**Mbando v Mtego**

**Division:** Court of Appeal of Tanzania at Dar-es-Salaam

**Date of judgment:** 4 May 2006

**Case Number:** 96/05

**Before:** Kaji JA

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Court of Appeal Rules – Whether service upon agent same as personal service – Time within which*

*to serve the Notice of Appeal and letter.*

*[2] Jurisdiction – Court of Appeal – Applications allowed in both the High Court and Court of Appeal.*

*[3] Jurisdiction – High Court – Matters the High Court can deal with on matters relating to the Court of*

*Appeal.*

**Editor’s Summary**

: The applicant had filed an appeal at the High Court at Dar-Es-Salaam but the same was dismissed due to his non-appearance on the hearing date. He applied for the dismissal order to be set aside but the application was also dismissed. Subsequently, he filed an appeal to the Court of Appeal. He however alleges that he could not trace the respondent and thus filed the present application seeking leave of the court for orders extending the time within which to serve the respondent with the Notice of Appeal. **Held** – Under rule 77(1) of the Court of Appeal Rules, 1979, an intended appellant must serve the respondent with a copy of the Notice of Appeal within seven days from the date of lodging the Notice of Appeal. Under rule 44 of the Court of Appeal Rules, 1979, whenever an application may be made either to the Court or to the High Court, it shall in the first instance be made to the High Court, except in criminal matters where the Court may, in its discretion, on application or of its own motion, give leave to appeal or extend the time for the doing of any act, notwithstanding the fact that no application has been made to the High Court. Rule 8 of the Court Rules, 1979 is clear on the Court of Appeal’s jurisdiction to extend the time limited by the Court Rules or by any decision of the Court or of the High Court for the doing of any act authorised or required by the Court Rules for sufficient reason. Under section 11(1) of the appellate Jurisdiction Act, 1979, as amended it would appear that the jurisdiction of the High Court in respect of extending time to matters coming to the Court of Appeal is limited to three categories, namely

(i) To extend time for giving notice of intention to appeal.

( ii) To extend time for making an application for leave to appeal.

(iii) To extend time for a certificate that the case is a fit case for appeal (certificate that a point of law is

involved).

The High Court therefore has no jurisdiction to extend time in which to serve the respondent with a Notice of Appeal or letter applying for copies of proceedings, ruling and order. Hence this application is properly before the Court. Service on the respondent’s brother, since he had accepted service on behalf of the respondent before, was as effective as if made on the respondent himself by virtue of Rule 20 of the Court of Appeal Rules, 1979 and Order 5, rule 12 of the Civil Procedure Code. There is no provision in the Court Rules, 1979 requiring service of the letter applying for copies of the proceedings, ruling and order within seven days. Since the law requires such letter to be written within 30 days from the date of lodging of the Notice of appeal, its service to the respondent is also probably within 30 days.

Application granted.

**No cases referred to in ruling**