

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

REFERENCE FILE NO. 1 OF 1995



IN THE MATTER OF THE HONOURABLE MR. JUSTICE
THOMAS LEO MKUDE DECEASED
AND
IN THE MATTER OF MEMORIAL TRIBUTES

BEFORE: NYALALI, C.J., MAKAME, J.A., OMAR, J.A.,
RAMADHANI, J.A., MNZAVAS, J.A., MFALILA,
J.A., AND LUBUVA, J.A.

ADDRESSES BY THE CHIEF CORPORATION COUNSEL
TANZANIA LEGAL CORPORATION

The Honourable the Chief Justice and Honourable
Judges of the Court of Appeal of Tanzania.

Your Lordships:

On behalf of Tanzania Legal Corporation, I have the
honour to present to you these tributes and condolences in
respect of the late Honourable Mr. Justice Thomas Leo
Mkude who suddenly left us on the 30th December, 1994, in
a tragic road accident.

The Honourable Justice Thomas Leo Mkude joined
Tanzania Legal Corporation in 1974 from the Faculty of
Law, University of Dar es Salaam as Corporation Counsel
and rose to the post of Principal Corporation Counsel.
In 1979 he was appointed Chief Corporation Counsel
replacing a former member of this Court the late Mr.
Justice Yona M.M. Mwakasendo, a post he held until May
1987 when he was appointed Deputy Attorney-General and

Principal Secretary, Ministry of Justice. Thus for slightly over half of his working life, the late Justice was at Tanzania Legal Corporation, the other half being spent at the University of Dar es Salaam, the Attorney-General's Chambers and the Judiciary.

The late Mr. Justice Mkude was brilliant, extremely hard working, dedicated and well versed in the laws and practice obtaining in Tanzania. He served as an example not only to the lawyers of Tanzania Legal Corporation but also to lawyers outside the Corporation. He was always ready and willing to share his great accumulation of knowledge of the laws and he continued to be a professor and consultant to his former students and to many others in the legal profession.

The late Mr. Justice Mkude emphasized time and again on proper preparation and research. He believed that this was the only way to achieve high professional standards. In a circular dated 29th May, 1980 which was addressed to all Professional Staff he stated as follows:-

"There has been a noticeable decline in the quality of our professional work which may lead to serious consequences in the time to come. The legal opinions we write are not supported by authorities as they should be. From the courts we hear of submissions which are never supported by authority. Our pleadings are faulty and sometimes

Experience has shown that all this is caused by lack of proper preparation and research. The amount of dust on our books in the library is an indication of our weakness, considering that our small library is rarely used as most people treat their work as mere routine. This attitude must stop. No case is exactly like another and so preparation and research must be done for every case one handles. When preparing a plaint or statement of defence there is need to read the relevant books and cases to avoid poor pleadings which may require amendment at a later stage. We have encyclopedia of forms and precedents, Halsbury's Laws of England, and encyclopedia of court forms which are very useful for this purpose, in addition to other texts on pleadings. When preparing for hearing of a case we have law reports and text books which must be read before venturing to court."

He concluded the said circular with this note:

"I take this opportunity to appeal to you all to live up to the demands of the profession you have chosen by reading all the time. We shall be deceiving ourselves to think that we know so much that we can do without books. Please take up the challenge and improve the quality of our work."

The late Justice Munda insisted that each lawyers, in the Corporation should have first hand knowledge of

the legal provisions. In a circular titled Basics of Criminal and Civil Litigation dated 17th March, 1981, he cited all the important provisions of the Civil Procedure Code, the Evidence Act, the Stamp Duty Act, the Law of Limitation Act and the Criminal Procedure Code. After the long list he concluded as follows:-

"The length of the list is an indication of the type of person an advocate is supposed to be. We must earn our fees, we should not charge them. The length of the list also calls for everyone of us to have our books when going to court. If you think you can do without books you are deceiving yourself and your client. Knowing the list will only enable you to know that you have legal authority for what you submit and when you have the books you can make reference on the spot. Please make a point of looking up these provisions regularly."

Apparently since he started his working life as an academician, he always insisted that lawyers in the Corporation made full use of books in the library in order to perfect their daily assignments. For instance in a circular dated 14th May, 1981, addressed to all professional staff he stated in part that -

"There is still a good number of lawyers in this Corporation who have difficulty in drawing up pleadings. The main weakness seems to lie in setting out

facts that disclose a cause of action or constitute a defence to a claim or, on occasion, the format to be used for things like affidavits and chamber summons. Attention is drawn to the existence of the following books in our library which are of great assistance in this regard:

- (i) The Encyclopedia of Court Forms and precedents in Civil Proceedings by Lord Atkin;
- (ii) Precedents of Pleadings by Bullen & Leake and Jacobs (better known as Bullen and Leake").

He continued -

"Our library is a reference library and it must be utilised fully."

He invariably insisted that lawyers in the Corporation should consult reference books to find appropriate precedents in the preparation of pleadings but should be modified to fit in the particular circumstances of the matter being dealt with.

In similar vein, in the preparation for hearing of court cases, he always impressed upon all of us in the Corporation that there are very few instances in which one would be left to argue a point of law from first

principles. He used t
instances whereby a case
opportunity to explore unc
judicial authority, persuasi
dated 28th September, 1984, he

"The common law is very
precedent and we should
make our own contribution
development of the common
analysing and, where necessa
distinguishing existing autho
It is a sign of ignorance for
anyone to argue from, first
principles a point that has been
decided by the courts over and
over again. Sometimes this amounts
to an outright betrayal of the
profession."

prompted the circular was the judgment of
vil Appeal No. 23 of 1983 between Construc-
s and Builders Ltd. and Sugar Development
which the court before reaching its
ed an impressive number of cases on the
f proceedings under the Arbitration
A copy of that judgment was
er in the Corporatic
lowed in dis
all

so as to avoid the unpleasant consequences of having to lose a case on technical points. Unfortunately despite his early warning, we have had our fair share of the "unpleasant consequences" he was referred to and caustic remarks from the court. For instance in Civil Application No. 5 of 1987, Kighoma Alli Malima and Abas Yusuf Mwinganno, the court remarked -

"Mr. X has argued before us the importance of the appeal lodged by him being heard by this court. If we venture to think, Mr. X had given the matter of filing the appeal the modicum of care that is expected of an advocate pursuing an appeal, this sorry state of affairs would not have arisen."

And the appeal was naturally struck out.

He represented clients in diverse cases and was the Advocate who represented a client in espionage case of Republic vs. Juma Thomas Zangira. The late Mr. Justice Mkude was also one of the defence counsels in the second treason trial in Tanzania, that is in Criminal Sessions Case No. 51 of 1984, Republic versus Hatibu Ghandi Mcghee and 18 others.

He also represented clients in election petition cases including Mbeya Civil Appeal No. 9 of 1980 -

Chrisanti Majiyatanga Mzindakaya versus Gilbert Louis Ngua and Arusha Civil Appeal No. 11 of 1981 - Solomon Akexander Ole Saibul vs. Hubert Mbaga.

Arbitration was also an area in which he was interested in. He represented Tanzania Harbours Authority in an International Arbitration between Mvita Construction Company Limited and Tanzania Harbours Authority in the United Kingdom until he was elevated to the Bench. In addition to his other duties, the late Mr. Justice Mkude also served as a Director on different Boards including National Provident Fund, Elimu Supplies and Faculty of Law at the University of Dar es Salaam. He was also a regular resource person in courses organized by the National Construction Council on Building and Civil Engineering Claims.

The late Mr. Justice Mkude had a very pleasant personality, was easy to work with and had the kind of patience rarely found in man. During the time he worked in the Corporation he was loved by both his peers and his subordinates. Sarcasm was his line. But this caused no offence because it was constructive I may say, and it was appreciated by his colleagues and friends alike. When he noted that some lawyers were in the habit of using abbreviations and slang in official correspondence, he had the following to say:-

"It is now becoming fashionable to ignore the very elementary rules of letter writing for official

correspondence. Almost every day I see letters addressed to clients or other parties with words like "don't", "can't", "ain't", "isn't" etc. This is wrong. It is never to be used in official correspondence. It does not cost you even a minute longer to write "do not" or "is not" and so there is no reason why one should use short forms."

He continued:-

"Even more unacceptable is the use of slang expressions or archaic constructions in official correspondence. Thus expressions like "kicking the bucket" or "joining the majority" should be avoided. If a victim of a motor accident dies instantly then say so simply. No use is served by telling our clients that "the victim kicked the bucket on the spot". Similarly a bank teller may detect something wrong with a cheque handed to him on the counter. He does not "smell a rat and report to his superiors". Lately the rain has been falling heavily in Dar es Salaam; it has never "rained cats and dogs". All these expressions may sound nice when spoken but they should never appear in our official correspondence. We should aim at precision and economy of words. The weight of our legal opinion is watered down

when clients read about smelling rats or joining the majority or kicking the bucket."

And in conclusion he had the following to say:-

"Ours being a professional institution must be able to instill confidence in the minds of the public. That confidence is lost when we expose ourselves to criticism on things as elementary as letter writing. Let us reserve the nice expressions for unofficial correspondence. Our official letters must be well written."

At Tanzania Legal Corporation, he will be remembered for implementing the expansion programme initiated by his predecessors, i.e. the expansion of Tanzania Legal Corporation into the regions. Currently Tanzania Legal Corporation has two zonal offices in Arusha and Mwanza. The original vision was to have a TLC Branch Office at every High Court Centre - a dream we may never realise under the changing circumstances.

As early as 1985, he realized that there was need to strengthen the Corporation for efficiency and better service to clients. He introduced a new organizational structure and the Corporation was divided into five functional departments headed by Principal Corporation Counsels. In this way he decentralised the decision making hierarchy in the Corporation.

In an effort to create a better working environment and retain experienced lawyers in the Corporation, he introduced a number of incentives including advocacy allowance, outfit allowance, Advocate of the Year, office transport to and from the office and timely promotion to all cadres.

We deeply appreciate Mr. Justice Mude's exemplary and dedicated service to the Tanzania Legal Corporation. We shall always miss him and his memories would be cherished forever. Even after leaving Tanzania Legal Corporation and joining the Government service, he still kept in close touch with Tanzania Legal Corporation and we always regarded him as one of us. May the Lord give strength to his family in particular to bear the loss and grant his widow a speedy recovery. Since it is God's will, we too should will it. We should always remember what Prophet Job said in Chapter 1 verse 21, that -

"Naked I came from the womb,
naked I shall return whence
I came. The LORD gives and
the LORD takes away: blessed
be the name of the LORD."

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


(M. S. SHANGALI)
DEPUTY REGISTRAR