

TANZANIA / JUDGMENT

shegembe izengo vs dima nholongo 1998 tzca 5 22 may 1998

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22 May 1998

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HI THE COURT OF APPEAL OF TANZANIA AT TABORA (xBE) civil APPLICATION NO. to OF 1995 In the matter of an intended Appeal Between SKEGEMBE IZENG0..... APPLICANT And DIMA NHOLONGO RESPONDENT (Application for awarding costs from the Ruling of the High Court of Tanzania at Tabora). (Mackanja, J«) dated the 18 th day of July, 1995 In Civil Case No. 1 of 19&5 RULING OF THE COURT MFALILA, J.A.-; If this application had been filed by the applicant in person, one Mr. Shagembe Izengo who appears a typical rural villager, I could have understood. But it was filed by Counsel, and a very Senior Counsel at that under a procedure totally unknown in the pro*oEur al rules of this Court. The application is by notice of raation which is alright, but then it is styled as "Reference from the order of the High Court of Tanzania at Tabora (Mr. Justice Mackanja.) dated 18th day of July 1995 in Civil Application No. 1 of 198.5>t! To compound matters, there was no such Civil application before the High Court but Civil Case No. 1 of 19 8 5 , and the natter before Mackanja J* in which he gave the ruling the subject of these proceedings was Civil Case No. 1 of 1985? although even this defies logic. Civil Case No. 1 of 1985 came up before and. was determined by Chipeta, J# These are not the only problems in this totally confusing matter even in the matter before Mackanja, J, the parties are styled appellants and respondents when the judge refers to the matter before his as an application. In the matter before him, Mackanja J. allowed the application and set aside the orderp of the taxing Master# The present applicant was not satisfied with this decision hence he purported to file this reference by notice of motion praying that this Court declare that the applicant was awarded costs in Civil Appeal No. 17/9^ and that the High Court acted without jurisdiction in ordering that the costs so awarded not to be paid; and also for an order that the costs of and incidental to this application abide the result of the reference,. In his affidavit in support of the application, Mr. Kwikima deponed that the presiding judge wrongly granted the respondent extension of time and purported to v\$-ry the judgment of the Court of Itppeal by ordering that the decree there of be rescinded, that the order of the High Court judge that the applicant is not entitled to *osts is perverse and incompetent in that the learned judge had no power to overrule or even interpret the judgment of the Court of Appeal and accordingly he grayed that their Lordships the judges of appeal declare that the apxolicant was awarded costs and that he be paid as already taxed, that the order denying his dues be nullified, Mr, Kwikima decided not to be present at the hearing of this application although he was served with the notice of hearing. He left his client in the lurch

to battle it out on his own this Complicated application. If Mr, Kwikima had been present in Court, I could have asked him to explain the rule or rules under which he filed this reference to this Court from the ruling of the High Court, There are only two routes by which decisions of the High Court can come to this Court, namely by way of appeal or revision. This reference procedure must be Mr* Kwikima*s own creation, Mr, Boaz learned Counsel for the respondent submitted at the hearing of this application that if the applicant was dissatisfied with the ruling of the High Court, he should have appealed against it, and that he cannot challenge the correctness of the High Court decision by way of reference by notice of motion, I agree with these submissions, fact Mr, Kwikima himself seems to have had the full court not the single judge in : mind when he prayed in paragraph 7 of his affidavit that their Lordships the judges of Appeal declare that the applicant was awarded costs, ..,i;. Accordingly this so called reference being unknown to law/ is dismissed with costs. DATED AT TABGRA THIS 22nd DAY OF MAY, 1998, L. M. MFALILA JUSTICE OF APPEAL I certify that this is a true copy of the original* P. KENTE AG. DISTRICT REGISTRAR

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