

~~Q12.G.4.~~

③, 1963

IN THE PRIVY COUNCIL

NO.23 of 1961

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

DORIO LUCIO VINCENZINI

Appellant

- and -

THE REGIONAL COMMISSIONER
OF INCOME TAX

Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

19 JUN 1964

25 RUSSELL SQUARE
LONDON, W.C.1.

RECORD OF PROCEEDINGS

74044

T.L.WILSON & CO.
6, Westminster Palace Gardens,
London S.W.1.
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Respondent.

IN THE PRIVY COUNCILNo.23 of 1961

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

DORIO LUCIO VINCENZINI

Appellant

-- and --

THE REGIONAL COMMISSIONER
 OF INCOME TAX

Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No.23 of 1961

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

DORIO LUCIO VINCENZINI

Appellant

- and -

THE REGIONAL COMMISSIONER
OF INCOME TAX

Respondent

RECORD OF PROCEEDINGS

10

No. 1

No.1

NOTICE CONFIRMING 1954 ASSESSMENT
NO. N.2209

Notice con-
firming 1954
Assessment
No. N.2209
16th July 1959.

Registered post.

File No. 40239.

EAST AFRICAN INCOME TAX DEPARTMENT.

NOTICE

(Section 110 of the East African Income Tax
(Management) Act, 1958 and of the Income
Tax (Management) Decree, 1959 of Zanzibar).

20

Date Stamp
16th July, 1959

To :
Count D.L.Vincenzini
Keringet Estates,
P.O.Molo. Kenya.

Sir,

Year of Income 1954 Assessment No. N.2209.

With reference to your objection to the
assessment made upon you for the above mentioned
year of income -

30

*I hereby give you notice that I confirm the
assessment as I am not prepared to amend it
in accordance with your objection.

No.1
 Notice con-
 firming 1954
 Assessment
 No. N.2209
 16th July 1959.
 continued

2. If you wish to appeal against this decision you are entitled to appeal to the Local Committee on giving me notice in writing within 45 days of the date of the service of this Notice.¹ Your notice of appeal must be accompanied by a memorandum signed by you or your agent setting forth concisely and under distinct heads the grounds of appeal, the facts upon which the appeal is based and referring to any documentary or other evidence which you propose to adduce to the Local Committee². As an alternative you are entitled to appeal to a Judge on giving me notice in writing within 45 days of the date of the service of this Notice¹ in which case you must within 75 days from the date of the service of this Notice present a memorandum of appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court².

10

3. Notice of appeal cannot be accepted after the period of 45 days set out in 2 above has elapsed unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due notice owing to absence from the *Territories/ Protectorate, sickness, or other reasonable cause.

20

4. If no appeal is made, tax amounting to Shs. 251,182/- is payable on or before the 14th day of September 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The first instalment (or part of the tax) which was payable notwithstanding an objection, is payable on the due date previously notified, if not already paid. Will you please quote the file number, year of income and assessment number when making payment.

30

I am, Sir,
 Your obedient servant,
 Sd:

Regional Commissioner of Income Tax.

¹The date of service is defined in Sec.145(3) of the Act Decree.

40

²

- (i) Income Tax (Local Committee) Rules, 1959
- (ii) Income Tax (Appeal to Kenya Supreme Court) Rules 1959
- (iii) Income Tax (Appeal to Uganda High Court) Rules 1959
- (iv) Income Tax (Appeal to Tanganyika High Court) Rules 1959
- (v) Income Tax (Appeal to the High Court) Rules 1959 (Zanzibar)

* Delete as appropriate.

50

No. 2

NOTICE CONFIRMING 1955 ASSESSMENT
NO. N.2784.

File No.40239.

EAST AFRICAN INCOME TAX DEPARTMENT.

NOTICE

(Section 110 of the East African Income Tax
(Management) Act, 1958 and of the Income Tax
(Management) Decree, 1959 of Zanzibar).

10

Date Stamp
16th July, 1959

To:
Count D.L.Vincenzini
Keringet Estates,
P.O.Molo. Kenya.

Sir,

Year of Income 1955 Assessment No. N.2784

20

With reference to your objection to the
assessment made upon you for the above mentioned
year of income -

I hereby give you notice that I confirm the
assessment as I am not prepared to amend it
in accordance with your objection.

30

2. If you wish to appeal against this decision
you are entitled to appeal to the Local Commit-
tee² on giving me notice in writing within 45
days of the date of the service of this Notice¹.
Your notice of appeal must be accompanied by a
memorandum signed by you or your agent setting
forth concisely and under distinct heads the
grounds of appeal, the facts upon which the ap-
peal is based and referring to any documentary
or other evidence which you propose to adduce to
the Local Committee². As an alternative you
are entitled to appeal to a Judge on giving me
notice in writing within 45 days of the date of

No.1
 Notice con-
 firming 1955
 Assessment
 No. N.2784
 16th July 1959
 continued

the service of this Notice¹ present a memorandum of appeal to the Registrar of the Supreme Court. Your attention is drawn to the appropriate Rules of Court 2.

3. Notice of appeal cannot be accepted after the period of 45 days set out in 2 above has elapsed unless you are able to satisfy the local Committee or the Judge that you were prevented from giving due notice owing to absence from the Territories/Protectorate, sickness, or other reasonable cause. 10

4. If no appeal is made, tax amounting to Shs. 150,959/- is payable on or before the 14th day of September 1959 and if payment is not made by that date a penalty of 20 per cent will be added. The first instalment (or part of the tax) which was payable notwithstanding an objection, is payable on the due date previously notified, if not already paid. Will you please quote the file number, year of income and assessment number when making payment. 20

I am, Sir,

Your obedient servant,

Sd.

Regional Commissioner of Income Tax.

¹ The date of service is defined in Sec.145(3) of the Act/Decree.

- ²
- (i) Income Tax (Local Committee) Rules, 1959
 - (ii) Income Tax (Appeal to Kenya Supreme Court) Rules 1959 30
 - (iii) Income Tax (Appeal to Uganda High Court) Rules 1959.
 - (iv) Income Tax (Appeal to Tanganyika High Court) Rules 1959
 - (v) Income Tax (Appeal to the High Court) Rules 1959 (Zanzibar)

*Delete as appropriate

No.3

In the Supreme Court

MEMORANDUM OF APPEAL AGAINST 1954 ASSESSMENT NO. N.2209

No.3

Memorandum of Appeal against 1954 Assessment No.N.2209 7th October 1959

IN THE MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

INCOME TAX CIVIL APPEAL No.59 of 1959.

IN THE MATTER OF THE EAST AFRICAN INCOME TAX (MANAGEMENT) ACT 1952

and

10 IN THE MATTER OF: AN APPEAL TO A JUDGE IN HER MAJESTY'S SUPREME COURT OF KENYA UNDER SECTION 78 AND OTHERWISE UNDER THE SAME ACT RELATING TO ASSESSMENT NUMBER N.2209 FOR THE YEAR OF INCOME 1954.

IN THE MATTER OF: DORIO L. VINCENZINI.

DORIO L. VINCENZINI

Appellant

v.

THE REGIONAL COMMISSIONER OF INCOME TAX

Respondent

MEMORANDUM OF APPEAL

20 APPEAL is HEREBY MADE against the decision of the Regional Commissioner of Income Tax set out in a Notice dated the 16th day of July 1959 in respect of assessment No.2209 of 1954 File No.40239 (a copy of the said Notice is enclosed herewith) on the following amongst other grounds:

30 1. The Regional Commissioner of Income Tax (hereinafter called "the Commissioner") was wrong in law in raising this assessment by virtue of Section 22 of the East African Income Tax (Management) Act (hereinafter referred to as "the Act"). The assessment purports to be raised on notional Dividends of Keringet Estates Limited (hereinafter called "the Company"). The company is not one to which Section 22 of the Act could be applied.

In the Supreme Court

No.3

Memorandum of Appeal against 1954 Assessment No. N.2209 7th October 1959 continued

2. The assessment is not a valid assessment inasmuch as it purports to assess income tax on an income which was not earned by the Appellant.

3. In the alternative if the profits of the Company could be assessed by virtue of Section 22 of the Act the Commissioner failed to exercise a judicial discretion in assessing the tax inasmuch as he did not take into consideration an expenditure of Shs. 312,831/15 expended on plant and machinery during the year of income by the said Company.

10

WHEREFORE it is prayed that this Honourable Court do allow this Appeal with costs to set aside the decision of the Commissioner and to remit in toto the tax assessed and that this Honourable Court may make such other and further Orders as to it deem just.

DATED at Nairobi this day of 1959.

Sd. SIRLEY & KEAN
ADVOCATE FOR THE APPELLANT.

20

Filed by:
Sirley & Kean
Advocates,
Princes House,
Government Road,
Nairobi - which is the address for service of the Appellant for the purposes of this Appeal.

To be served on:
The Regional Commissioner of Income Tax,
E.A. Income Tax Department,
P.O. Box 30165,
Nairobi.

30

TAKE NOTICE that at the hearing of this Appeal the Appellant will support the grounds set forth in this Memorandum inter alia by the sworn evidence of the Appellant and his Accountants and the relevant documentary evidence.

RUBBER STAMP OF

"H.M.SUPREME COURT OF KENYA
(CIVIL SIDE)
7 OCT.1959
NAIROBI.

40

No.4

In the Supreme Court

MEMORANDUM OF APPEAL AGAINST 1955 ASSESSMENT NO. N.2784

No.4

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

Memorandum of Appeal against 1955 Assessment No.N.2784 7th October 1959

INCOME TAX CIVIL APPEAL No.58 of 1959.

IN THE MATTER OF THE EAST AFRICAN INCOME TAX (MANAGEMENT) ACT 1952

and

10

IN THE MATTER OF: AN APPEAL TO A JUDGE IN HER MAJESTY'S SUPREME COURT OF KENYA UNDER SECTION 78 AND OTHERWISE UNDER THE SAME ACT RELATING TO ASSESSMENT NUMBER N.2784 FOR THE YEAR OF INCOME 1954

and

IN THE MATTER OF: DORIO L. VINCENZINI

DORIO L. VINCENZINI

Appellant

v.

THE REGIONAL COMMISSIONER OF INCOME TAX

Respondent

20

MEMORANDUM OF APPEAL

APPEAL is HEREBY MADE against the decision of the Regional Commissioner of Income Tax set out in a Notice dated the 16th day of July 1959 in respect of assessment N.2784 of 1955 File No.40239 (a copy of the said Notice is enclosed herewith) on the following amongst other grounds:-

30

1. The Regional Commissioner of Income Tax (hereinafter called "the Commissioner") was wrong in law in raising this assessment by virtue of Section 22 of the East African Income Tax (Management) Act (hereinafter referred to as "the Act"). The assessment purports to be raised on notional Dividends of Keringet Estates Limited (hereinafter called "the Company") The Company is not one to which Section 22 of the Act could be applied.

In the Supreme Court

No.4

Memorandum of Appeal against 1955 Assessment No.N.2784 7th October 1959 continued

2. The assessment is not a valid assessment inasmuch as it purports to assess income tax on an income which was not earned by the Appellant.

3. In the alternative if the profits of the Company could be assessed by virtue of Section 22 of the Act the Commissioner failed to exercise a judicial discretion in assessing the tax inasmuch as he did not take into consideration an expenditure of Shs.272,076/75 expended on plant and machinery during the year of income by the said Company.

10

WHEREFORE it is prayed that this Honourable Court do allow this Appeal with costs to set aside the decision of the Commissioner and to remit in toto the tax assessed and that this Honourable Court may make such other and further Orders as to it deem just.

DATED at Nairobi this day of 1959.

Sd. SIRLEY & KEAN
ADVOCATE FOR THE APPELLANT.

20

Rubber Stamp:
H.M. SUPREME COURT
OF KENYA (Civil side)
7 OCT. 1959
NAIROBI.

Filed by:
Sirley & Kean Advocates,
Princes House, Government Road, Nairobi - which is the address for service of the Appellant for the purposes of this Appeal.

30

To be served on: The Regional Commissioner of Income Tax, E.A.Income Tax Department, P.C.Box 30165, Nairobi.

TAKE NOTICE that at the hearing of this Appeal the Appellant will support the grounds set forth in this Memorandum inter alia by the sworn evidence of the Appellant and his Accountants and the relevant documentary evidence.

No.5

In the Supreme Court

CHAMBER SUMMONS TO STRIKE OUT PROCEEDINGS

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

No.5

Chamber Summons to strike out proceedings 9th November 1959

CIVIL APPEAL No.58 of 1959.

DORIO L. VINCENZINI Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

SUMMONS

10

Rule 18(2) Income Tax (Appeal to the Kenya Supreme Court) Rules 1959.

Let all parties concerned attend before the Judge in Chambers on the 23rd day of November 1959, at 9.30 o'clock in the forenoon on the hearing of an application by Counsel for the Respondent above named that these proceedings be struck out on the grounds that they are not properly before this Honourable Court and that the costs of this application be awarded to the Respondent.

20

2. The applicant will rely at the hearing upon the affidavit of Ramnikrai Premshanker Acharya dated the 9th day of November 1959, and which is attached hereto.

DATED at Nairobi this ninth day of November, 1959.

Sd. B.A.K. le Champion
for Legal Secretary East Africa
High Commission (Counsel for the Respondent)

30

The Summons was taken out by:-

W.G.Waddell
DEPUTY REGISTRAR
Supreme Court of Kenya.

The Legal Secretary,
E.A. High Commission,
High Commission Building.
P.O.Box 30005, NAIROBI.

To be served on:-
Messrs. Sirley & Kean,
Advocates,
Princes House,
Government Road,
NAIROBI.

40

In the Supreme Court

No.6

AFFIDAVIT IN SUPPORT OF CHAMBER SUMMONS

No.6

Affidavit in support of Chamber Summons 9th November 1959

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

CIVIL APPEAL No.58 of 1959.

DORIO L. VINCENZINI

Appellant

versus

THE COMMISSIONER OF INCOME TAX

Respondent

10

AFFIDAVIT

I, RAMNIKRAI PREMESHANKER ACHARYA, Advocate, Legal Secretary's Chambers, East Africa High Commission, Ngong Road, P.O. Box 30005, Nairobi, make oath and say as follows:-

1. In this income tax appeal the Appellant appeals against an assessment No. N.2784 dated 16th October 1958 and raised upon him for the year of income 1955.

2. The Memorandum of Appeal in the proceedings was filed in the Registry of this Honourable Court in accordance with the Income Tax (Appeal to the Kenya Supreme Court) Rules 1959, on the 7th October 1959.

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3. At the time the said Memorandum of Appeal was filed it was not accompanied by a copy of the notice of appeal as required by Rule 5(b) of the said Rules.

4. The Memorandum of Appeal relating to the year in question was further not accompanied by a Statement of Facts as required by rule 5(c) of the said Rules.

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5. In the latter connection I crave leave to draw

attention to East African Tax Case No. 52 in which it was held that as no Statement of Facts had been filed with the Memorandum of Appeal the appeal in that case was not properly before the court and must be dismissed with costs.

In the Supreme Court

No.6

Affidavit in support of Chamber Summons 9th November 1959 continued

10

6. I am enabled to make this affidavit from facts appearing upon the official files relating to the affairs of the above mentioned Appellant, Dorio L. Vincenzini, and from facts within my own knowledge gained in the course of my official duties. The said facts are to the best of my knowledge, information and belief true.

Sworn at Nairobi this 9th day of November, 1959, before me Sd. R.P.ACHARYA

Sd. G. WADDELL
DEPUTY REGISTRAR
SUPREME COURT OF KENYA
COMMISSIONER FOR OATHS.

DEPONENT.

20

No.7

No.7

ORDER CONSOLIDATING APPEALS

IN HER MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI

Order consolidating Appeals 23rd November 1959

CIVIL APPEAL No.58 of 1959.

IN THE MATTER OF THE EAST AFRICAN TAX (MANAGEMENT) ACT 1952

and

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IN THE MATTER OF: AN APPEAL TO A JUDGE IN HER MAJESTY'S SUPREME COURT OF KENYA UNDER SECTION 78 AND OTHERWISE UNDER THE SAID ACT RELATING TO ASSESSMENT NUMBER N.2784 FOR THE YEAR OF INCOME 1954.

IN THE MATTER OF: DORIO L. VINCENZINI

DORIO L. VINCENZINI

Appellant

versus

THE REGIONAL COMMISSIONER
OF INCOME TAX

Respondent

23.11.59

Le Champion for Appellant

Kean for Respondent

Order by Consent.

40

(1) This appeal is consolidated with C.A.

In the Supreme Court

No.7

Order consolidating Appeals
23rd November 1959
continued

59 of 1959.

- (2) Both these appeals consolidated with C.A.28 of 1959 in which judgment has already been reserved for consideration of preliminary point taken by Mr. Kean in C.A.28.
- (3) Parties agreed to be bound (so far as this Court is concerned) by decision in C.A.28 in that particulars correspond in relation to the preliminary point.

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HENRY MAYERS
23.11.59.

23.11.59. Notice of appeal filed by the Legal Secretary.

P. HEIM
DEPUTY REGISTRAR.

No.8

Ruling on Chamber Summons
17th December 1959

No.8

RULING ON CHAMBER SUMMONS

COLONY AND PROTECTORATE OF KENYA

20

IN HER MAJESTY'S SUPREME COURT AT NAIROBI

CIVIL APPEAL No.28 of 1959.

CHRISTO KATSANTONI CHRISTIE

Appellant

versus

THE REGIONAL COMMISSIONER OF INCOME TAX

Respondent

RULING.

By this Chamber Summons the Applicant, the Regional Commissioner of Income Tax, seeks an order under Rule 18(2) of the Income Tax (Appeal

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to the Kenya Supreme Court) Rules, 1959, hereinafter referred to as the Appeal Rules, that an appeal lodged by the Respondent against a refusal of the Assistant Commissioner of Income Tax to amend further the assessment to Income Tax of the Respondent in respect of the year of Income 1953 be dismissed on the ground that that appeal is out of time and incompetent by reason of the fact that when the memorandum of appeal was filed it was not accompanied by the appropriate number of copies of the amended notice of assessment - which defect was not remedied until after the expiration of the time within which appeals should be lodged - and further was not accompanied by the notice of appeal and by a statement of facts as required by the Appeal Rules.

In the Supreme
Court

No.8

Ruling on
Chamber Summons
17th December
1959
continued

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At the beginning of the hearing Mr. Kean, who appears for the Respondent, took a preliminary objection that the application is not maintainable for reasons hereinafter discussed. At the same time he observed that there were listed for hearing before me on the same day similar applications in Civil Appeal Numbers 29, 30 and 31 of 1959, in all of which he proposed to take the same preliminary objection. This application was therefore ordered to be consolidated with those Civil appeals which are hereinafter collectively referred to as Category A.

Having heard argument I reserved my ruling. Subsequently there were listed before me applications in the Civil Appeals Nos. 58 and 59 of 1959, hereinafter referred to as Category B. In all of these Mr. Kean appeared for the Respondent and when the first was called on for hearing, informed the Court that he proposed to take the same preliminary objection as he had taken in the applications falling within Category A, although in addition to that objection he proposed to take other objections in relation to the applications falling in Category B.

It was therefore ordered by consent that the applications in Category B should be deemed to be consolidated with those in Category A for the purpose of the consideration of Mr. Kean's preliminary objection but that, in the event of that objection not being upheld, the applications in

In the Supreme Court

Category B should be re-listed for argument in relation to the other aspects of those matters.

No.8

Ruling on Chamber Summons 17th December 1959 continued

Mr. Kean's argument was that although Rule 18(1) of the Appeal Rules authorises the jurisdiction of the Court under the Rules to be exercised in Chambers, Rule 18(2) provides for ancillary applications to be made by summons in Chambers, but this is not an ancillary application. Mr. Kean further contended that the Appeal Rules are ultra vires in that Section 117 of the Income Tax Management Act, under which they purport to be made, confers no power to make Rules in relation to appeals. Mr. Le Champion, for the Commissioner of Income Tax, relied, however, upon the East African Tax Case No.52 and East African Case No.51.

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Neither of the cases relied upon by Mr. le Champion can be regarded as a binding authority in the instant matter in as much as they were both decided before the promulgation of the present appeal Rules and may, therefore, have been decided upon rules very differently phrased to those now to be construed. Whether the rules under which they were decided are or are not similar in phraseology to the existing appeals, I do not know as neither party appeared to think it worthwhile to cite to me the then extant rules and at least one of the cases relied upon by Mr. le Champion was decided, not upon the Rules relating to appeals to the Kenya Supreme Court, but upon those relating to the Tanganyika High Court. Apart from the foregoing, the order dismissing the appeal on the ground that it was incompetent was made in one of the cases relied upon by Mr. le Champion in Court and in the other the point that there was no jurisdiction to dismiss in Chambers, does not appear to have been taken.

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Rule 18, so far as is material, is in the following terms:

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"(1) The authority and jurisdiction of the Court under these Rules may be exercised by the Court in Chambers.

(2) Ancillary applications to a Judge, if

not made at the hearing, shall be made by summons in Chambers intituled in the matter of the appeal, supported by affidavit."

In the Supreme
Court

No.8

Ruling on
Chamber Summons
17th December
1959
continued

10 By virtue of Rule 18(1) supra it is clear that everything may be done in Chambers which is within the jurisdiction of the Court conferred by the Rules. The only jurisdiction conferred by the Rules to dismiss an appeal by reason of the appellant's default is that conferred by Rule 11 and by Rule 12, which relate to dismissal for non-appearance and dismissal for failure to deposit certain sums in respect of costs. It seems to me quite clear, therefore, that the Rules do not confer jurisdiction to dismiss an appeal in Chambers on the grounds relied on in this application. In view of the decisions that the Court has power at the hearing to dismiss an appeal for non-compliance with the Rules relating to the filing of a statement of facts, it would not be proper for me, without the matter having been fully argued before me to express any view as to whether the Court has such jurisdiction as founded upon the inherent powers of the Court or upon some provisions in the Income Tax Management Act. For present purposes, therefore, I assume that there would have been jurisdiction to dismiss these appeals upon the grounds relied upon by Mr. le Champion in Court, although such jurisdiction would not have been derived from the Appeal Rules. It is, therefore, necessary to consider whether Rule 18(2) authorises the exercise of that jurisdiction in Chambers. On the face of it Rule 18(2) authorises ancillary applications to be made by summons in Chambers. Ancillary is defined in the Oxford English Dictionary as meaning "subservient, subordinate, ministerial."

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40 It does not appear to me that an application having as its object the final determination so far as this Court is concerned of any legal proceeding can properly be regarded as being "subservient, subordinate or ministerial". Furthermore, it seems to me that Rule 18(2) must be read as subject to Rule 18(1) and therefore that the ancillary applications to which that sub-Rule applies are applications ancillary to

In the Supreme Court

No.8

Ruling on Chamber Summons 17th December 1959 continued

the authority and jurisdiction of the Court conferred by the Rules. As I have already observed in my view the Rules confer no jurisdiction to dismiss an appeal by reason of the memorandum of appeal not being accompanied by the appropriate documents. For these reasons it appears to me that Mr. Kean's preliminary objection is valid and that all of these applications must be dismissed with costs.

Sd. HENRY MAYERS. J.
17.12.59.

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No.9

Order on Chamber Summons 17th December 1959

No.9

ORDER ON CHAMBER SUMMONS

IN HER MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI

CIVIL APPEALS NOS.58-59 of 1959
(Consolidated).

DORIO L. VINCENZINI Appellant

v.

THE REGIONAL COMMISSIONER OF INCOME TAX Respondent

20

(Chamber applications made by the Respondent to strike out the above mentioned Appeals on the grounds that they are not properly before the Court).

ORDER

IN CHAMBERS

This 17th day of December 1959.

THESE APPLICATIONS coming on for hearing on the 23rd day of November, 1959, in the presence

of B.A.K. le Champion, Esq., Counsel for the Commissioner of Income Tax, and M. Kean, Esq., Counsel for the Appellant, it was ordered that these applications do stand for judgment and the same coming for judgment this day IT IS ORDERED -

In the Supreme Court

No.9

Order on Chamber Summons 17th December 1959 continued

10

- (a) that these applications be and are hereby dismissed;
- (b) that the Respondent shall pay the Appellant's taxed costs of these applications;
- (c) that the Respondent do have leave to appeal to Her Majesty's Court of Appeal for Eastern Africa.

GIVEN under my hand and the Seal of the Court at Nairobi this 17th day of December, 1959.

Sgd. H.F.Hammell
DEPUTY REGISTRAR
SUPREME COURT OF KENYA.

20

No.10

No.10

NOTICE OF APPEAL

IN HER MAJESTY'S SUPREME COURT OF KENYA AT
NAIROBI.

Notice of Appeal
23rd December
1959

CIVIL APPEAL NO. 58 & 59 of 1959

DORIO L. VINCENZINI

Appellant

V.

THE COMMISSIONER OF INCOME
TAX

Respondent

NOTICE OF APPEAL

30

TAKE NOTICE that the Commissioner of Income Tax, being dissatisfied with the decision of the Honourable Mr. Justice Mayers given on an interlocutory application in Chambers herein at Nairobi on the 17th day of December 1959, intends to appeal to Her Majesty's Court of Appeal

In the Supreme
Court

No.10

Notice of
Appeal
23rd December
1959
continued

for Eastern Africa against the whole of the said
decision in favour of the Appellant herein.

DATED at Nairobi this 23rd day of December,
1959.

Sgd. B.A.K.le Champion

for LEGAL SECRETARY

EAST AFRICA HIGH COMMISSION

(Counsel for Commissioner of Income
Tax).

To: The Registrar,
Supreme Court of Kenya,
Nairobi.

10

And to:
Messrs.Sirley & Kean,
Advocates,
Princes House,
Government Road,
Nairobi.

The address for service of the intended
Appellant is -

20

c/o The Legal Secretary,
E.A.High Commission,
Upper Hill Road,
P.O.Box 30005, Nairobi.

NOTE: A Respondent served with this Notice is
required within fourteen days after such service
to file in these proceedings and serve on the
Appellant a notice of his address for service
for the purpose of the intended appeal, and with-
in a further fourteen days to serve a copy there-
of on every other Respondent named in this notice
who has filed notice of an address for service.
In the event of non-compliance, the Appellant may
proceed ex parte.

30

FILED the day of December 1959.

REGISTRAR.

No. 11

In the Court
of Appeal

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI.

No.11

CIVIL APPEAL No.9 of 1960.

Memorandum
of Appeal
12th February
1960

BETWEEN

THE REGIONAL COMMISSIONER OF
INCOME TAX

Appellant

and

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DORIO L. VINCENZINI

Respondent

(Appeal from a Ruling and Order of the
Supreme Court of Kenya at Nairobi (Mr.
Justice Mayers) dated the 17th December
1959,

in

Civil Appeal No.58 of 1959

AND

Civil Appeal No.59 of 1959

DORIO L. VINCENZINI

Appellant

20

and

THE REGIONAL COMMISSIONER
OF INCOME TAX

Respondent

MEMORANDUM OF APPEAL

The Regional Commissioner of Income Tax; the
Appellant above named, appeals to Her Majesty's
Court of Appeal for Eastern Africa against the
whole of the decision above named on the follow-
ing grounds :-

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1. That the Kenya (Appeal to the Kenya Supreme
Court Rules) 1959, and in particular Rule 18(2)
thereof, confer jurisdiction on the Court to

In the Court
of Appeal

No.11

Memorandum
of Appeal
12th February
1960
continued

dismiss an appeal to a Judge under the said rules which is not properly before the Court by reason of the memorandum of appeal not being accompanied by the prescribed documents.

2. That the learned Judge erred in failing to hold that the application made by summons to the Court under the said Rule 18(2) to strike out the proceedings was an ancillary proceeding properly brought within the said Rule 18(2).

3. That the Court has an inherent jurisdiction to strike out proceedings which do not comply with the provisions of the law under which they purport to be preferred. 10

The Appellant therefore prays

(a) that the ruling to the Supreme Court be reversed; and

(b) for such further and other relief as this Honourable Court may see fit to grant, together with the costs of this Appeal and of the Appeals in the Court below. 20

DATED at Nairobi this 12th day of February 1960.

Sgd. B.A.K.le Champion

for LEGAL SECRETARY
EAST AFRICA HIGH COMMISSION
(Advocate for the Appellant)

Filed by:
The Legal Secretary,
E.A.High Commission,
NAIROBI.

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To: The Honourable the Judges of Her Majesty's
Court of Appeal for Eastern Africa NAIROBI

and to Messrs.Sirley & Kean, Advocates, Princes'
House Government Road, NAIROBI.

Filed this 15th day of February, 1960 at Nairobi.

NOTES OF O'CONNOR P.

27.1.61.

Goram: O'Connor P.
Forbes V.P.
Crawshaw J.A.

Notes of
O'Connor P.
27th January
1961

Le Champion for Appellant

Kean for Respondent.

KEAN: called on to support decision.

10 CHAMPION: Newbold's reference.

Two appeals - No provision for consolidation.

Points at issue similar.

Glad if one hearing can cover both appeals.
Only difference between appeals Nos.8 and 9 is
that the question of time does not come within
No.9. Kean agrees.

Counsel agree that the question of whether the
jurisdiction exists is identical in both appeals.

20 Counsel agree that we should hear Appeal
No.8 and that the decision in that on jurisdic-
tion should govern Appeal No.9, it being under-
stood that if we find that the jurisdiction to
strike out does exist, then the application would
have to be remitted to the Supreme Court to de-
cide whether it should be exercised.

KEAN: If you hold the jurisdiction does not
exist the matters concerned have to go back to
the Supreme Court for adjudication on the prin-
cipal appeals.

30 Rec.p.29

Agree with the ruling. Reads it.

R.18(2)

p.30, r.10. I was there misquoted.

In the Court
of Appeal

No.12

Notes of
O'Connor P.
27th January
1961
continued

p.31.

Agree with reasoning of the learned judge and adopt them.

There is the I.T. Management Act, 1958.

Powers to make rules.

s.117 which provides that the R. Committee is entitled to make rules governing appeals etc.

s.113. These are rights conferred on the taxpayer including a right to appeal before the judge on the hearing of the appeal - at the time fixed for the hearing of the appeal.

10

A right to be heard and a duty to be heard. Ask you not to trifle with the rights which the Act confers on the taxpayer. Fundamental right not be tampered with or penal taxation could be imposed.

s.17. The rules may not be wider than the section conferring the right.

The appeal in each case was filed within time but all the documents were not filed.

20

But I am not driven to rely on ultra vires. The rules are sufficient and adequate.

R.21. Under the C.P. Rules if the appeal is defective an application can be made by motion and plaintiff would fail if he had not complied with the rules.

If the Court could exercise that jurisdiction it would have to be by motion under the inherent jurisdiction.

30

Civil Procedure Ordinance s.97 (inherent power)
s.70. C.P.Ordinance.

The Income Tax (Appeal to the High Court Rules, 1959 retroactive. Emphasise that these are nothing but procedural rules. Substantive provisions are contained in the Act.

Dismissal of suit.

You must look at the totality of the Rules. Rules 11, 12, 13, 14.

In the Court
of Appeal

To Court. There is no provision in the Rules for striking out. The provisions relating to striking out of pleadings are not applied (R.21).

No.12

In this particular case "striking out" would be tantamount to dismissal.

Notes of
O'Connor P.
27th January
1961
continued

10 Submit that an appeal cannot be struck out or dismissed otherwise than under the express provision of the Rules.

Court. (F). Is there an appeal at all if the Rules have not been complied with?

A. Yes.

There is no jurisdiction to strike out an appeal for non-compliance with the Rules in Income Tax cases.

20 If non-compliance with the Rules is an irregularity a mere procedural defect, the Court can require it to be remedied. If not remedied the party may be in contempt and the Court may dismiss. That is inherent jurisdiction which can only be exercised at the hearing; but not by Chamber summons.

The jurisdiction to enforce the Rules does not arise under the Rules but is inherent. Whether the jurisdiction to enforce the Rules arises under the Rules.

30 The Legislature could have provided expressly that breach of the rules would confer power to dismiss the appeal.

c.f.R.72 E.A.C.Rules.

Inherent power is not a general power for the Court to do what is impliedly omitted by legislation. s.151 Indian Civil Procedure Code.

Chitaley 5th Vol. I. p.1393.

1394 "Inherent power...."

In the Court
of Appeal

No.12

Notes of
O'Connor P.
27th January
1961
continued

"justice has to be done" not procedural.

Court cannot invoke inherent jurisdiction to imply something left out.

p.1401.

No example of dismissal of suit.

p.1411. Cannot override general principles of law.

p.1413. "...end on justice..."

p.1425.

Jurisdiction to strike out is not conferred by the Rules. 10

The appeal depends on s.113 and s.111 of the Act. Non-compliance with the Rules does not affect the fact that there is an appeal if the notice of appeal is given in time.

To Court. If s.111(1) has been complied with there is an appeal notwithstanding that R.3 has not been complied with, if the defect is procedural - a mere irregularity. There is an appeal if a memo has been presented within time. There is an appeal although the memorandum may be defective. 20

Court: What if the Registrar refuses to enter under R.6?

These appeals were in fact entered. The fact that he may have wrongly done so does not mean that there is no appeal.

(i) The Court has no inherent jurisdiction to enforce these Rules unless the failure amounts to contempt or abuse; (2) but if it has, that jurisdiction does not arise "under these Rules" within R.18(1) and cannot be exercised in Chambers. 30

R.18(2) The judge was right.

The Respondent's application was brought under this. p.31, l.6. "ancillary application" does not invoke the inherent jurisdiction.

Income tax appeals do not depend on procedure as well as on substance.

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of Appeal

No express provision allowing appeals to be dismissed for non-compliance with the Rules.

No.12

S.18(1) means what it says and

Notes of
O'Connor P.
27th January
1961
continued

(2) cannot be ancillary.

Mayer's J's ruling is correct.

Adjourned to 2.30.

K.O.C. 27.1.

10 2.30 p.m. Bench and Bar as before.

Le Champion not called on.

JUDGMENT

20 The appeal is allowed with costs to be taxed. The Ruling and Order dated 17th December, 1959 of the Supreme Court are set aside and the consolidated applications of the Commissioner of Income Tax are remitted to the Supreme Court for consideration. The Commissioner should have his costs in the Supreme Court of/and incidental to the preliminary objection.

We will give written reasons for our decision.

27.1.61.

(Sgd.) K.K.O'Connor
President

A.G.Forbes
Vice President

30 E.D.W.Crawshaw
Justice of Appeal.



In the Court
of Appeal

No. 13

REASONS FOR JUDGMENT

No.13
Reasons for
Judgment
8th February
1961

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI
CIVIL APPEALS NOS. 8 & 9 OF 1960.

BETWEEN

THE REGIONAL COMMISSIONER OF
INCOME TAX APPELLANT

AND

CHRISTO KATSANTONI CHRISTIE RESPONDENT 10

AND

THE REGIONAL COMMISSIONER OF
INCOME TAX APPELLANT

AND

DORIO L. VINCENZINI RESPONDENT

(Appeals from ruling and order of H.M.
Supreme Court of Kenya at Nairobi
(Mayers, J.) dated 17th December, 1959

in

Civil Appeals Nos.28-31 of 1959 20

Between

Christo Katsantoni Christie Appellant

and

The Regional Commissioner of
Income Tax Respondent

and

Civil Appeals Nos.58 and 59 of 1959

Between

Dorio L. Vincenzini Appellant

and

The Regional Commissioner of
Income Tax Respondent 30

and

In the matter of the East African Income
Tax (Management) Act, 1958).

REASONS FOR JUDGMENT

O'CONNOR P.

These are appeals from a ruling of a judge

In the Court
of Appeal

No.13

Reasons for
Judgment
8th February
1961
continued

reasons hereinafter discussed. The learned judge upheld these preliminary objections and, on the 17th December, 1959, dismissed all the Commissioner's summonses with costs. The Commissioner appealed to this Court.

On the 27th January, 1961, we allowed the appeals with costs, set aside the rulings and orders of the Supreme Court dated 17th December, 1959 and remitted the consolidated applications of the Commissioner to the Supreme Court for consideration. We directed that the Commissioner should have his costs in the Supreme Court of and incidental to the preliminary objections. We now give our reasons.

10

The relevant provisions of the East African Income Tax (Management) Act, 1958 (hereinafter called "the Act") and of the Rules, so far as material, are as follows :-

"111.(1) Any person who has given a valid notice of objection to an assessment and, consequent thereon, has been served with a notice under sub-section (3) of section 110 may appeal -

20

.....

(b) to a judge.

upon giving notice of appeal in writing to the Commissioner within 45 days after the date of service upon him of the notice under sub-section (3)."

30

.....

"113. In every appeal to a judge under Section 111 the following provisions shall apply -

(a) every person appealing shall appear before the judge either in person or by advocate on the day and at the time fixed for the hearing of the appeal:

Provided that if it be proved to the satisfaction of the judge that owing to absence of the Appellant from the Territories, sickness, or other reasonable cause, he is prevented from attending at

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the hearing of the appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of such appeal for such reasonable time as he thinks necessary;

In the Court
of Appeal

No.13

Reasons for
Judgment
8th February
1961
continued

- (b) the appeal shall be heard in camera unless the judge on the application of the person assessed otherwise directs;

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117. (1) The appropriate authority may, in relation to each territory, make rules governing appeals under this Part (other than appeals to a local committee) and providing for the method of tendering evidence and appointing places for the hearing of such appeals and prescribing the fees to be paid on such appeals."

Rules 3,5,6,18 and 21 of the Rules so far as material read:

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"3. (1) Every appeal to a Judge under the Act shall be preferred in the form of a memorandum of appeal and shall be presented to the Registrar within 75 days after the date of service upon the Appellant of -

- (a) the confirming notice; or
- (b) the amending notice; or
- (c) the notice of the decision of the Commissioner; or

.....

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5. The memorandum of appeal shall be accompanied by -

- (a) a copy of the confirming notice, the amending notice, the notice of the decision of the Commissioner, or the notice of the decision of the local committee, as the case may be; and

(b) a copy of the notice of appeal; and

(c) a statement, signed by the Appellant or his advocate, setting out the facts upon which the appeal is based and referring to any documentary or other evidence

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In the Court
of Appeal

which it is proposed to adduce at the
hearing of the appeal.

No.13

Reasons for
Judgment
8th February
1961
continued

6. Where a memorandum of appeal and the documents referred to in rule 5 of these Rules are lodged and the filing and service fees in relation thereto paid, the Registrar shall then cause to be endorsed thereon the date of presentation, and the appeal shall be entered in the Register of Appeals in accordance with Rule 8 of Order XLI of the Civil Procedure (Revised) Rules, 1948."

10

.....

"18(1) the authority and jurisdiction of the Court under these Rules may be exercised by the Court in Chambers.

(2) Ancillary applications to a Judge, if not made at the hearing, shall be made by summons in Chambers intituled in the matter of the appeal, supported by affidavit.

(3) If no appeal is pending, the summons in Chambers shall be intituled in the matter of the intended appeal.

20

.....

"21. The rules determining procedure in civil suits before the Court in so far as such rules relate to" (Here follow a number of matters none of which is material in the present case) "shall, to the extent to which such rules are not inconsistent with the Act or these Rules, apply to an appeal to a Judge under the Act as if such appeal were a civil suit but, save as provided in these Rules, the procedure relating to civil suits before the Court shall not apply to any such appeal".

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It is to be noted that the provisions of Order 50 rule 1 of the Kenya Civil Procedure (Revised) Rules, 1948 (which provides that all applications to the Court, save where otherwise expressly provided for under those Rules, shall be by motion and shall be heard in open Court) is not applied by rule 21 of the Rules to income

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tax appeals: indeed its application is by that rule expressly negatived. Such provision would be quite inappropriate to proceedings which, under s.113(b) of the Act, are directed normally to be heard in camera.

In the Court
of Appeal

No.13

Reasons for
Judgment
8th February
1961
continued

10 Rules 11 and 12 of the Rules contain an express provision permitting the Court to dismiss an appeal. R.11 allows dismissal for non-appearance of the Appellant at the hearing. R.12 allows dismissal where on the day fixed for the hearing or on any hearing or on any day to which the hearing may be adjourned it is found that the memorandum of appeal and other documents required by rule 5 have not been served because the service fee has not been deposited by the appellant. No other express provision empowering the Court to dismiss an appeal is conferred by the Rules.

20 The Rules are silent on the question of striking out an appeal which does not comply with the requirements of Rule 3 or 5 and which has been wrongly entered under Rule 6. This is, of course, quite a different matter from dismissing a properly constituted appeal.

An extract from the Ruling of the learned judge is :

30 "By virtue of Rule 18(1) supra it is clear that everything may be done in Chambers which is within the jurisdiction of the Court conferred by the Rules. The only jurisdiction conferred by the Rules to dismiss an appeal by reason of the appellant's default is that conferred by Rule 11 and by Rule 12, which relate to dismissal for non-appearance and dismissal for failure to deposit certain sums in respect of costs. It seems to me quite clear, therefore, that the Rules do not confer jurisdiction to dismiss an appeal in Chambers on the grounds relied on in this application. In view of the decisions that the Court has power at the hearing to dismiss an appeal for non-compliance with the Rules relating to the filing of a statement of facts, it would not

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In the Court
of Appeal

No.13

Reasons for
Judgment
8th February
1961
continued

be proper for me, without the matter having been fully argued before me to express any view as to whether the Court has such jurisdiction as founded upon the inherent powers of the Court or upon some provisions in the Income Tax Management Act. For present purposes, therefore, I assume that there would have been jurisdiction to dismiss these appeals upon the grounds relied upon by Mr. le Champion in Court, although such jurisdiction would not have been derived from the Appeal Rules. It is, therefore, necessary to consider whether Rule 18(2) authorises the exercise of that jurisdiction in Chambers. On the face of it Rule 18(2) authorises ancillary applications to be made by Summons in Chambers. Ancillary is defined in the Oxford English Dictionary as meaning "subservient, subordinate, ministerial."

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It does not appear to me that an application having as its object the final determination so far as this Court is concerned of any legal proceeding can properly be regarded as being 'subservient, subordinate or ministerial'. Furthermore, it seems to me that Rule 18(2) must be read as subject to Rule 18(1) and therefore that the ancillary applications to which that sub-Rule applies are applications ancillary to the authority and jurisdiction of the Court conferred by the Rules. As I have already observed in my view the Rules confer no jurisdiction to dismiss an appeal by reason of the memorandum of appeal not being accompanied by the appropriate documents. For these reasons it appears to me that Mr. Kean's preliminary objection is valid and that all of these applications must be dismissed with costs."

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At the commencement of the appeal we called upon Mr. Kean, who appeared for the Respondent, to support this Ruling.

Mr. Kean put his argument on two grounds. He first submitted that the right conferred on the taxpayer by section 113(a) of the Act to appear before the judge on the day and at the time fixed for the hearing of the appeal was a fundamental right and that any rule which purported to interfere with that right (e.g. by permitting the appeal to be struck out on an interlocutory application made before the

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hearing because it did not comply with the procedural requirements of the Rules) would be ultra vires the Ordinance. We think that this argument gives insufficient weight to the power conferred by S.117(1) of the Act to make rules governing appeals. We think that "every person appealing" in Section 113(a) means every person appealing in an appeal constituted in accordance with rules made under Section 117. We think that it would have been well within the power conferred by S.117(1) for the rule-making authority to frame a rule expressly empowering the Court to strike out a purported appeal which was not constituted in accordance with the Rules and had been improperly entered either on an application made to it by summons in Chambers before the hearing or by application at the hearing. In our opinion, any such rule would not be ultra vires S.117 of the Act. There is no such express provision in the Rules; but, in our view, for the Court to enforce the provisions of rules properly made by the rule-making authority by striking out appeals which do not comply with the appeal rules would certainly not be ultra vires the Act.

Mr. Kean's next and more substantial argument may be summarised thus:-

- (1) The Supreme Court has no inherent jurisdiction to enforce compliance with the Rules, unless the failure to comply amounts to a contempt or abuse of the process of the Court.
- (2) Even if the court has an inherent jurisdiction to enforce any provision of the Rules, that jurisdiction is not "an authority or jurisdiction" of the Court under these Rules" within sub-rule (1) of Rule 18 and is not therefore, exercisable by the Court in Chambers under that sub-rule.
- (3) An application to strike out an appeal is not an ancillary application under sub-rule (2) of rule 18.

In our opinion, the Supreme Court has jurisdiction under the Rules to strike out a

In the Court
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No.13

Reasons for
Judgment
8th February
1961
continued

In the Court
of Appeal

No.13

Reasons for
Judgment
8th February
1961
continued

purported appeal which is not constituted in accordance with the statutory rules governing income tax appeals and which has been entered in breach of Rule 6. Appeal is a creature of statute. Section 111 of the Act confers a right of appeal to a judge which, by virtue of S.117, is to be governed by rules. The Court has no power to hear an appeal which is not properly before it under the Rules. The Court is bound by the Rules except where it has power to relax them and must exercise its appellate jurisdiction and authority in accordance with the Rules and must, therefore have implied authority under the Rules to decline to entertain an appeal not properly before it in accordance with the Rules. That, in our opinion, is an exercise of authority "under these Rules" within sub-rule (1) of Rule 18 and may be exercised by the Court in Chambers. The ordinary way of invoking the authority of the Court in Chambers is by summons in Chambers supported by affidavit and we see no reason why that procedure should not be followed in applications to strike out defective appeals. Mr.Kean argued, on the analogy of Rules 11 and 12 of the Rules and of Order 50 Rule 1 of the Kenya Civil Procedure (Revised) Rules, 1948, that an application to strike out must be made by motion at the hearing of the appeal. We think that Rules 11 and 12 deal with very different matters to that under consideration. Those rules (as already stated) deal with dismissals of properly constituted appeals for non-appearance of the appellant at the hearing and for failure to deposit the service fees, and do not deal with striking out incompetent appeals which have been improperly entered. As we have already pointed out, the application of Order 50 R.1 of the Kenya Civil Procedure Rules is expressly negatived by Rule 21 and no analogy can be drawn from it.

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It is obviously a saving of expense and convenient for the Court and for the parties that applications to enforce compliance with

10 the procedural requirements of the Rules or to strike out an appeal for non-compliance should be dealt with in Chambers and as early as possible. Otherwise, if an application cannot be made until the hearing, as Mr. Kean contended, the Court and the parties are put to the labour, and the parties to the expense, of getting up a case which may never be heard. It is not to be assumed without very clear words that the intention of the Legislature and of the Rule-making authority would be to produce so unusual, expensive and inconvenient a result.

In the Court
of Appeal

No.13

Reasons for
Judgment
8th February
1961
continued

20 In our view, the Supreme Court has authority to strike out an improperly constituted appeal under sub-rule (1) of Rule 18, and that authority may be exercised upon a summons in Chambers before the date, if any; fixed for the hearing. Whether, and how, the Court exercises that authority in the present case are matters for the Supreme Court and not for us.

On the view which we take of sub-rule (1), it is unnecessary to consider sub-rule (2) of rule 18.

Dated at Nairobi this 8th day of February, 1961.

K.K.O'CONNOR
PRESIDENT

A.G.FORBES
VICE-PRESIDENT

E.D.W.CRAWSHAW
JUSTICE OF APPEAL.

30 DELIVERED by O'Connor P.

In the Court
of Appeal

No.14

O R D E R

No.14

Order
27th January
1961 (Issued
22nd February
1961)

In Court this 27th day of January, 1961.

Before the Honourable the President (Sir Kenneth
O'Connor)
the Honourable the Vice-President (Sir
Alastair Forbes)
and the Honourable Mr. Justice Crawshaw, a
Justice of Appeal.

O R D E R

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THIS APPEAL coming on for hearing this day AND
UPON HEARING M.Kean Esquire of Counsel for the
Respondent, B.A.K.le Champion Esquire of Counsel
for the Appellant not being called upon IT IS
ORDERED :

- (a) THAT this appeal be and is hereby allowed.
- (b) THAT the Respondent do pay to the Appell-
ant the costs of this appeal
- (c) THAT the Ruling and Order of the Supreme
Court dated the 17th December, 1959, be
and are hereby set aside and the appli-
cation of the Appellant be remitted to
the Supreme Court for consideration.
- (d) THAT the Respondent do pay to the Appell-
ant the costs incurred in the Supreme
Court of an incidental to the preliminary
objections taken by the Respondent

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GIVEN under my hand and the Seal of the Court at
Nairobi, the 27th day of January, 1961.

F. HARLAND
REGISTRAR.

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ISSUED this 22nd day of February, 1961.

No.15

ORDER GRANTING FINAL LEAVE TO
APPEAL TO PRIVY COUNCIL

In the Court
of Appeal

No.15

Order granting
Final Leave to
Appeal to
Privy Council
14th June 1961.

In Chambers

On the 14th June, 1961

Before the Honourable the Ag. Vice President
(Mr. Justice Gould)

O R D E R

10 UPON READING the application presented to
this Court on the 26th day of May, 1961, by
Counsel for the above-named Appellant for Final
Leave to appeal to Her Majesty in Council AND
UPON READING the Affidavit of MICHAEL KEAN in
support thereof sworn on the 25th day of May,
1961 AND UPON HEARING Counsel for the Appell-
ant and Counsel for the Respondent THIS COURT
DOTH ORDER that the Application for Final Leave
to appeal to Her Majesty in Council be and is
hereby granted AND DOTH DIRECT that the Record
20 including this Order, be dispatched to England
within Fourteen days from the date of issue of
this Order AND DOTH FURTHER ORDER that the Costs
of this Application do abide the result of the
Appeal.

GIVEN under my hand and the Seal of the
Court at Nairobi this 14th day of June, 1961.

ISSUED on this 21st day of June, 1961.

F. HARLAND
REGISTRAR.

H.M. COURT OF APPEAL FOR
EASTERN AGRICA.

IN THE PRIVY COUNCIL

NO.23 of 1961

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

DORIO LUCIO VINCENZINI

Appellant

- and -

THE REGIONAL COMMISSIONER
OF INCOME TAX

Respondent

RECORD OF PROCEEDINGS

T.L.WILSON & CO.
6, Westminster Palace Gardens,
London S.W.1.
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Respondent.