

Civil Reference No 14 of 2005 Court of Appeal of Tanzania at Dar es Salaam. Mroso, J.A, Msoffe, J.A and Kaji, J.A	Philip Chumbuka VS. Masudi Ally Kasele (Appeal from the Judgement Decision of the Appeal Court of Tanzania at Dar es Salaam – Civil Application No. 149 of 2004)	The full court will not Interfere with the decision of the single judge on the basis of fresh facts or submission which were not available to the single judge see also DAUDI HAGA Vs. JEMITHA ABDON MACHAGU – Civil Reference No 1 of 2000 (Unreported)
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**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM.**

**(CORAM: MROSO, J. A, MSOFFE, J. A. AND KAJI, J. A.)**

**CIVIL REFERECE NO. 14 OF 2005**

**PHILIP CHUMBUKA ..... APPLICANT**

**VERSUS**

**MASUDI ALLY KASELE .....RESPONDENT**

**(Appeal from the Judgment Decision of the Appeal  
Court of Tanzania at Dar es Salaam)**

**(Munuo, J.)**

**Dated the 22<sup>nd</sup> day of July, 2007.  
in  
Civil Application No. 149 of 2004**

**RULING OF THE COURT**

**KAJI, J. A.:**

On 25<sup>th</sup> April, 2001, the High Court at Dar es Salaam delivered a decision in Civil Appeal No. 51 of 1999 which aggrieved the applicant, Philip Chumbuka.

On 16<sup>th</sup> July, 2001, the applicant filed an application in the High Court for extension of time in which to file an application for leave to appeal to this Court. The only reason for delay was that he could not file the application within time because he was yet to be supplied with copies of the proceedings and drawn order. The application was dismissed for want of merit. The High Court (Rugazia, J.) held the view that, in terms of Rule 43 (a) of the Court of Appeal Rules, 1979, application for leave may be made informally when the decision against which it is desired to appeal is given, and that there is nothing in the provision suggesting that when an application for leave to appeal is made in the High Court, it must be accompanied by the documents claimed by the applicant.

On 1<sup>st</sup> November, 2004 the applicant lodged his application before a single judge of the Court. This time he gave two different grounds for the delay. First, that on 2/ 5/ 2004 he was arrested by the police at Kariakoo in a police swoop and was released on 16/ 5/

2004. Two, that his advocate the late Yusuf Mtenya was mentally confused when he filed the application in the High Court. He did not elaborate. The learned single judge considered the grounds for the delay and said:-

Going by the affidavit of the applicant, he stated at paragraph 4 that he was arrested by the police on the night of the 2/ 5/ 2004. The period between the 2/ 5/ 2004 and 16/ 5/ 2004 had nothing to do with time the ruling he wishes to appeal against was delivered because the said ruling was passed on the 25<sup>th</sup> April, 2001 three years before the police arrested the applicant on the night of 2<sup>nd</sup> May, 2004 as stated at paragraph 4 of his affidavit in support of the application. The applicant filed the application for extension of time in the High Court on 16<sup>th</sup> July, 2001, more than 2 1/2 months after the decision of the High Court. The allegation by the applicant that his advocate at that time, the late Yusuf Mtenya, was mentally confused when he filed the

application for extension of time in the High Court, is to say the least, sheer speculation and thence of no substance.

The applicant was dissatisfied with the decision; hence this reference. He wants the full Court to fault the decision of the learned single judge. In his letter of complaint, the applicant did not point out specifically where the learned single judge went wrong. He merely complained that he had documents showing that the house in dispute is his, unlike the respondent Masudi Ally Kasele who has none. We think, that could be one of his grounds of appeal if the case went that far.

It is an accepted principle that in a reference, the full Court considers what was presented and argued before the single judge and see whether the learned single judge was right or wrong. The full Court will not interfere with the decision of the single judge on the basis of fresh facts or submissions which were not available to the single judge – see **DAUDI HAGA V JEMITHA ABDON MACHAFU** – Civil Reference No. 1 of 2000 (unreported).

In the instant case, before the single judge, the applicant had advanced two grounds for the delay. The learned judge considered them and held the view that they were not sufficient for extending the time prayed for. We have carefully considered her decision. Indeed the applicant's arrest by the police three years after the decision to be appealed against and the unsubstantiated allegation that his advocate at that time was mentally confused when he filed the application in the High Court, cannot be said to be sufficient grounds for extension of time. There is nothing to fault the decision of the learned single judge. This reference lacks merit.

For the reason stated above, we dismiss the reference with costs.

DATED at DAR ES SALAAM this 12<sup>th</sup> day of September, 2007.

J. A. MROSO  
**JUSTICE OF APPEAL**

J. H. MSOFFE  
**JUSTICE OF APPEAL**

S. N. KAJI  
**JUSTICE OF APPEAL**

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

I.P. KITUSI  
**DEPUTY REGISTRAR**