IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MSOFFE, J.A., KILEO, J.A., KIMARO, J.A., MASSATI, J.A., And MANDIA, J.A.)

CIVIL APPEAL NO. 36 OF 2012

CHIRIKO HARUNI DAVID .....APPELLANT

VERSUS

1. KANGI ALPHAXARD LUGORA
2. THE RETURNING OFFICER FOR MWIBARA CONSTITUENCY } .....RESPONDENTS
3. THE ATTORNEY GENERAL

(Appeal from the judgment and decree of the High Court of Tanzania at Musoma)

(Chocha, J.)

Dated 21st day of November, 2011

in

Miscellaneous Civil Cause No. 7 of 2010

RULING OF THE COURT

17th & 31st May, 2013

MSOFFE, J.A.

On 26/9/2012 a Bench of three Justices of the Court of Appeal of Tanzania (Rutakangwa J.A.; Luanda, J.A.; And Oriyo, J.A.) sitting as an ordinary Court under Article 122 of the Constitution of the United Republic of Tanzania, 1977, referred a matter of law for consideration and decision by

the same Court sitting as a full Bench of five Justices under Article 118(1) of the same Constitution In its Order the ordinary Court stated:-

> *In this appeal, counsel for the appellant, Mr. Herbert Nyange, in terms of Rule 106 (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules), had intimated that he would invite us to depart from our decision in* ***KATANI A. KATANI V. THE RETURNING OFFICER, TANDAHIMBA DISTRICT AND TWO OTHERS****, Civil Appeal No. 115 of 2011, regarding the proper construction to be put on s.111 of the National Elections Act.*
>
> *When the matter came up for hearing before us this morning, Ms. Nyange appeared for the appellant, while Mr. Melckisedeck Lutema, learned advocate, for the 1st respondent, and Mr. Obadiya Kameya, learned Principal State Attorney, for the 2nd and 3rd respondent appeared. In fact the 1st respondent has lodged a notice of cross-appeal whose thrust is to urge the Court to nullify the proceeding, in the trial*

High Court on the strength of the Court's decision in the ***Katana*** *case (supra).*

After focused interchanges, between the Court and counsel for all parties, it was agreed that in order to avoid unnecessary chaos, the matter be referred to the Full Bench for hearing and determination.

After giving the issue the benefit of a mature and objective consideration, we have found ourselves constrained to accept the learned counsel(s) prayer. Our acceptance has been necessitated by our realisation that we need a healthy growth of our nascent jurisprudence on electoral litigation which will give us certainty and not chaos. That we have the jurisdiction to refer the matter to the Full Bench has long been settled by the Court.

In the case of ***FREEMAN A. MBOWE and ANOTHER V. ALEX O. LEMA,*** *[2004] T.L.R. 85, the Court said:-*

"In the practice of this Court, a Full Bench may overrule an earlier precedent in one of two ways. In the first place, it may do so in the process of resolving a conflict in the decision of the Court. However, in appropriate circumstances a Full Bench may, when so required, depart from a previous decision of the Court without there being conflicting decisions on the matter to an issue. The jurisdiction to do so may be traced to Lodhia's case cited earlier."

It is agreed here that so far there are no prior conflicting decisions of the Court on the issue regarding the true import of s.111 of the National Elections Act. We do not have to wait for such a situation to arise. Since it is within our powers to avoid that chaotic situation, we have found it apt to accept the unanimous invitation of counsel in this appeal to refer this appeal and cross-appeal to the Full Bench for determination. The hearing date will be determined by the Chief Justice.

We so order and accordingly adjourn the hearing of the appeal and cross-appeal.

As was also observed by this Court in **Abualy Alibhai Azizi v. Bhatia Brothers Ltd.** (2000) TLR 288 the ordinary Court followed this procedure in the light of what is stated in **PHR Poole v. R** (1960) 1 EA 62 that:-

> *A full court of Appeal has no greater powers than a division of the court .... but if it is to be contended that there are grounds, upon which the court could act, for departing from a previous decision of the court, it is obviously desirable that the matter should, if practicable, be considered by a bench of five judges.*

The parties in the proceedings before this Full Bench are the same as the parties in the proceedings subject of the present proceedings. As in those proceedings, the appellant is represented in these proceedings by Mr. Herbert Hezekiah Nyange, learned advocate. The first respondent is represented by Mr. Melkizedeck Sangaleli Lutema, learned advocate. The

second and third respondents have the services of Mr. Obadiah Kameya, learned Principal State Attorney. Pursuant to the terms of the Court order which initiated these proceedings, Professor Mgongo Fimbo, learned advocate, was appointed by the Court to be *Amicus Curiae*, specifically on the issue that was posed by the Court as shall be demonstrated hereunder.

We must at this early stage express our profound appreciation for the research made by learned counsel in general, and by Prof. Fimbo in particular on the issue raised by the Court. The extensive research by learned counsel has had a direct impact on the quality of our decision.

As can be gleaned from the above Order the matter referred to us relates specifically to a decision made by an ordinary bench of this Court in **Katani A. Katani v The Returning Officer, Tandahimba District and two Others**, Civil Appeal No. 115 of 2011 (unreported) wherein the said bench took the view that it is mandatory for an intending election petitioner to make an application for determination of security for costs. Basically, this "reference" concerns the interpretation of **Section 111** of the **Elections Act** on whether or not it is mandatory for a petitioner to make an application to the above effect.

It is common ground that so far there are no conflicting decisions by this Court on the interpretation of **Section 111** of the **Elections Act** in relation to the interpretation put forth by the bench in **KATANI**. In similar vein, there is no dispute that so far no decision has been given directing a departure from **KATANI**. As it is therefore, as this Court observed in **Mussa Arbogast Mutaiemwa v. Republic**, Criminal Application for Review No. 5 of 1996 (unreported), it follows that unless and until a Full Bench of this Court declares that **KATANI** should not be followed that decision is good law and will remain valid and in force in so far as it concerns the parties thereto.

At first we were not too sure if the issue at stake in this matter is so grave and serious as to warrant the composition of a Full Bench to determine it. We say so because as already stated, so far there are no conflicting decisions by this Court on the interpretation of **Section 111** (*supra*). Furthermore, the Bench of three Justices did not address **KATANI** and distinguish it, if necessary. In the process of distinguishing it the said Bench could have, for instance, declared that the construction put on **KATANI** is "unnecessarily wide or too narrow" for purposes of their decision. We say so because:-

In distinguishing the courts do not accord to their predecessors an unlimited power to lay down rules. They are apt to declare a rule as unnecessarily wide or too narrow for the decision before them. The consequences are that a rule may be rejected. The process of distinguishing involves cutting down the expressed ratio decidendi of a case. The process also involves the identification of factual differences and using it as a justification for departing from the ruling in the earlier case.

See Kamanija, **Lectures on Legal Method**, Summer 2005 (REVISED IN 2010) and Mukoyogo, M.C. **Legal Method**: Cases and Materials, 1st Edition (1998)).

As it is, therefore, we do not have the benefit of knowing the views of the ordinary Bench on the point. Indeed, to the best of our knowledge this is the first time in the history of the Court since it was established in 1979 that a Full Bench of the Court is being asked or called upon to address an anticipated or probable future conflict or "chaos" in decisions. Whether or not this is good judicial policy is not the issue of the moment.

It was against the above background that we framed an issue and invited learned counsel to address us on it. The issue framed was:-

> *Whether in the circumstances of this case, counsel's invitation to the Court to depart from its decision in Civil Appeal No. 115 of 2011 –* ***Katani A. Katani v. the Returning Officer Tandahimba District and two Others*** *should be determined by the Court (three Justices) or the Full Bench/Court.*

In response, learned counsel filed written submissions on the above issue. In the process a number of authorities were cited. Prof. Fimbo in particular came up with a more detailed, reasoned out and researched submission on the issue. Among the authorities cited were **Abualy** (supra) **Freeman Aikael Mbowe and Another v. Alex O. Lema** (2004) TLR 85, **Leonsi Ngalai v. Justine Salakana,** CAT Civil Appeal No. 38 of 1996 (unreported), **Sheikh Mohamed Bashir v Commissioner for Lands** (1958) EA 45, **Dodhia v National and Grindlays Bank Ltd and Another** (1970) EA 195, **Jumuiya ya Wafanyakazi Tanzania v Kiwanda cha Uchapishaji cha Taifa** (1988) TLR 146, **21st Century Food and Packaging Ltd v Tanzania Sugar Producers Association and two Others** (2005) TLR 1, **Sheikh Mohamed Bashir v. Commissioner for**

Lands (1958) EA 45, **Kiriri Cotton Company Ltd v. Panchohodas Keshavji Dewani** (1958) EA 258, and **Jumuiya ya Wafanyakazi Tanzania v. Kiwanda cha Uchapishaji cha Taifa** (1988) TLR 146.

Very briefly, in the context of the matter before us, two main principles emerge from the above authorities. **One,** the Full Bench may be convened to overrule a previous decision or to depart from a previous decision. And, as was held in **Mbowe** (*supra*), the grounds or circumstances that may justify the Full Bench are not closed in that ultimately every case will be decided on the basis of its own peculiar facts. Typical grounds would be, for example, where there are conflicting decisions of the Court, where a decision was made *per in curiam* or where the decision is wrong *per se*.

Two, a bench of three Justices can depart from a previous decision of three Justices of the same Court. This proposition of law is supported by the cases of **Sheikh Mohamed**, **Kiriri Cotton Company** and **21st Century Food and Packaging**, respectively (*supra*).

It follows that the issue at stake here is one that could as well have been dealt with, or rather determined, by the Bench of three Justices notwithstanding the anticipated conflict or "chaos". At any rate, as pointed

out by Prof. Fimbo, when the Court decides to depart from a previous decision the prior decision ceases to be an authority on the point and that position does not lead to "chaos".

In the premise, the issue at this juncture is whether **KATANI** should be dealt with by the Full Bench or by the Bench of three Justices. We have given very careful thought to this point. In the end, we are of the considered view that in the circumstances of this matter the interests of justice demand that it be dealt with by the Full Bench as presently constituted. We say so basically because we are already seized with the matter. It will not serve any useful purpose to remit the record back to the Bench of three Justices to consider whether or not **KATANI** should be distinguished. Furthermore, in the spirit of speedy disposal of election petitions it is fair and opportune that we determine the issue at this point in time.

In order to appreciate the essence of the issue before us it is important at this juncture to reproduce **subsections (2), (3), (4), (5)** and **(7)** of **Section 111** of the **Elections Act** as under:-

(1) .....

(2) The Registrar shall not fix a date for the hearing of a petition **unless the petitioner has paid into the court, as security for costs, an amount not exceeding five million shillings** in respect of each respondent.

(3) **The petitioner shall within fourteen days after filing a petition, make an application for determination of the amount payable as security for costs**, and the court shall determine such application within the next fourteen days following the date of filing an application for determination of the amount payable as security for costs.

(4) Where any person is made a respondent pursuant to an order of the court, the petitioner shall within fourteen days of the date on which the order directing a person to be joined as a respondent was made, pay into the court a further amount not exceeding three million shillings, as shall be directed by the court in respect of such person.

(5) Where on application made by the petitioner, the court is satisfied that compliance with the provisions of subsections (2) or (4) will cause **considerable hardship** to the petitioner, it may direct that -

(a) The petitioner give such other form of security the value of which does not exceed five million shillings, as the court may consider fit; or

(b) The petitioner be exempted from payment of any form of security for costs.

(6) .....

(7) In the event of security for costs not being paid into the court within fourteen days from the date of determination by the court of the amount payable as security for costs, no further proceedings shall be had on the petition.

(8) .....

(9) .....

[Emphasis added.]

Prior to the above enactment it was imperative for any petitioner to deposit into court a sum of Shs. 5,000,000/= as security for costs before the hearing of an election petition. The situation changed after this Court's decision in **Julius Ishengoma Francis Ndyanabo v Attorney General** (2004) TLR 14, dated 12 February 2002, which held, *inter alia*, that an indigent petitioner who fails to deposit Shs. 5,000,000/= is denied access to justice. So, after **Ndyanabo** a number of amendments were made to the law. In the process, **Section 111** *(supra)* was brought in by virtue of the relevant provisions of the **Written Laws (Miscellaneous Amendments) Act No. 25 of 2002** in order to cater for those who could not raise the hitherto mandatory deposit of the sum of Shs. 5,000,000/= as security.

Having said so, we subscribe to the view expressed by the Bench of three Justices in **KATANI** - citing G.P. Singh in his book **Principles of Statutory Interpretation**, Tenth Edition, 2006 on the construction of a provision in a statute, that:-

> *When the question arises as to the meaning of a certain provision in a statute, it is not only*

legitimate but proper to read that provision in its context. The context here means, ***the statute as a whole, the previous state of the law,*** *other statutes in pari materia,* ***the general scope of the statute and the mischief that it was intended to remedy.***

[Emphasis added.]

As already observed, before **Ndyanabo**, it is evident that "**the previous state of the law**" required a petitioner to deposit a sum of Shs. 5,000,000/= as security for costs. This was no doubt unfair because its effect was to deny access to justice to indigent petitioners. In order to remedy this "**mischief**" the law was changed hence the new scheme of the law now appearing under **subsections 2, 3, 4, 5** and **7** of **Section 111** above. We do not read anything under this new regime of the law to the effect that it was also intended to cover petitioners who were able and willing to deposit the maximum amount of shs. 5,000,000/=. On the contrary, we are of the firm view that the law as it now stands confers distinct and separate procedures for depositing security for costs as we shall demonstrate hereunder.

The first procedure covers a petitioner who is willing and able to deposit the maximum amount. This one does not need to make an application for determination of the amount payable as security for costs. To require such a petitioner to make an application is unnecessary and would only lead to a delay in the disposal of an election petition thereby defeating or going against the spirit of speedy disposal of election petitions. In fact, to require a petitioner of this nature to make an application is tantamount to asking him/her to say:-

> *Yes, I am able to pay the maximum amount but tell me how much I should pay.*

We do not think that Parliament in its wisdom intended that petitioners who are financially sound should also make applications to the above effect.

The other procedure applies to indigent petitioners. These are covered under **subsections 3, 4, 5** and **7**. Under **subsection 3** a petitioner makes an application. Thereafter, the court is mandated to determine the application. **Under subsection 5**, the court in exercise of its discretionary power may direct the petitioner to give such other form of security which does not exceed 5,000,000/= instead of cash money, or grant total

exemption from payment of any form of security, on being satisfied that full compliance with **subsections (2)** and **(4)** will cause **considerable hardship** to the petitioner. The catchwords here are "considerable hardship" which suggest that the Court takes into account this aspect in determining an application of the above nature. Therefore, under this procedure the law is that a petitioner who believes that he/she cannot meet the requirements under **subsection 2** is required to make an application for determination of the amount payable as security for costs.

We wish to observe here by way of emphasis, even if it is at the expense of repeating ourselves, that one of the cardinal rules of construction is that courts should give a legislation its plain meaning. In this regard **Section 111** has to be looked at as a whole. Therefore, looking at the **section** as a whole and especially on the issue of security for costs it is evident that under **subsection 2** the Registrar cannot fix a date for the hearing of a petition unless a petitioner pays an amount not exceeding 5,000,000/=. To this extent, the **subsection** is self-sufficient, self-sustaining and independent. This suggests that the **subsection** applies to a petitioner who does not need a determination of the amount payable as security for costs. **Subsections 3, 4, 5,** and **7** thereto create a separate and distinct

regime in that they apply to indigent petitioners who depend on the court's **discretion** in determining the amount payable as security for costs.

This brings us to another aspect of the matter before us which is also relevant in a full and fair determination of the issue we are called upon to address. This is in relation to the intention of the legislature in enacting the above law.

The traditional wisdom is that the search for legislative intent is central to statutory interpretation. And the legislature's intent is normally ascertained from the words it has used. The words used may be found in the title, preamble, chapter headings, marginal notes, punctuations, definitions, etc. of the statute. In such a situation it is easy to discern the intention of the legislature because when a statute is clear and unambiguous the inquiry into legislative intent ends at that point.

However, when a statute could be interpreted in more than one fashion the legislature's intention must be inferred from sources other than the statute. In this sense, there are other "Aids" which are not contained in the statute but may be found elsewhere. According to Justice A.K. Srivastava of the Delhi High Court in his persuasive article titled **Interpretation of**

Statutes (J.I.R.I. Journal – First year, Issue-3-Year- July-September, 1995) the other "Aids" may be as follows:-

1. ***Historical background***
2. ***Statement of objects and reasons.***
3. ***The original Bill as drafted and introduced.***
4. ***Debates in the legislature.***
5. ***State of things at the time a particular legislation was enacted.***
6. *Judicial construction.*
7. *Legal dictionaries.*
8. ***Commonsense.***

[Emphasis added.]

Applying **Srivastara** to this case, it will be observed that the spirit behind **Paragraphs** 3 and **5** thereto has been addressed above, ***albeit*** briefly. We have attempted to show the historical background and the state of the law before the above change in the law was made.

In the same spirit of applying **Srivastara,** we now propose to look at **Paragraph 2** (supra) in the context of the issue before us. The objects and reasons in the Bill that led to the relevant amendments as per **Act No. 25 of 2002** read in Swahili as follows:-

> *Sheria ya Uchaguzi, 1985 (Na. 1 ya mwaka 1985) nayo imependekezwa kufanyiwa marekebisho ili kuweka utaratibu mpya wa ulipaji wa dhamana inayotolewa mahakamani kwa kufungua kesi ya uchaguzi. Inapendekezwa pia kwamba mahakama ziwe na mamiaka ya kuamua dhamana au kumwondolea dhamana mlalamikaji pale* ***inapodhihirika kuwa hatamudu****. Walalamikaji wanaotetewa na vyombo vya msaada* ***wa kisheria*** *hawatalipa dhamana ya kesi. Wale wanaoshinda kesi watarejeshewa dhamana au sehemu ya dhamana zao.*

This translates in English as under:-

> *Section 111 is amended so as to prescribe new mechanism of payment of the security for costs into*

the court in Election petitions. It is also proposed that courts should have discretion to determine costs payable by the petitioner ***where it is difficult for him to pay.***

[Emphasis added.]

In our view, the words **pale inapodhihirika kuwa hatamudu** and **where it is difficult for him to pay** are significant in that they apply to an indigent petitioner. In other words, it seems to us that the objects and reasons behind the above enactment proceeded on the general premise that every petitioner has to pay the prescribed amount of money as security for costs but where it is difficult for him/her to pay then he/she has "*to make an application for determination of the amount of money payable as security for costs*. In this sense, it goes without saying that a willing and able petitioner does not have to make an application to the above effect.

This brings us to **Paragraph 3** in **Srivastara**, specifically on how the above Bill was **introduced** in Parliament. A look at the **HANSARD** transcript of 13/11/2002 will show that the Attorney General stated, *inter alia*, as follows:-

....Inapendekezwa kupltia muswada huu ***dhamana kwa kufungua kesi za uchaguzi kiwe ni kiwango cha fedha kisichozidi shilingi 5,000,000/=....***

Hata hivyo, ***ili kuhakikisha usawa kwa wote*** *mbele ya sheria....inapendekezwa sheria itoe ridhaa kwa Mahakama Kuu kwa kutegemea mazingira na aalum ya kila kesi ya kukubali dhamana ya kitu kingine badala ya fedha taslimu au kuagiza dhamana isiwekwe kabisa endapo Mahakama itaridhika kuwa mlalamikaji hana uwezo wa kumudu sharti la kuweka dhamana...*

[Emphasis added.]

As for **Paragraph 4** in **Srivastara** relating to the debate in Parliament, a look at **HANSARD** (supra) will show that the introduction of the Bill by the Attorney General was followed by a lively debate. Among the Members of Parliament who debated the Bill were Leonard N. Derefa and William Shelukindo. Mr. Shelukindo in particular had this to say:-

> ***...sasa hivi kiwango cha kufungua kesi*** *ni* ***shilingi*** *5,000,000/=* ***tu*** *unatakiwa kulipa kufungua kesi.... mtu* ***kama kuna kesi kashtaki na kama kuna uwezo, taratibu za Mahakama ziwepo kama zinavyopendekezwa...***
>
> [Emphasis added.]

So, going by the manner in which the Bill was introduced, and the ensuing debate in Parliament, it is clear that the Members of Parliament were aware that a petitioner was required to deposit a sum of 5,000,000/= save that where that was not possible one could proceed by way of an application as stipulated above. It was nowhere suggested by anyone, including the Attorney General, that a willing and able petitioner capable of depositing the maximum amount was also to be subjected to making an application for determination of the amount payable as security for costs.

Finally, yet again applying **Srivastara** (supra) to the issue before us, there is the aspect of **commonsense** in discerning the intention of the legislature. In the justice of this case we think that commonsense dictated to

the legislature that only an indigent petitioner should make an application under **subsection 3**. Otherwise, it would not make sense for a petitioner who is financially able and willing to deposit the maximum amount to, at the same time, be required to make an application to the above effect.

Henceforth, in making the above changes in the law the intention of the legislature was basically threefold:-

(i) Access to justice for all, irrespective of one's financial standing.

(ii) Speedy determination of election petitions.

(iii) Only indigent petitioners are required to apply for determination of the amount to be paid as security for costs.

We appreciate that, as was also stated in **KATANI, subsection (3)** above is couched in mandatory terms and that under **Section 53(2) of The Interpretation of Laws Act** (CAP 1 R.E. 2002) where the word "shall" is used such word shall be interpreted to mean that the function so conferred must be performed. However, it occurs to us that, under **Section 2(2) (b)** the provisions of the said **Act** do not apply where:-

...the intent and object of the Act or something in the subject or context of the Act is inconsistent with such application.

So, in view of the construction we have given to **Section 111** it follows that the use of the word "shall" under **subsection** 3 thereto is inconsequential. Furthermore, as was again stated by **Srivastara** (supra), whose views we also share, the use of the words "shall" and "may" is not always the determinant factor. Regard must always be given to the context, subject matter and object of the statutory provision in question, in determining whether the same is mandatory or directory/discretionary. In this context, we may also add this Court's decision of the Full Bench in **Bahati Makeja v Republic**, Criminal Appeal No. 118 of 2006 (unreported) that it is not always the case that where the word "shall" is used that should mean that the function so conferred **must** be performed.

Before concluding our decision we wish to state that the respondents filed written submissions basically in support of the construction put on **Section 111** by the Bench of three Justices in **KATANI**. We note with regret

however that to a very big extent the State Attorney advocating for the second and third respondents missed the point in that his submission is centred on the merits or otherwise of the appeal and the cross-appeal which is not the issue before us at the moment. Thus, there is nothing we can benefit from that submission is so far as the issue before us is concerned.

Mr. Lutema appearing on behalf of the first respondent filed a fairly long written submission. With respect, we will not address each and everything that is canvassed in his submission. We will not do so not because of discourtesy to learned counsel but due to the fact that in view of the position we have taken on the construction of **Section 111** most of the points he is raising have adequately been dealt with there. There are however two other matters in his submission which deserve our attention as under.

Somewhere in his submission Mr. Lutema is saying as follows:-

> *We submit that advocating for an interpretation that permits the High Court to allow those who have the money to deposit security for costs*

without prior assessment is to advocate for the discrimination of the poor against the rich...

With respect, this reasoning is not correct. The historical background and the objects and reasons behind the above enactment are clear testimony that the intention of the legislature was to create a sense of justice that is fair to both the rich and the poor. In other words, the spirit is to ensure that there is access to justice by all - the rich and the poor. If anything, that was "***positive discrimination***", so to say.

Another point raised by Mr. Lutema relates to the time within which the "rich petitioner" may pay the security for costs. This is what Mr. Lutema is saying:-

Another absurdity that may be associated with the kind of interpretation being campaigned for by the Appellant is related to the time within which the Appellant who wants to pay without filing an application for prior assessment. When should the rich petitioner pay? Within fourteen days? Within one month? And what will be the basis for this Court to set the time limits? And does this Court

have the jurisdiction to set the time limits which means in effect amending the statute?

Our short answer to the above assertion is that there is no absurdity, at all. **Subsection 2** is very clear that the Registrar cannot fix a date for the hearing of an election petition before the stated amount is paid. In our view, the payment has to be made before hearing, preferrably at the time of filing the petition.

In conclusion, we are now in a position to say that **KATANI** is no longer good law and should not be followed from the date of this decision. For the avoidance of doubt, as per this Court's observation in **Mutalemwa** (supra), **KATANI** is still good law to the extent that it continues to bind the parties thereto.

We also wish to state for the sake of certainty that we have dealt with the specific issue that was brought for our consideration and decision. Our decision has nothing to do with the other proceedings now pending in the appeal and the cross-appeal.

We consequently direct that the ordinary Bench of the Court (Rutakangwa, J.A., Luanda, J.A., and Oriyo, J.A.,) be informed accordingly so

that the hearing of the appeal and the cross-appeal may resume. We so order.

DATED at DAR ES SALAAM this 31st day of May 2013.

J.H. MSOFFE
JUSTICE OF APPEAL

E.A. KILEO
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

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

E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL