

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. CIVIL APPLICATION NO. 9 OF 2003
(PC CIVIL APPEAL NO. 7 OF 2002 OF
THE HIGH COURT OF TANZANIA AT DODOMA
ORIGINAL CIVIL CASE NO. 17 OF 2001 OF SINGIDA
DISTRICT COURT AT SINGIDA)



DAUDI MKUMBO APPLICANT

VERSUS

HANGO MAMBO RESPONDENT

02.05.2006 & 16.05.2006

RULING

MASANCHE, J.

The applicant, **Daudi Mkumbo**, seeks leave to appeal to the Court of Appeal, against the judgment of Kaji J. (as he then was). He has lost in all the three courts, as it were. He lost the case in the primary court of Ilongero, in Singida District. He lost the case in the District Court of Singida. He lost the case in the high Court of Tanzania. He now, as I say, wishes to appeal to the Court of Appeal.

It all started with the applicant, David Mkumbo, stabbing the respondent on the mouth, with a knife. The applicant was successfully prosecuted in the primary court, and convicted and sentenced to a fine of Shs.10,000/=, or 8 months jail in default of the fine. He was aggrieved. He appealed to the District Court of Singida, where his appeal (criminal as it were) was dismissed. He appealed to the High Court. His Criminal appeal was dismissed.

Meantime, his adversary, the respondent, turned around and sued him in a civil court, for compensation arising out of the injury, and complained that the compensation he was given, in the civil trial, of shs.1,000/=, was not enough. The primary court gave the respondent judgment. The appellant has, then, sought to appeal in those various courts I have mentioned earlier.

After reading the entire record, I say that I cannot grant the applicant leave to appeal to the Court of Appeal. The evidence on record showed that the applicant, truly, injured the respondent. The injuries were "horrible", we are told. The compensation of Shs.1,000/= given by the primary court, on the criminal proceedings, was, indeed, paltry. There was justification for the respondent to go to a civil court for a big compensation sum – the one million shillings. As pointed out by Kaji, J. (as he then was), the law allows that. As

Parker CJ of the English Court of Appeal pointed out, in **R. v Stevens and Bristow [1968]** Crim. L.R. 670.:

"there are cases which are so hopeless that the court may take the view that there is no reason for supposing anyone could possibly have advised an application for leave to appeal, there being no ground for it. If the Court comes to that view, it will not hesitate to direct [no] loss of time - ..."

The application for leave to appeal to the Court of Appeal is refused. As the respondent did not appear before me, I make no order as to costs.


(J.E.C. MASANCHE)
JUDGE

DODOMA

16th May, 2006

Applicant - Present in person.

Respondent - Absent.