilities of two fingers of the right hand caused to him due to battery by the Police;
b) Interest at court rate from the day of the unlawful acts done to full payment of the sum;
c) Costs of the suit are born by defendants;
d) Any other order(s) and relief(s) the honourable court may deem fit and just to grant.

Plaintiff was unrepresented while both defendants were represented by the State Attorney M/S Lusilile. Issues were framed as follows:-

1. Whether the plaintiff was falsely imprisoned and maliciously prosecuted;
2. Whether plaintiff’s fingers were permanently disabled by beating by defendants;
3. To what reliefs are the parties entitled to.

Plaintiff is establishing his claim through sworn evidence stated that on 13/10/2004 at about 23:00 hrs he was returning home Vinguguti area and he was coming from his business at Buguruni. While at the bus stand he met a policeman Vedaline Jitu and he claimed that the plaintiff has stolen his mobile phone and identification card. Plaintiff denied to have done so. The Policeman tried to search his pockets and he resisted and plaintiff started to run but unfortunately he fell down and the Policeman assaulted him. Plaintiff was rescued by people and then the Police run away and Plaintiff was taken to Amana Hospital and later transferred to Muhimbili Hospital. His assailant was arrested but later was released. Thereafter he complained to Police Officials but then was arrested, remanded and charged with an offence of armed robbery before Samora District Court on 16/9/2005 whereby he was remanded for one year and eight months. On 17/05/2007 he was acquitted after prosecution was filed to prove their case. Therefore the plaintiff is claiming compensation for wrongful confinement, malicious prosecution and loss of business as he was conducting petty business and everyday he had a profit of 25,000/=.

PW2 Salum Rashid said that on October, 2004 he was a watchman at Mgango Guest House and at about 24:00 hrs he heard people quarrelling he went out and find a person whom he didn’t know before his whole body was full of blood and Police asked him with other to help them, they took the person to Police and then to hospital and it is when he identified him as the plaintiff. The person who assaulted plaintiff was a policeman by name of Gumbo. Then in 2007 he was summoned to Samora District Court to give evidence in criminal case.

PW3 Bakari Makanda evidence was that sometimes in October, 2004 at night about 24:00 hrs he was in his house and he Heard someone outside crying “nakufa, nakufa...” (I am dying). He went outside and saw a person cutting another with “kwanga” (matched) and the person who was cutting was a policeman and later he identified him as JITO. He then asked him to stop cutting the other and he refused. PW3 called Police for help and police went to the scent immediately and JITO ran away but later he was arrested. The after that the Plaintiff being the person who was being cut by JITO was charged and remanded in prison for
more than a year and eight months. Then he was summoned to give evidence for the plaintiff and he was acquitted.

PW4 Juma Jamuhuri evidence was that in October 2004 at midnight he heard someone crying for help near his house. He got out and he saw and identified a person by name of JITO assaulting another person with a "kwanja” and that person had wounds all over his body. With other neighbours they intervened and call the police. JITO ran away, and the wounded person was plaintiff who was taken to Police unconsciousness. The following day he wrote his statement. In 2006 he was called at District Court at Samora to give evidence whereby plaintiff was charge with the offence of armed robbery but he was acquitted. That was plaintiff’s case.

Defence evidence as adduced by DW1 E. 2051 Cpl. Vedastus was that on 09/10/2004 at about 3:00 hrs he was returning home and on his way at Kigogo bar he saw four people, two coming from behind him and two were in front of him he speed up and catch those who were in front of him. Then those who were behind speed up and they catch him and took his mobile phone and a wallet. He raised an alarm and those people ran at different directions. People who come to help him managed to catch one of them and assaulted him. He went to Police and reported as that person was in bad condition and was taken to Amana Hospital and referred to Muhimbili Hospital. The next day DW1 filed a charge against him. DW1 was injured with a panga on the head and hand. He went to Police and reported as that person was in bad condition and was taken to Amana Hospital and referred to Muhimbili Hospital. The next day DW1 filed a charge against him. DW1 was injured with a panga on the head and hand. That person who was admitted at Amana Hospital was the plaintiff who was later charged before court of law and was acquitted. DW1 denies to have injured plaintiff as he was injured to mob justice.

DW2 Insp. Shata evidence was that, he was being working with the Police Office for twenty years and he is now working in the Legal Department of the Police force. He had claims from plaintiff being assaulted by DW1 Cop. Vedastus. DW1 and he found that the issue was a personal issue between Copl. Vedastus and the Plaintiff and therefore Vedastus acted in his personal capacity the Police Force was not liable as according to Police ethics a police is not supposed to assaults an individual. They also had no case against Copl. Vedastus. That was defendant’s case.

In the course of trial issues framed were as follows:-

i) Whether the plaintiff was falsely imprisoned and maliciously prosecuted by the 1st Defendant;
Whether the permanent disability of the two fingers of the right hand of plaintiff was caused by Police;

iii) What are the relief(s) the parties are entitled to?

Defendant’s Attorney in the final submission, argued that the plaintiff have not proved that tort of false imprisonment and he is not entitled to any damage as she was imprisoned following the court order after being charged with the offence of armed robbery which is a non-bailable offence. She cited the case of MORIS A. SASA WATA VS. MATIAS MALEKO [1980] TLR 158 (HC) whereby Sammatta, J. (as he then was) held that to constitute false imprisonment there must be restrain of plaintiff’s liberty and in the case of KASANA PRODUCE STORE VS. KATO [1973] EA 190 it was held an action for false imprisonment lies when there has been an imprisonment without any order of the court.

Plaintiff who stood on his own unrepresented didn’t file any submissions. For that reasons I will resort to his evidence. From the evidence it is obvious that plaintiff has been remanded for one year and eight months. Being in remand is an imprisonment as plaintiff’s liberty was restrained. Now was that restrained? Now was that restrain false or lawful? According to plaintiff it was false but according to the respondent it was lawful as it was according to the order of the court and he cited the case of KASANA PRODUCE STORE VS. KATO to that effect. In the case of JAMES FUNKE GWAGIKO vs. ATTORNEY GENERAL [2001] TLR no. 455 THE LATE Kyando, J. In answering whether in false imprisonment after imprisonment has been proved then the next question is whether the imprisonment was justified? He referred to HALSBURTY’S LAWS OF ENGLAND, Volume 38 (3ED), and page 765 paragraph 1266:-

_The gist of false imprisonment is mere imprisonment the plaintiff needs to prove that was unlawful or malicious, but establishes a “prima facie” case if he proves that he was imprisoned by the defendant of proving justification._

In this case plaintiffs have proved that he was imprisoned, and then it is upon defendant to prove the justification of imprisonment. The Defendant are saying the justification of the imprisonment was a charge of armed robbery against plaintiff before a court of law and that offence is not bailable, and more over the imprisonment was due to court order. They cited the case of KASANA PRODUCE STORE V. KATO where it was held an action for false imprisonment lies when there has been an imprisonment without any order of the court. I do adopt that holding and find that false imprisonment was justifiable. As to the issue is malicious prosecution. As pointed out by the State Attorney for
defendants, elements of malicious prosecution was set out in the case of HOSIA LALATA VS. BIBSON SUMBA MWASOTA [1980] TLR 154, to be:-

a) That the plaintiff was prosecuted;
b) The prosecution ended in his favour;
c) That the prosecution was conducted without reasonable and probable cause;
d) That in bringing the prosecution the defendant was actuated by malice.

In the case of JEREMIAH KAMAMA VS BLIGOMOLA MAYANDI [1983] TLR 123 it was held:-

For a suit of malicious prosecution to succeed the plaintiff must prove simultaneously that:-

f) He was prosecuted;
g) That the proceedings complained of ended in his favour;
h) That the defendant instituted the prosecution maliciously;
i) That there was no reasonable and probable cause for such prosecution; and
j) That damage was occasioned to the plaintiff.

In the case it is not disputed that plaintiff was prosecuted. The State Attorney in her final submissions argued that there were no exhibits tendered to that effect. The plaintiff was annexed with a copy of judgment as annexure A4 vide Criminal Case No. 852/2005 in the District Court of Ilala whereby accused Hamad Juma and the plaintiff who was charged with the offence of armed robbery c/s 287 A of the Penal code and was acquitted. In the course of trial this fact was not disputed and I therefore find that plaintiff in this suit was prosecuted and the proceedings complained of ended in his favour. On the issue that the defendant instituted the prosecution maliciously the plaintiff claimed that the 1st defendant did prosecute him so as to protect their fellow police who had assaulted him and he was complaining on being unlawfully attacked by DW1. In her submission the State Attorney for 1st defendant is arguing that in cross examination the plaintiff admitted that 2nd defendant has no malice. That is not true as it is in the cross examination where the plaintiff said it was the Police Force which maliciously prosecuted him so as to cover their fellow police DW1 and he further said that as he was complaining to Police they didn’t listen to him and instead they decided to prosecute him and that was malice. From the evidence on record, DW1 who complained that plaintiff was among the four people who robbed him his mobile phone and identity card
and he raised an alarm and those reacted to the alarm are the one who chased plaintiff caught him and assaulted him. None of them was called as witness.

On the other side of the coin there is evidence of plaintiff that he met DW1 who complained plaintiff had stolen his mobile and identity card and plaintiff denied the allegations and EW1 had a matched and started to search him and he ran away but, unfortunately he fell down and it is when DW1 assaulted him in the same case on appeal before Court of Appeal of Tanzania [2004] TLR 161 malice was defined as:-

“Malice in the context of malicious prosecution is intent to use legal process for other than its legally pointed and appropriate purpose.”

The next element is that of whether there was any reasonable and probable cause in plaintiff’s prosecution. Plaintiff was prosecuted on allegations by DW1 that he has robbed him. According to DW1’s statement that after plaintiff has robbed him with other they all managed to run away but plaintiff was caught by people who come for help and they assaulted him by various weapons. There is evidence of 3 different people who come for help and they are testifying that it was DW1 who was cutting plaintiff with a matched when they arrived at the scene. Even a copy of PF 3 attached in the plaint reveals that the wounds which plaintiff had were caused by a matched. Now the question is what evidence or facts which made the prosecution to arrive at a decision that plaintiff was the one who robbed DW1 and prosecute him? By simple delinquency the evidence of DW1 does not real suggest that it was plaintiff who robbed him. He claims that as plaintiff was running he was caught by people who come to help and they assaulted him. But there evidence of those people who are saying they found DW1 cutting plaintiff with a matched and they rescued him.

It is therefore my finding that the prosecution had no reasonable and probable cause to prosecute plaintiff as they did. Therefore come to conclusion that malice prosecution has been proved and defendants are liable.

The last prayer of plaintiff was compensation for disabilities of two fingers of the right hand caused to him due to the battery caused by the police. Plaintiff in his evidence claimed to be assaulted by DW1 who was a police and when assaulting him DW1 was wearing police uniform. But taking the whole circumstances of the case I do arrive at a decision that when DW1 was assaulting plaintiff he was not in duty and he was not acting in the cause of his employment. According to evidence he was in his person issue and the cause of attacking plaintiff was in the cause for employment but was on his personal affairs that he is the belief that plaintiff has robbed him and therefore the employer cannot be held liable.
and therefore the claim for compensation for disability is hereby dismissed. I now come to the issue of the reliefs which plaintiff is entitled to. Plaintiff has claimed to be paid a compensation of Tshs. 40,000,000/= for all his claims. The claim of false imprisonment has not been established and that of compensation due to disability. I find it that the plaintiff is entitled to compensation of 10,000,000/= (ten million T. shillings) for the tort of malicious prosecution without costs.

F. H. MASSENGI
JUDGE
23/2/2011

Delivered in chamber court this 23rd of February 2011 in presence of plaintiff and in absence of defendants. Right of appeal fully explained.

F.H. MASSENGI
JUDGE
23/2/2011

TRASEASE K. RUTAKWA vs. DEVOTHAS G. RUTAKWA, Civil Application No. 105 of 2011, Court of Appeal of Tanzania at Dar es Salaam

BRIEF FACTS
Aggrieved by the decision of the High Court of Tanzania, the applicant herein filed an application for revision of the said decision before the Court of Appeal of Tanzania. His Notice of Motion was filed on 18th April 2010. The Notice of Motion supported by Affidavit, was to be followed by written submissions within sixth (60) days as stipulated under R 106(1) of the Court of Appeal Rules, 2009 (the Rules). He failed to comply with that requirement. He therefore filed a notice of motion seeking extension of time to file the said written submissions; hence this application.

POINTS TO NOTE FROM THE CASE
The categories of good cause in an application for extension of time are not restricted, but ignorance of law and lack of communication between the applicant and his advocate do not form part of good cause.
IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 105 OF 2011

TRAASEASE K. RUTAKWA ........................................ APPELLANT

VERSUS
DEVOTHA G. RUTAKWA ........................................ RESPONDENT
(An application for extension of time to file written submission in respect
of Notice of Motion for extension of time to file an application for revision
in the High Court of Tanzania at Dar es Salaam)
(Mruke, J.)
Dated 15th day of November 2010
In
Civil Appeal Case No. 30 of 2010

RULING
31st Oct. & 11th Nov. 2011

BWANA, J.A

Being aggrieved by the decision of the High Court of Tanzania, the applicant
herein filed an application for revision of the said decision. His Notice of Motion
was filed on 18th April 2010. The Notice of Motion supported by Affidavit, was
to be followed by written submissions within sixth (60) days as stipulated under
R 106(1) of the Court of Appeal Rules, 2009 (the Rules). He failed to comply
with that requirement. He has now come before this Court asking for extension
of time to file the said written submissions. His application is made under Rules
10 and 106 (9) of the Rules.

As revered in his supporting affidavit, the applicant could not file his written
submission within the prescribed period because he was working under the
impression that his advocate would continue his services out of the same fees
paid for his work in the High Court. To his surprise, the applicant was told by the
said advocate that the matter did not proceed “for lack of proper instructions”,
an expression used sometimes by advocates to mean that no fees have been paid
for services to be rendered. Therefore lack of proper instructions is taken by the
applicant to be the main reasons why he was late to file his written submissions.
He considered that to be sufficient cause for the delay and therefore, requests
this Court to allow him to file the submissions out of time. As a layman, he did not know all these legal requirements and his advocate never told him of the same until the applicant made up a follow up, so he avers.

On her part, the respondent controverts what the applicant is averring. She believes that the latter is trying to “buy” sympathy of the court for his own negligence. Having been with the advocate since the case came up for trial at Kisutu Resident Magistrate’s Court, the applicant’s defence that he was not aware of the fact that the fees paid to the advocate was not enough to cover the case up to this court, is unacceptable and a mere attempt to win sympathy of the court, the respondent avers. At any rate, such reason as given does not constitute sufficient cause. She cited the case of Calico Textile Industries Ltd vs Pyaralesmail Premji (1983) TLR 28 (CA) where Nyalali, D. J. (as he then was) stated:

“…. The reason for the delay advanced by Mr. Patel for the appellant is that he did not check the requirement of the law properly. Surely this cannot be sufficient reason …” (emphasis provided).

The Court then proceeds to strike out the notice of appeal with costs. Rule 10 of the Rules requires an applicant to show good cause for the delay before an application for extension of time may be granted. Has the applicant herein shown such good cause? The only cause shown, if I may paraphrase it, is that he was late to file written submissions because, firstly, as a lay man he was not aware of that requirement. Secondly, he thought that his advocate would continue with his services and do the needful. The issue of “lack of proper instructions” seems to have escaped his mind.

With due respect, both causes are not relevant in so far as the requirement of Rule 10 and 106(9) of the Rules are concerned. Ignorance of law is not an excuse, so it is settled. The applicant cannot, therefore rely on it as good cause. It is particularly so, if I may note, that the applicant had counsel all the way from the trial stage in the Resident Magistrate’s Court. No doubt there were some exchanges between the two as the case progressed to higher courts. If counsel never informed his client of the fee arrangements, that cannot institute a good cause for consideration and granting of extension of time sought.

Of course the categories of “good cause” are never restricted. It depends on the circumstances of each case. In the instance application, it is my considered view that lack of proper communication between the applicant and his counsel
or the former’s claim of ignorance of the law; do not constitute good cause for granting extension of time.

Accordingly, this application lacks merit. It is dismissed with costs. DATED at DAR ES SALAAM this 7th day of November, 2011

S.J. BWANA
JUSTICE OF APPEAL

I certify that this is a true copy of the original

J.S. Mgetta
DEPUTY REGISTRAR
COURT OF APPEAL

RAMADHANI SALUM MAKANGILA vs. TATU MAKANGILA, Misc. Civil Appeal No. 9 of 2011, High Court of Tanzania (Dar es salaam District Registry) at Dar es Salaam

BRIEF FACTS
The applicant herein was seeking to be granted an extension of time to file an application for review out of time. The application was supported by the affidavit of the applicant himself. The application was unopposed, as the respondent was served but she refused to acknowledge service and defaulted appearance when the case was called for hearing. The matter therefore preceded ex-parte, hence the decision below.

POINTS TO NOTE FROM THE CASE
Where leave is required by the law, and parties to an action are required to obtain the said leave, if one of the said parties has obtained the leave, the other party shall not be obliged to obtain the leave again.

JUDGMENT
IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION NO. 9 OF 2011
RAMADHANI SALUM MAKANGILA ………………….. APPLICANT

VERSUS

TATU SALUM MAKANGILA ………………….. RESPONDENT

Date of last order: 16/08/2011
Date of Ruling: 17/8/2011

RULING

KARUA, J.

This is an application brought under subsection (1) of Section 14 of the Law of Limitation Act [cap 89 RE 2002]. The applicant, Ramadhani Salum Makangila, is essentially seeking to be granted an extension of time to file an application for review out of time. The application is supported by the affidavit of the applicant himself. The application as unopposed, as the respondent was served, however, she refused to acknowledge service and defaulted appearance when the case was called for hearing. Hence, the matter proceeded one sided.

Briefly, the applicant is aggrieved with the decision of Oriyo, J. (as she then was) in Civil Revision No. 26 of 2000 which the learned Judge delivered on the 27th November, 2007. In her decision of which, as said, the applicant is complaining about, the learned Judge held:-

“The law makes it abundantly clear that unless parties secured leave of the High Court to institute the suit on un-surveyed land in the District Court, the latter had no jurisdiction to entertain the suit. There is no evidence that Ramadhani Salum Makingira was granted leave of the High Court to Institute Civil Case No. 68/95 in the District Court of Morogoro. Therefore, the District Court had no jurisdiction over the land dispute.

In the event the proceedings in the District Court of Morogoro were a nullity. The same is accordingly quashed. The ex-parte judgment and Decree are set aside.”

The applicant faults the learned judge for not taking into account the decision of Maina J. in Misc. Civil Application no. 152 of 1994, who transferred the proceedings from the primary court to the High Court. I draw from the record that the applicant and the respondent are blood related. They are at each other’s horns over a piece of un-surveyed land situated in Morogoro. The applicant preferred a suit against the respondent at Morogoro primary court. The respondent through the services of Mr. Kshumbugu, learned advocate, sought
for leave of the High Court to have the proceedings transferred to the District Court and Maina J., granted that application. Thereafter the applicant preferred Civil Case No. 68 of 1995 at the District Court of Morogoro. This is the case that Oriyo J., quashed. Within a period of 60 days from the date of the decision of Oriyo J., to be specific on 3rd January 2008, the applicant wrote to the registrar requesting the High Court to revise those proceedings. On the 17th January 2008, the applicant received a letter from the registrar, which advised him to institute formal application for review of that decision. The applicant complied on 21st day of July, 2008. However, that application was struck out by Massengi, J., on 29th November, 2010 because it was caught up by limitation. The learned Judge advised the applicant to apply first for extension of time to file the application out of time. This is the application which is now before me.

I have followed and considered the applicants arguments contained in his affidavit. I have also gone through both judgments of learned Judges. I am persuaded and indeed, I would in all circumstances of this case, respectfully sustain the application. The applicant does not come out clearly why he was late in presenting his application for review in compliance with the Registrars advice. However, in the interest of justice, the applicant in my considered views raises a formidable issue, which is indeed, a sufficient cause under the relevant law to grant the application. This is whether in light of the decision by Maina J., the decision by Oriyo J., robbed the applicant of his rights. It is, indeed, true that it was the respondent, through her counsel, the learned Mr. Kashumbugu, who sought for the leave to have the case transferred from the Primary Court and it is the applicant who preferred a fresh suit at the District Court. In my considered views, the applicant had no obligation to ask for a second transfer, as the case had already been transferred from the Primary Court. There can only be one transfer. The applicant could not have made a second application, which obviously, cannot be met because there was nothing to be transferred again.

In my view, I think, it is imperative for the High Court to look into this matter a fresh. Accordingly I grant this application.

S. V. G. Karua

JUDGE

17/08/2011

DATED IN DAR ES SALAAM

Appearance
For the Appellant: Present in person.
For the Respondent: Absent with notice.
JUMA SALIM & ANOTHER vs. PAULINE ISRAEL, Misc. Application No. 56 of 2009, High Court of Tanzania at Arusha

BRIEF FACTS
Applicant herein filed an application before the High Court of Tanzania at Arusha seeking to be granted leave to challenge the decision of the District Court of Babati at Babati in Civil Appeal No. 44 of 2004 out of time, hence this ruling.

POINTS TO NOTE FROM THE CASE
Where an applicant for extension of time blames the registry for a delay in, say, issuing a receipt to justify that the applicant has really filed his application on time, an affidavit of the casher to that effect must be filed together with the application. In the absence of such an affidavit, the court shall not consider the excuse as a valid reason to grant the extension sought.

RULING
IN THE HIGH COURT OF TANZANIA
AT ARUSHA
MISC. CIVIL APPLICATION NO. 56 OF 2009
(C/F District Court of Babati at Babati in Civil Appeal No. 44 of 2004
Originating from Babati Primary Court in Civil Case No. 48 of 2003)

BETWEEN

1. JUMA SALIM
2. MAMATATU ..................................APPLICANTS

AND

PAULINE ISRAEL ................................. RESPONDENT

Date of last Order: 04/08//2011
Date of Ruling: 03/11/2011

RULING
A.C. NYERERE, J.
The is a ruling from an application made by the applicants under the provisions of section 14(1) of the Law of Limitation Act, [CAP, 89 R.E. 2002] and any other enabling provisions of the law for the following orders;
1. That, this Honourable Court be pleased to grant an order for extension of time to file an appeal out of time;

2. Any other orders this Honourable Court shall deem fit to grant.

The chamber summons was supported by affidavit sworn by the applicants stating that after being granted leave to appeal to this court via an order of the court by N.P.Z. Chocha, J dated 12/03/2009, the applicants forthwith filed the said appeal in Babati Registry on 19/03/2009 whereas they were unable to be furnished with a receipt as the Registry had no Receipt Book.

It was the deponents’ affirmation that they had to wait until on 08/04/2009 when they were supplied with the said receipt. Further, on 23/04/2009 the said appeal was rejected or not admitted by K.M.M. Sambo, J as the appeal was out of time and without an order of the court extending time in which to file the same. In this application, parties agreed to argue the application by way of written submissions whereas the applicants were assisted by Legal and Human Rights Centre while the respondent argued the application in person.

The applicants reiterated what they had already stated in the already filed affidavit and in addition, they made reference to which was held by the Court of Appeal of Tanzania in determination of an application for extension of time. The referred case was **REPUBLIC vs. YONA KAPONDA AND 9 OTHERS [1985] T.L.R. 84** where the court had the following observation:

>“As I understand it, sufficient reasons here do not refer only and is not confined, to the delay. Rather, it is sufficient reason for extending time and for this I have to take into account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved.”

In rebuttal; the respondent submitted that the date known for one to worth to have filed a document is the day when s/he effect payment of the necessary fees. The respondent referred this court to the case of **JOHN CHUWA vs. ANTHONY CIZA [1992] T.L.R. 233** where the court of Appeal of Tanzania observed that:

>“According to the learned judge, the date of filing the application is the date of the payment of the fees and not that of the receipt of the relevant documents in the registry. Mr. Akaro, learned advocate for the applicant, conceded that before me and I cannot fault the learned judge there.”
Regarding the allegations of lack of receipt book, the respondent opined such averments to be a cooked story as the applicants had to file an affidavit by the cashier to that effect. The respondent referred this court to what was held by the Court of Appeal of Tanzania in the case of John Chuwa vs. Anthony Ciza (supra) where the Court held;

“An Affidavit of a person so material, as the cashier in this case, has to be filed.”

Further, the respondent argued that in order for this court to grant leave for extension of time, one has to show that the intended appeal possesses chances of success. The respondent cited the case of Rajabu Kidimwa Ng’eni and Another vs. Iddi Adam [1991] T.L.R. 38 where the High Court of Tanzania held that;

“Since the intended appeal has absolutely no chances of success the application must fall.”

Further reference was made to the case of Samson Kishosha Bagra vs Charles Kingongo Gabba [1990] T.L.R 133 where the High Court of Tanzania held as following;

“(i) In determining whether or not to allow an application for leave to appeal out of time the court has to consider reasons for the delay as well as the likelihood for success of the intended appeal.”

In rejoinder; the applicants reiterated what they submitted in chief adding that the intended appeal has great chances of success and that they (the applicants) are/were not at fault as the issue of lacking receipt books are beyond their reach.

Having gone through the Court records and the respective submissions by both parties, here are the observations and deliberations of the Court in disposition of the present application. First, it is not in dispute that the applicants were granted leave to file an application out of time via an order of this court dated 12/03/2009 for the applicants/appellants to file an appeal within 14 days from the date of the said order.

Second; the records of the court show that the said appeal was filed on 19/03/2009 whereas upon admission in court the said appeal bears a Court seal together with a signature of the Registry Officer. Third, surprisingly, while the said appeal is alleged to have been filed in court on 19/03/2009 the records shows that the appeal was signed by the applicants (appellants) on 20/03/2009.
Now, this court has asked itself as to how can a document that has already been filed in court and the said copy been kept in the court record later been taken back to the person who has filed the document for signature as the record shows that the appeal was filed in court before the same was signed. In addition, if a document was filed before being signed can that document amount into a proper filing?

Going through those issues, this court is of the view that; filing of a document that lacks signature renders that document a mere meaningless paper that was filed in court as it bears no legal rights and or responsibilities. From the above; the confusion in dates as above narrated together with the filing of the said appeal (sic) that lack signatures of the makers (as the signatures appear to have been made on 20/03/2011 while the filing is alleges to have been affected by the appellants on 19/03/2009 as signified by the Registry Officer), that takes the matter to a position that there was no appeal ever filed in court.

For that matter it was until the date when the fees were paid in court i.e. on 08/04/2009 when the said signatures by the appellants gained meaningful status as all along the way prior to the payment of the fees there was nothing filed in court.

But on the other hand; the fact that there are variances in dates in respect of the dates when the appeal was filed and as to when the said was signed by the appellants and as far as it is unknown as to how and why the applicants/appellants filed the said documents without signing and latter after the filing then; take it back and sign the same it leaves a lot to be desired.

Consequently; from all the above pitfalls, since the affidavit by the applicants hidden all those facts as if the applicants/appellant managed to file the said appeal timely but at the default of the registry as they said to be furnished with copy of a receipt signifying filing of the said appeal. And from the facts that the applicants have failed even to annex an affidavit by the cashier/court registry, providing that it was a fault engineered by the registry or rather that it was true that the said court registry lacked receipts by the dates of the filing the said appeal, then; this court finds that there are no genuine reasons and or genuine basis under which this court can grant extension of time within which to file an appeal.

It falls that, despite the facts that an appeal is a constitutional rights, yet; the duty to inform the court nothing than the absolute truth stands the cornerstone
in administration of justice. From the above, the application for extension of
time to file an appeal out of time, is hereby dismissed with costs.
It is so ordered.

Sgd: A.C. NYERERE
JUDGE
03/11/2011

Ruling delivered in chamber this 3rd day of November, 2011 in the presence of
both applicants in person and in absence of the respondents who is aware of
this date.

Sgd: A.C. NYERERE
JUDGE
03/11/2011

I hereby certified this to be a true copy of the original.

Sgd.
DISTRICT REGISTRAR
ARUSHA
03/11/2011

FRED WANGAEL SWAI vs. MOHAMED RASHID LEMA & ANOTHER,
Misc. Civil Application No. 1 of 2010, High Court of Tanzania at Arusha

BRIEF FACTS
The Appellant herein instituted a suit against the Respondent before the
Resident Magistrate’s Court of Arusha at Arusha. However, before the suit was
determined on its merits, the Respondent raised a preliminary objection. The
trial court upheld the objection and dismissed the Appellant’s suit. Aggrieved by
the decision of the Arusha Resident Magistrate’s Court, the Appellant preferred
an appeal before the High Court of Tanzania at Arusha, hence this appeal.

POINTS TO NOTE FROM THE CASE
1. A preliminary objection consist of a point of law which have been pleaded
or which arises by clear implication out of pleadings and which is urged
as a preliminary points may dispose of the suit. It cannot be raised if any
fact has to be ascertained or if what is sought is the exercise of judicial
discretion;
2. A cause of action is ‘every fact which when travest, it will be necessary for the plaintiff to proof in order to support his right to the judgment of the court. In other words, is a bundle of essential facts which is necessary for the plaintiff to proof before he can succeed in the suit’;

3. According to section 18 of the Civil Procedure Code Cap. 33 [R.E 2002], the Plaintiff may choose to institute the case where the defendant reside or where the cause of action arose.

**JUDGEMENT**

**IN THE HIGH COURT OF TANZANIA**  
**AT ARUSHA**  
**MISC. CIVIL APPEAL NO. 1 OF 2010**

FRED WANGAEL SWAI ........................................ APPELLANT

VERSUS

MOHAMED RASHID LEMA
THABIT ABDULLAH LEMA .................................. RESPONDENTS

Date of last Order: 05/01/2012  
Date of Judgment: 19/07/2012

**JUDGMENT**

**Before: F.H. Massengi, J.**

This appeal emanates from the decision of D.J. Msffe – RM in Civil Case No. 18 of 2009, dated 25/01/2010 in which the resident magistrate dismissed the plaintiffs case basing on a preliminary objection on the point of the law raised by the respondent. Being aggrieved by the said decision the appellant referred this appeal against the ruling and order on the following grounds:

1. That the trial court erred both in law and in fact by misinterpreting the laws regarding treatment and determination of preliminary points of objections as required in law despite the appellant/plaintiff meeting all the requirement of the law;

2. That the trial court erred both in law and in fact by resting the burden of proof against the appellant/plaintiff at the preliminary stage regarding the objections contrary to the demands of the law;
3. That the trial court erred both in law and in facts for being bias against the appellant/plaintiff. Thus availing with his duty as an umpire within the prescribed limit of the law as evidenced both in the proceedings and the ruling of the trial court.

The appellant prays for the ruling and order of the Arusha Resident magistrate Court be quashed and an order to be entered on the matter be heard on merit. During the hearing of this appeal it was agreed for this appeal to be argued by way of written submissions in which both parties appeared in person.

In his submission, the appellant is complaining that, the Resident Magistrate in his ruling which arose from the preliminary objections raised by the respondent included other issues which were supposed to be heard in trial and determined conclusively.

It was further stated that, the Magistrate raised three issues in that ruling which needed to be heard and determined fully but instead she ended to treat the case as the matter based on preliminary objections on point of law and leaving behind issues framed undetermined.

He referred this court to the case of Mukisa Biscuits Manufacturing Company Limited vs. Westend Distributors Ltd (1996) E.A. 696 which establishes basic principles of the law which governs preliminary objections. He stated that a preliminary objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. It is his supposition that, the ruling of the subordinate court carries other issues which are not purely points of law, therefore needed to be determined accordingly. Other cases cited by him to support is contentions is the case of Festo vs. Mwakabana (1991) H.CD 117, the case of Agro-Industries Limited vs. Attorney General 1994 TLR 43 and the case of Fredrick Selenge and Another vs. Agness Masele of 1983 TLR 199 (HC).

He therefore suggested that the magistrate has availed with his duties as an umpired and acted biased by ruling out the case without determining possible issues framed by the court itself as it believed that, those issues are involved in the case. Basing on that he prayed this appeal to be allowed with costs.

In rebuttal the respondent submitted that it is the established law of procedure that in any trial where there arises any preliminary objection on any point of law it must be resolved first. The respondent raised three grounds of preliminary
objections and the court dismissed the case on the basis of the preliminary objections or upon the determination of issues raised by the court. He added that, the Magistrate clearly set out reasons for the decision reached.

He therefore, stated that, the case was not heard on merit because the magistrate was obliged to first resolve the preliminary objection and on that basis the suit was dismissed. As such he prayed this appeal be dismissed with costs.

In rejoinder, the appellant submitted that, what was stated by the Magistrate to be the preliminary objection by the respondent does not suffices to dismiss the suit. He thus insisted his prayer for this court to allow the appeal considering the finding of the court of appeal in the case of Mukisa Buscuits manufacturing company Ltd vs. West end Distributors Limited (1969).

I have gone through and considered the submission of both parties. As well I have gone thoroughly through the ruling of the Resident Magistrate. On the first place, I must admit that the trial magistrate in her ruling has mixed up some issues which ought to be dealt with during the hearing of the case on merit with the point of preliminary objections which were raised by the respondent.

On a perusal of the lower court records, I noted that, on the first day of hearing the respondents’ counsel raised a preliminary point of objections to the effect that;

“The plaintiff suit is bad in law for contravening section 18, Order VII r. 1 (e) and rule 5 of the Civil Procedure Code (33 R.E. 2002).

But the trial magistrate in her ruling discussed three issues and treated all of the as the point of preliminary objection. For the sake of clarity I would like to quote part of her ruling,

“The defendants have denied the above mentioned claims by the plaintiff thereby bring to the attention of the court several issues and raised a preliminary objection on point of law that;

1. In issues of law, whether the plaintiff’s suits is bad in law for contravening section 18 Order VII r. 1(e) and r. 5 of Cap. 33 R.E. 2002.

2. An issue of facts, whether the defendants had in any way influenced the law enforcing organs of the state to do or not to do any conducts upon the plaintiff thereby creating a cause of action.

3. Whether the plaintiff is entitled to any reliefs at the disposal of this suit.”
To me I don’t see if para 2 and 3 above ought to be included or discussed in her ruling because these points purely base on facts as such do not qualify to be treated as points of preliminary objections. In a land mark case of Mukisa Biscuits Company vs. Westend Distributors (1969) E.A. at page 700 it was stated that:

“A preliminary objection consist of a point of law which have been pleaded or which arises by clear implication out of pleadings and which is urged as a preliminary points may dispose of the suit.”

It was further stated in this case at page 701 that;

“A preliminary Objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

With support from the held in the above case I am convinced that the issues in para 2 and 3 of the ruling of the trial magistrate did not qualify to be treated as a point of preliminary objection or be included in her ruling as they are basing on point of facts which needed to be ascertained on full trial. On that point the trial magistrate wrongly made a finding on her ruling basing on para 2 and 3 as indicated above which are purely points of facts without going in the full trial. Coming to para 1 of her ruling, which is the point of preliminary objection raised by the defendant to the effect that the plaintiffs suit is bad in law for contravening s. 18 Order VII r. 1(e) and r.5 of the Civil Procedure Code, it is my understanding that section 18 of the Civil Procedure Code requires the plaintiff to be institute a case in a court within the local limits whose the defendants resides or where the cause of action arose.

The word “or” is a conjunction which according TO THE BLACK LAW DICTIONARY, 6TH EDITION means a word to be used to express alternative or to give a choice of one among two or more things. As the word suggest under s. 18 of the Civil Procedure Code the Plaintiff may choose to institute the case where the defendant reside or where the cause of action arose. In the plaint it is indicated that the defendant resides at Arusha and this fact is not disputed in the written submission of the defence by the defendants. On that regard, since the plaintiff instituted this case at Arusha, it is my finding that the plaintiffs suit did not contravene s. 18 of the Civil Procedure Code as alleged by the defendants.

Another point which the defendant claimed to be contravened by the plaintiff’s suits is Order VII r. 1(e) that the plaint does not disclose the cause of action and when it arose.
A cause of action is defined by MULLA, in his book titled CODE OF CIVIL PROCEDURE 12th Edition at p. 120 to mean every fact which when travest, it will be necessary for the plaintiff to proof in order to support his right to the judgment of the court. In other words, is a bundle of essential facts which is necessary for the plaintiff to proof before he can succeed in the suit. In light of the above definition and having gone through the plaint which was filed before the lower court, I find that the plaintiff disclosed the cause of action of malicious prosecution against the respondents.

With consideration of the grounds of appeal raised by the appellant, I find that the trial magistrate erred in law and in fact in fixing issues of fact and addressed them as point of preliminary objections.

On the circumstances, I therefore allow this appeal and order the hearing of this case on merits to proceed before the trial court.
Order accordingly.

(Sgd) F.H. Massengi  
JUDGE  
26/7/2012

Judgment delivered in court this 26th of July, 2012 in the absence of both parties.

(Sgd) F.H. Massengi  
JUDGE  
26/7/2012

I hereby certify this to be the true copy of the original.

Sgd

Ag. DISTRICT REGISTRAR  
26/7/2012
MAGRETH LOY vs. PHILIMENA EMSON, (PC) Civil Appeal No. 45 of 2007, High Court of Tanzania at Arusha

BRIEF FACTS
The parties herein are at variance on who should be appointed the administratrix of the estate of the late Emson Masangwa, who was their husband at different times. When the late Emson Masangwa died in 2003, the Appellant applied to be granted letters of administration of his estates. The application was lodged at Arusha Urban Primary Court. It was marked Probate Administration No. 151 of 2005.

The respondent lodged an objection. Pending the hearing of an objection the respondent hired the services of the lawyer which necessitated the transfer of the record to the District Court to enable the lawyer feature, and the same was filed as Miscellaneous Civil Application No. 23 of 2005. The District Court decided in favour of the Respondent. Aggrieved by the decision of the District Court, the Appellant appealed before the High Court of Tanzania at Arusha, hence this appeal.

POINTS TO NOTE FROM THE CASE
1. A party seeking for transfer of a case from a Primary Court to a District should show good or sufficient cause. Financial ability to engage an advocate alone does not amount to good and sufficient cause to grant an application to transfer a case from Primary Court to any other court;

2. The mandate of ordering transfer of probate proceedings to have them presided over by the District Delegate lies with the High Court by necessary construction of section 5(3) of the Probate and Administration of Estates Act, Cap. 352 [R.E. 2002], and or section 47(1) of the Magistrates’ Court Act, Cap 11 [R.E 2002], upon satisfactory grounds having been advanced to the court;

3. A District Court may order transfer of a probate matter to the Primary Court or to itself only on matters within its jurisdiction;

4. District Courts presided over by the District Magistrate have jurisdiction in the administration of small estate in terms of section 6 of the Probate and Administration of Estates Act, Cap. 352 [R.E. 2002].
JUDGMENT

IN THE HIGH COURT OF TANZANIA
AT ARUSHA
(PC) CIVIL APPEAL NO. 45 OF 2007
(C/F Misc. Civil Application No. 23 of 2005, Original Arusha urban
Primary Court Probate & Administration Cause No. 151/2005)

MAGRETH LOY ................................................................. APPLICANT

VERSUS

PHILOMENA EMSON .................................................. RESPONDENT

JUDGMENT

N. P. Z. CHOCHA, J.

Two ladies namely Magreth Loy and Philomena Emson are on a quarrel on who
should administer the estate of the late Emson Masangwa. For convenience
sake the ladies shall hereinafter be referred to as the appellant and respondent
respectively. Emson shall be referred to as the deceased.

The late Emson Masangwa was married to all ladies in instalments during his
lifetime. The appellant was a senior wife. Her marriage with the deceased was
contracted way back in October, 1983 under Christian rites. The appellant said
it was a monogamous marriage yet to be dissolved. In 1995 the couple separated
on account of some misunderstandings.

Upon separation, in 1998 the respondent stepped in. She cohabited with the
deceased up to the time of his death. The deceased’s demise was in 2003. Until
1996 the deceased had already fathered five children with the appellant.

The deceased’s death prompted the appellant’s back to her home. She applied
to be appointed to administer the deceased’s estate. The application was lodged
at Arusha Urban Primary Court. It was marked Probate Administration No. 151
of 2005. The respondent lodged an objection.

Pending the hearing of an objection the respondent hired the services of the
lawyer which necessitated the transfer of the record to the District Court to
enable the lawyer feature. Miscellaneous Civil Application No. 23 of 2005
was therefore registered to accommodate the purpose, with Mr. Oola advocate
featuring for the respondent.
In a document titled *SUBMISSION BY THE APPLICANT’S OBJECTOR’S COUNSEL* which is dated 30th May, 2007 authored by Duncan Joel Oola, the author introduced one GODWIN MASNAGWA to be the 2nd objector. The said Godwin Masangwa is said to be the deceased’s blood brother. He (Mr. Oola) argued that if there were any resolution related to the deceased’s estate, this man ought to be informed.

When the matter came up for hearing on 19th September, 2006, the appellant took the floor. She addressed the court on the application. Mr. Oola on the other hand replied on behalf of his client, after which the appellant made a rejoinder.

The trial Magistrate then concluded the affair in a one page typed written judgment whose concluding para is let to speak as itself:-

“It is my view she cannot be administratrix her first objection can be administrator, on that premises I hereby object Magreth Loy to be appointed as administrator. Order the other person to be appointed as administrator who duly appointed by clan of late Emson Masangwa.”

It is always very difficult to comprehend this learned magistrates texts, which is why I normally reproduce them without any foreign interpretation. I take judicial notice that the learned magistrate had in mind that he was granting objection by the respondent to have the appellant appointed as the administratrix of the deceased estate, otherwise it was improper for the magistrate himself to object the appointment as he put it.

Sequel to this judgment, the appellant came up with the following grounds of appeal;

1. *That the learned trial Magistrate erred both in law and in fact by giving a mere decision which lacks legal reasoning contrary to what is provided by law;*

2. *That the learned trial magistrate erred both in law and in fact by not scrutinizing the evidence tendered before the honourable court by the appellant therefore reached into a wrong decision;*

3. *That the learned trial magistrate erred both in law and in fact by deciding that the respondent was duly married without taking into account the fact that the marriage between the appellant and the deceased was a Christian marriage and it was never dissolved;*

4. *That the learned trial magistrate erred in law in giving judgment by*
holding that the appellant cannot administer her late husband’s estate without giving reasons why she cannot do so.”

Parties to the appeal made their submission in support of their respective positions. The appellant is reinforcing her position by first attacking the trial courts judgment for its failure to properly evaluate the evidence before it. Secondly she restates her position on how she feels still justified and or entitled to be appointed the administratrix of the deceased’s estate.

Mr. Oola Advocate supports the District Courts decision which allowed the objection. Among other things, he argued that the minutes of the purported clan meeting which took place on the 29th June, 2005 were objected because the deceased’s elder brother was not involved.

The learned trial magistrate was in an unnecessary hurry when he was attending this matter. As the appellant complaints, the magistrate’s judgment is without sufficient reasons.

I am not aware of any provision of law which categorically provides on how long the judgment should be. However, Order XX rule 4 of the civil procedure code provides for the contents and how the judgment should look like thus:-

“4. Judgments shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.”

After attending to both parties in Misc. Civil Application No. 23 of 2005 with the “application/objection” filing a four (4) pages type written submission, I wonder how could it be possible for the trial court to summarise and condense all that in one page only, and claim to have complied with the format required under the above quoted law. The appellant’s complaint that the judgment does not meet the legal requirement is very founded.

After carefully studying this matter I find that there is an error material to the merits of the case which if left uncontrolled, will occasion injustice and set a wrong precedent. I have therefore decided to exercise powers in terms of section 44(b) of the Magistrates’ Court Act to revised the orders made by the District Court vide Misc. Civil Application No. 23 of 2005. In this application, Philemina Emson successfully applied to have the original fine No. 151 of 2005 transfer from the Primary Court to itself so that her lawyer could be heard.
Consequent to the order of transfer, the matter is to identify the stumbling block upon which he foot was stricken rather than looking for the solution from the fallen site.

Philemina Emson filed an application for transfer brought under section 47(1) (b)(i) of the Magistrates Courts Act. For convenience sake the provision reads: “47(1) Where any proceeding has been instituted in a primary court, it shall be lawful at a time before judgment for: –

(a) ................................

(b) The District Court or a court of resident magistrate within any part of the local jurisdiction of which the primary court is established, to order the transfer of the proceedings to itself or to some other magistrate’s court;

In any case where: –

It appears that the circumstances or gravity or the proceeding make it desirable that the same should be transferred.”

Mr. Fimbo, RM granted the application which the appellant had objected because according to the appellant, the matter ought to be governed by customary law. On this query the learned magistrate remarked:-

“In the circumstances I cannot certainly ascertain this objection, despite the fact such party would like this court to believe on this point and decide on each one’s favour, since, like what Mr. Oola has stated the respondent has not in any way indicated in his submission on whether she wanted the matter to be decided under customary law, then this point is of no meaning to me.”

With due respect to the learned magistrate, she abdicated from making a finding on a very fundamental issue on which law should be applicable. It was necessary for her to make the finding which would eventually guide on the court with proper jurisdiction to preside on the matter in the case of STANSLAUS RUGABA KASUSURA AND THE ATTORNEY GENERAL V. PHARES KABUEYE (1982) TLR 338 the Court of Appeal found that the trial courts judgment was fatally defective because it had left the contested material issues of fact unresolved.

The way I see it, it was important to ascertain the applicable law for proper placement of the matter in terms of jurisdiction. There was no way the court could avoid the application of section 63(1) of the Magistrates’ Court Act No. 2/1984 – Cap. 11 [R.E. 2002].
The learned magistrate erred in granting an application for transfer of the case on ground of availing the party’s lawyer’s audience relying on Section 47 of the Magistrate Courts Act. This court has already directed vide the case of **ABUBAKAR MLENDAVRS JUMA MFAUME (1989) TLR 145** that a party seeking for transfer of a case from a Primary Court to a District should show good or sufficient cause. Mere with the financial ability to engage an advocate alone does not amount to good and sufficient cause to grant an application to transfer a case from Primary Court to any other court.

In any case, section 47 of the Magistrates Court Act which the applicant based her application does not contain as one of the condition which may warrant a transfer of the case, a ground wanting the services of the lawyer, The provision was therefore erroneously cited as an enabling provision. The learned magistrate was also wrongly swayed when she granted an application basing on the provision.

The learned magistrate erroneously granted the transfer of the matter to the District Court without ascertaining jurisdiction. Looking at the application, the deceased’s estate can roughly be estimated in terms of millions of shillings. Even where transfer was acceptable, considering the pecuniary value of the estate a **District Delegate** appointed pursuant to section 5 of the Probate and Administration of Estates Act Cap. 352 [R.E. 2002] who could qualify to preside over the application upon transfer.

The mandate of ordering the transfer of the proceedings to have them presided over by the District Delegate lies with the High Court by necessary construction of section 5(3) of Cap. 352 R.E. 2002, and or section 47(1) of the Magistrates’ Court Act upon satisfactory grounds having been advanced to court.

The District Court may order the transfer of the matter to the Primary Court or to itself only on matters within its jurisdiction. Assuming there was no controversy on the applicable law which the court had failed to resolve, the District Courts presided over by the District Magistrate has jurisdiction in the administration of small estate in terms of section 6 of Cap. 352 [R.E. 2002].

Small estate are those estates the gross value of which does not exceed Tshs. 10,000/-. With all these considered, it follows that the learned magistrate (Fimbo, RM) usurped wrong powers to entertain the application which resulted in the transferring of the proceedings. These powers belong to the High Court.
Secondly, the assignment of the record to Mashabara, RM after a wrong transfer, was equally wrong as the said Mashabara was not a District Delegate.

The learned magistrates (Fimbo) ruling/order vide Misc. Civil Application No. 23 of 2005 purporting to transfer the Urban Primary Court Probate and Administration Cause No. 151 of 2003 to the District Court is VOID as it was made by a person without jurisdiction. It is set aside.

The setting aside of the order implies that no record has ever been transferred. It follows therefore the purported judgment by Mashabara RM is not really a judgment because it is based on the fouled purportedly transferred record. It does not constitute a judgment which can be upheld or up-set. It can only be rejected.

Considering he applications and technicalities which have so far surfaced in this matter and considering possible gross value of the estate involved in the administration, I find this matter requires a proper keen attention.

I exercise powers under section 47(1)(c) of the Magistrate’s Courts Act to order the transfer of Probate and Administration cause No. 151 of 2005 from Arusha Urban Primary Court to the High Court of Arusha. Order accordingly.

Cost to follow the cause.

Sgd. N. P. Z. CHOCHA
JUDGE
27/03/2009

Date: 27/03/2009
Coram: N.P.Z. Chocha, J.
Appellant: Present in person.
Respondent: Present in person.
Court: The judgment cum revision order is delivered in physical personal presence of parties.
Right of Appeal Explained.

Sgd. N. P. Z. CHOCHA
JUDGE
27/03/2009
I hereby certify this to be a true copy of the Original.

DISTRICT REGISTRAR
ARUSHA

JOSEPH SIKUSTAHILI vs. ELIUDI PETER SWAI, Civil Appeal No. 14 of 2008, High Court of Tanzania at Moshi

BRIEF FACT
This case originated from Civil Case No 26 of 2006 before Moshi Residence Magistrate Court where the Appellant, Joseph Sikustahili, instituted a suit for malicious prosecution. He said a charge of arson which was preferred against him was instituted with spite or ill will following false information filed to the police by the Respondent, Eliud Peter Swai. The suit was dismissed. Aggrieved by the trial court’s decision, Appellant preferred and appeal before the High Court. However, before the appeal was determined on its merits, the Respondent filed a preliminary objection hence this ruling.

POINTS TO NOTE FROM THE CASE
For a court to allow a party to rectify the discrepancy of dates between a judgement and decree for the sake of enabling the party to come back to court, the court has to first direct itself as to the overwhelming chances of success of the appeal. Where there are no any chances of success in that appeal, a court shall not allow a party leave to rectify and come back to court afresh.

JUDGEMENT

IN THE HIGH COURT OF TANZANIA
AT MOSHI
( DC) CIVIL APPEL NO. 14 OF 2008
C/F CIVIL CASE NO.26 OF 2004 OF RM’S COURT OF MOSHI

JOSEPH SIKUSTAHILI..........................................................APPEALLANT

VERSUS

ELIUDI PETER SWAI..........................................................RESPONDENT

RULING
MZUNA, J.
This preliminary objection is in respect of an application filed by Mr. Sandi, learned counsel for the Respondent in main suit, Eliud peter Swai. It is against
Mr. Joseph Sikustahili, the appellant. It is against the accompanied decree which the learned counsel says is a defective decree and therefore prayed for same to be dismissed.

That the decree and its date of signing it differ and that the same is incompetent and should therefore be dismissed under order XX Rule 7 of CPC cap.33 R.E. (2002).

On his part the appellant/respondent in this application asked for this court to consider his appeal on merits as he is innocent to that anomaly.
I have carefully considered the arguments advanced for and against this application.

The law as it stands is well provided under order XX rule 7of the C.P.C Cap 33 R.E. 2002. That provision of the law reads as follows:-

“The decree shall bear the date of the day on which the judgment was pronounced, when the judgement was pronounced, and when the Judge or magistrate has satisfied himself that the decree has been drawn up in accordance with the judgement he shall sign the decree.” (Emphasis supplied).

According to the wording of the above provision of the law, the term used is “shall” which means it is mandatory. In other words a decree which bear a date different to that on which the judgement was pronounced is a defective decree. It is illegal.

Even where a magistrate has vacated office before pronouncing a judgement or signing a decree that “a decree drawn up in accordance with such judgement may be signed by his successor.”

According to the court record, a judgement was prepared and signed by G. Herbert, RM (as he then was) on 6/12/2007. It was delivered by M. Lusewa, RM on 10/12/2007. A decree bears both dates i.e. 6th day of December, 2007 and 10th day of December, 2007. That is in total divergence to the provisions of the law, above cited.

That being the case, a remedy I think is not to allow the appellant/respondent amend the decree. I would have thought of doing so had there been an appeal worth consideration.
To put it in brief, the appellant/respondent Joseph Sikustahili instituted a suit on malicious prosecution. He said a charge of arson which was preferred against him was instituted with spite or ill will following false information filed to the police by the respondent/applicant Eliud Peter Swai. The suit was dismissed for what the trial court Magistrate found there was no basis for the award of damages and secondly that the ingredients of malicious prosecution were not proved to the satisfaction as well stated in the case of Jeremiah Kamama Vs. Bugomola Mayandi (1983) T.L.R. 123.

There was evidence that indeed the respondent’s house was set on fire. As stated by Korosso, J (though in obiter) in the case of Mafumba Jilawaji v. Budu Mnyagolya 1992 T.L.R 310 that:

"Prosecution is one of the essentials of the tort of malicious prosecution. No plaintiff can ever satisfy this essential in a criminal case, this is because most prosecution before the District and High court are conducted by Public Prosecutors and state Attorneys”

Surely, the appellant was arrested, case investigated and then charged. He, under such circumstance, could not point a finger on the respondent/applicant that there was no honest belief in the words or report which formed the basis for the malicious prosecution.

It was held in the case of Mbaraka William v. Adamu Kissute and Another (1983) T.L.R 358, Mushi, J. (as he then was) that:

“In a case of Malicious prosecution the most important consideration to be made in whether there was an honest belief in the words or report which formed the basis for the malicious prosecution.”

Evidence was adduced that the appellants were not good term. Naturally, the offence of Arson is committed during night or in a situation where the criminal is not seen. The charge against the appellant was dismissed for simple reason that the respondent had no other independent witness to add weight to his evidence that indeed the appellant was a suspect. There is therefore no merit in the intended appeal as mere acquittal is not by itself proof that the complaint was false.
The preliminary objection is according sustained with costs.

M.G. MZUNA
JUDGE
6/5/2010
Date: 6/5/2010

Coram: M.G Mzuna, J.
Appellant/Respondent: Present
For Respondent/Applicant: Mr. Sandi, Advocate
C.C: Ramla
Court: Ruling delivered.

M.G. MZUNA
JUDGE
6/5/2010

Appellant/Respondent: I pray to be supplied with a copy of the ruling.
Court: The same be typed and supplied to him upon payment court fees.

M.G. MZUNA
JUDGE
6/5/2010
CONCLUSION

Legal Assistance is indispensable to the access to justice for the poor. It remains a refuge for millions of Tanzanians who cannot afford advocates fees and legal technicalities.

Most legal aid providers provide services such as counselling, advising, reconciliation, drafting court documents and sometimes empowering or representing clients in courts of law. In addition, organisations such as LHRC produce self help kits for clients’ personal use as a first aid legal advice tailored to meet specific situations. I.e. what a client should do when his employment contract is terminated, or how to write a will, or how to provide maintenance for a child born out of wedlock, etc. These organisations do not get subsidy from the government. Most of the Legal Aid Clinics including the LHRC’s legal aid clinics depend mostly on funding from development partners and volunteers. This is not a sustainable way to assist the needy people in Tanzania in accessing justice.

All the cases reported in this Volume are evidence of the need to assist these indigent who cannot afford legal fees. If it was not for the legal aid, so many cases would not been heard as such the clients would have no legal recourse. It is anticipated that this document will serve two main purposes namely; to show the importance of legal aid but also a material for researchers, scholars as well as interested persons in this field.