

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. CIVIL APPLICATION NO. 1 OF 2006
(ORIGINAL MISC. CIVIL APPLICATION NO. 54
OF 2005 IN (DC) CIVIL APPEAL NO. 14 OF 2003
– ORIGINAL CIVIL CASE NO. 4 OF 2002 IN
DODOMA DISTRICT COURT)

1. SHABAN S. MSURI

2. MOHAMED S. MSURI

..... APPELLANTS

VERSUS

JUMA S. MSURI RESPONDENT

16.05.2006 & 20.06.2006

RULING

MASANCHE, J.

The two applicants, **SHABANI MSURI** and
MOHAMED MSURI, have lost in the three courts,

the Primary Court, the District Court and the High Court. They now seek leave to appeal to the Court of Appeal. Apparently their adversary is their full brother, Juma Msuri, the respondent.

This application for leave to appeal to the Court of Appeal is without substance.

Their mother, actually, died in 1985. Then, a Probate and Administration Case got opened in 1995 in Probate and Administration Cause No. 16/1995, in the urban Primary Court Dodoma, by the two appellant brothers, against their other brother. They lost. The case was declared patently out of time. They then appealed to the District Court of Dodoma in Civil Case No. 75 of 1997. They lost. They then appealed further, to the high Court in Civil Appeal No. 7/1998, and here, before the late Stella Mafuru, a Principal Resident Magistrate, with extended jurisdiction, they lost the case. Somehow, their case found itself before Mjasiri, J. in Miscellaneous Civil Application No. 54/2005. They have lost.

As pointed out by Mjasiri, J. The applicants are trifling with the matter. The matter is time barred. The issues they grappled upon were res judicata. Their actions, now, are clearly an absence of court process. In any case, after I read the record, the issue or issues were factual. All the courts they have visited are at one that the house they eye, belongs to the respondent, their other brother. They should accept that holding of fact and call it a day.

Bullen Leak and **Jacobs** in **Precedents of Pleadings** 12th edition, at page 145 write this, of these frivolous and vexatious cases: They say:

"- a pleading or an action is frivolous when it is without substance or groundless or fanciful, and it is vexatious when it lacks bone fides and is hopeless or oppressive and tends to cause the opposite party unnecessary anxiety, trouble

and expense. Thus, a proceeding may be said to be frivolous when a party is trifling with the court or when to put it forward would be wasting the time of the Court."

*[Authors cite cases **Chaffers v.***

Goldmid [1894] 1 Q.B.186;

Dawkins v Prince Edward

of Saxe Weimar (1876)

Q.B.D. 499 per Mellor J.]

About pleadings which portray an abuse of Court process, this is what they say: They say that:

"Any pleading or endorsement of writ which is an abuse of the process of the Court may be ordered to be struck out or amended and the action may be stayed or dismissed or judgment entered accordingly, as the case may be. This express

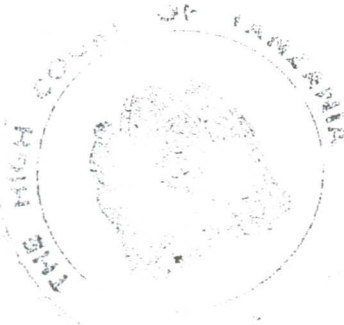
power conferred on the court is derived from and is parallel with the inherent jurisdiction of the Court to prevent the abuse of its process."

The authors go on to say:

"The term 'abuse of the process of the Court is a term of great significance. It connotes that the process of the Court must be carried out properly, honestly, and in good faith; and it means that the Court will not allow its function as a Court of law to be misused, but will, in a proper case, prevent its machinery from being used as a means of vexation or oppression in the process of litigation."
(page 148)

When I asked the applicants what they were, actually, up to, they told me that, yes, they had lost, but they wanted "to appeal further."

Their application for leave to appeal to the Court of Appeal is refused. It is refused with costs.




J.E.C. MASANCHE

JUDGE

DODOMA

20TH JUNE, 2006

Parties - Absent.