

IN THE COURT OF APPEAL OF TANZANIA

AT DAR-ES-SALAAM

(CORAM: MAKAME, J.A., KISANGA, J.A., And MFALIIA, J.A.)

CIVIL REFERENCE NO. 7 OF 1995  
In the Matter of an Intended Appeal

BETWEEN

MVITA CONSTRUCTION CO. LTD. .... APPLICANT

AND

TANZANIA HARBOURS AUTHORITY ..... RESPONDENT

(Reference from the Ruling/Decision of a single  
Judge of the Court of Appeal of Tanzania at  
Dar es Salaam)

(Omar, J.A.)

dated the 9th day of June, 1995

in

Civil Application No. 12 of 1995

R U L I N G

MAKAME, J.A.:

This Reference was brought by MVITA CONSTRUCTION CO. LTD., who were represented before us by Mr. Lukwaro, learned advocate. It seeks a reversal of the decision by the single judge (Omar, J.A.) who on 9th June, 1995 granted the present respondent's prayer for extension of time to file a Notice of Appeal to this Court and to serve the present appellant with a copy of a letter asking for a copy of the High Court proceedings before Kyando, J. who had dismissed their petition which sought to have some Interim awards by an arbitrator set aside. A similar application had been dismissed by Bubeshi, J. on 31st March, 1995.

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When this Reference came up for hearing Mr. Mnzava, learned Counsel for the respondents, Tanzania Harbours Authority, made a valiant but unsuccessful effort to have the matter stood down so as to await the disposal of Civil Application No. 5 of 1995 UNIVERSITY OF DAR-ES-SALAAM v. SYLEVESTER CYPRIAN AND 210 OTHERS. We decided to proceed with the hearing of this Reference and our reason for doing so, which we promised we would state in the course of this Ruling, is that we were persuaded to agree that the said Civil Application had no relevant bearing on the present Reference.

In seeking to have us reverse the decision of Omar, J.A. Mr. Lukwaro submitted that there were no sufficient reasons advanced to warrant extension of time by the single judge.

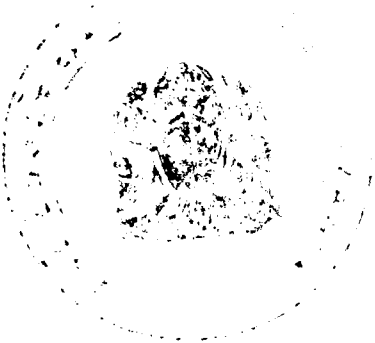
We wish to point out that actually, in essence, the matter was carefully considered in this Court's Ruling in CIVIL APPEAL NO. 9 of 1994 between the same parties, which panel had the good fortune of including the single judge. The Court decided on 14th October, 1994 that the appeal was time-barred. The issues which had been raised then were substantially the same as those raised again before the single judge after Bubeshi, J. had also considered them. The application of Rule 83 of the Tanzania Court of Appeal Rules was also considered and pronounced on.

With respect, Mr. Mnzava took pains to set out the chronology of events but in our considered view there were no new matters, no new grounds, that would make us disagree with

Bubeshi, J. and reverse her. If we could think of any good reason on our own we might sustain the respondent's application, but we can think of none.

We accordingly reverse the decision of our learned brother Omar, J.A., with costs.

DATED at DAR ES SALAAM this 28th day of November, 1996.

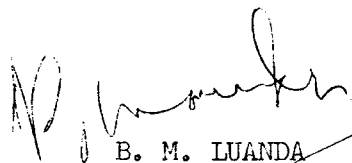


L. M. MAKAME  
JUSTICE OF APPEAL

R. H. KISANGA  
JUSTICE OF APPEAL

L. M. MFALIHA  
JUSTICE OF APPEAL

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

  
B. M. LUANDA  
SENIOR DEPUTY REGISTRAR