

4 COPIES Affidavit based on  
Jallo-hind court  
acted upon.

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

CIVIL APPLICATION NO. 110 OF 2009

KIDODI SUGAR ESTATE AND 5 OTHERS..... APPLICANTS

VERSUS

TANGA PETROLEUM CO LTD. .... RESPONDENT

(Application for extension of time within which to serve notice of appeal,  
proceedings and decree)

RULING

27<sup>th</sup> June 2011 &

KILEO, J.A.

The applicants, Kidodi Sugar Estate and five others who are represented by Mr. Charles Semgalawe, learned advocate, are seeking an extension of time within which to serve notice of appeal, proceedings and decree upon the respondent. The application which was filed under Rule 8 of the Court of Appeal Rules, 1979 is supported by an affidavit sworn to by Mr. Charles Kibaja Semgalawe, the learned counsel for the applicant.

The grounds for the application are not contained in the Notice of Motion as required under Rule 45 of the Court of Appeal Rules 1979. Nevertheless they can be gathered from the affidavit of the counsel for the applicant which shows that the notice of appeal and letter

requesting for copies of proceedings, judgment and decree was lodged in Court in time but service upon the other side was not done within seven days due to the fact that he did not know the address of the counsel for the respondent until after talking to her on the phone on 4<sup>th</sup> day of September 2009.

Mr. Semgalawe argued that since the requirement of serving notice of appeal and letter requesting for proceedings are mere procedural rules such technicalities should not be used to defeat the ends of justice unless it is shown that there was no seriousness on the part of the applicant to pursue the matter. He prayed that the application be granted as the granting thereof will not in any way prejudice the rights of the respondent.

Objecting to the application, Mrs Mansoor argued that it was not true as stated in Mr.Semgalawe's affidavit that he didn't know her physical address. She referred to the affidavit in reply which was sworn to by One Ally Hemed Said, the Director of Tanga Petroleum Company Limited to which was attached her final written submissions in the High Court Commercial Case No.29 of 2007. The written submissions contained the addresses of Latifa Law Chambers- Physical, Postal and telephone numbers as well as email address. She argued that the affidavit of

Mr.Semgalawe does not speak the truth as he had the full address of Latifa Law Chambers much before the date he claimed to have obtained it. As affidavits are substitutes of oral evidence which must contain statements of truth, and since Mr.Semgalawe's affidavit contained some elements of falsehood she urged the Court to disregard it.

Making reference to the case of **Consolidated Holding Corporation v. Ahmed Motor Ways Ltd, Truck Freight (T) Ltd and Fuel Distribution Network,Civil Application No.7 of 2004** (unreported) she argued that the delay of 20 days in taking the necessary step could not be said to be a short delay in the circumstances of this case.

As for the alleged sickness of Mr. Semgalawe's clerk who was sent to serve the documents, Mrs Mansoor argued that this was mere hearsay which could not be acted upon

The learned counsel for the respondent pointed out that the respondents who are the decree holders have not been able to enjoy the fruits of their decree since it was passed two years ago and urged the Court to ensure that parties do not benefit from clear disregard of the Rules. In support of her contention the learned counsel cited Civil

Application No.4 of 2004, **Tanzania Electric Supply Co.Ltd Vs. The Presidential Parastatal Sector Reform Commission**, where Ramadhani, J. A. (as he then was), quoted the following caption from Makame, J. A.:-

*While we do not clasp mere husks, but rather go for the kernel, breaching the Rules in a way that suggests a clear disregard of them cannot be brooked or condoned.*

There is no doubt that the affidavit sworn to by Mr. Semgalawe in support of the Notice of Motion contains a falsehood with regard to the reason for the delay in serving the respondent with the necessary documents as required by law. Mr. Semgalawe stated under oath that he did not know the location of Latifa Law Chambers until 4<sup>th</sup> September 2009. There is however unchallenged evidence in the affidavit of Ally Hemed Said to the effect that Mr. Semgalawe knew the address as early as April 2009 when he was served with Final Written Submissions in Commercial case No 29 of 2007 between the same parties. Surely, no court properly directing its mind to the dictates of justice can act on an affidavit which is based on a falsehood.

The affidavit upon which the Notice of Motion is based is in the

circumstances disregarded. The application without a supporting affidavit remains with no legs to stand upon and for this reason it must fail.

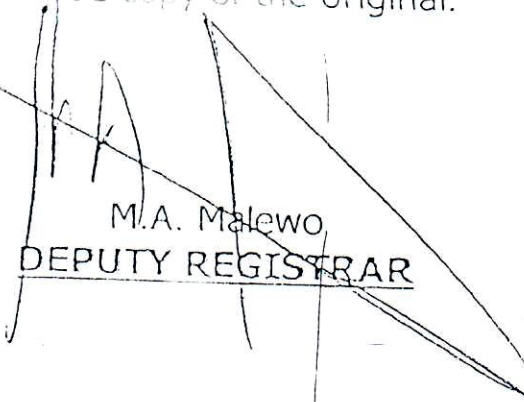
The application is in the event dismissed with costs to the respondent.

DATED at Dar es Salaam this 2<sup>nd</sup> day of July, 2011.

E. A. KILEO  
JUSTICE OF APPEAL.

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



  
M.A. Malewo  
DEPUTY REGISTRAR