

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MPALILA, J.A., CHIPETA, Ag. J.A., And MROSO, Ag. J.A.)

CIVIL REFERENCE NO. 13 OF 1998

BETWEEN

STEPHEN MASATO WASIRA ..... APPLICANT

AND

JOSEPH SINDE VARIOBA ..... 1ST RESPONDENT

THE HON. ATTORNEY GENERAL ..... 2ND RESPONDENT

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

(Samatta, J.A.)

dated the 29th day of September, 1998

in

MZA Civil Application No. 1 of 1998

JUDGEMENT OF THE COURT

MPALILA, J.A.:

This is a reference from the ruling of a single judge of this Court under Rule 57 of the Court of Appeal Rules. In Civil Application No. 1 of 1998 the applicant Stephen Masato Wasira applied to be granted two reliefs namely (1) leave to lodge a notice of appeal in respect of the judgement of the High Court of Tanzania at Mwanza in Misc. Civil Cause No. 25/95 and (2) leave to serve upon the respondents copies of the aforesaid notice of appeal out of time. In accordance with the rules, that application came before a single judge of this Court. After hearing both sides, the learned single judge (Samatta, J.A.) dismissed the application with costs. Thereupon the applicant filed this reference stating that he was dissatisfied with that decision and asked the Court to vary it.

Due to time constraints, we do not intend to give in this judgement full reasons for our decision, we shall give them later.

and only issue which was the subject of contention both in the application before the learned single judge and in this reference. The issue was and is whether the applicant had sufficient reason for not serving the 1st respondent with the notice of appeal.

At the hearing of the application before the learned single judge as well as during the hearing of this reference, Mr. Maira, learned advocate for the applicant, valiantly attempted to answer this issue or question in the affirmative on the basis first, that the applicant had attempted without success to serve the notice of appeal on Mr. Rweyemamu the advocate who had appeared for the 1st respondent in the High Court as provided by Rule 77 (2). Secondly that the applicant had honestly believed that the 1st respondent was served by a receptionist at the New Mwanza Hotel.

Dr. Mwaikusa, learned advocate for the 1st respondent, opposed the reference saying that the applicant has not advanced any reason to fault the decision of the learned single judge who, he said, correctly addressed his mind to the question before him and concluded that in view of the applicant's subsequent conduct which clearly showed that he had abandoned his original intention to appeal, the applicant could not have had any belief that the notice of appeal had been served on the 1st respondent. He added that the attempt to serve the notice of appeal on Mr. Rweyemamu in Bukoba meant nothing as sub-rule (2) of Rule 77 directs the notice of appeal to be served through the existing address which in this case was Dar es Salaam.

While we certainly sympathise with Mr. Maira's predicament occasioned by the applicant's conduct subsequent to his so called attempts to serve the notice of appeal on the 1st respondent, the reality of the situation is that Dr. Mwaikusa's contentions are correct. There was absolutely no need to attempt to serve the notice

of appeal on Mr. Rweyemamu in Bukoba contrary to sub-rule (2) of Rule 77. As to the attempts to serve the notice on the 1st respondent through a hotel receptionist, the same objection can be raised namely that the New Mwanza Hotel is not the 1st respondent's address shown in the pleadings. It is also quite clear to us that the applicant did not take steps to verify the service at the New Mwanza Hotel because through his letter (Annexure ILC 2) to the Chairman of the Electoral Commission, he made it clear that he was not interested in appealing but would re-contest the Bunda seat. In these circumstances, the applicant cannot be taken seriously when he asserts that he honestly believed that the notice had been served on the 1st respondent. If by announcing officially to state organs that he was not appealing and asked them to go ahead and organise a by-election he was playing political games as stated by his advocate, then we are sorry that he decided to engage in a dangerous game for which he only can take full responsibility, however grim.

In short, then we agree with the learned single judge that no ground has been laid for enlarging time in which to file the notice of appeal and serve it on the 1st respondent. We see no reason to hold a different view. As indicated, we shall give full reasons later but for the moment this reference stands dismissed with costs.

DATED AT DAR ES SALAAM THIS 17TH DAY OF DECEMBER, 1998.

L. M. MFALILA  
JUSTICE OF APPEAL

B. D. CHIPETA  
Ag. JUSTICE OF APPEAL

J. A. MROSO  
Ag. JUSTICE OF APPEAL

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

( A.G. MWARIJA )  
DEPUTY REGISTRAR