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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
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25 RUSSELL SQUARE  
LONDON, W.C.1.

78608

Judgment  
27/1964

IN THE PRIVY COUNCIL

No. 11 of 1963

O N A P P E A L

FROM THE COURT OF APPEAL FOR EASTERN AFRICA AT  
NAIROBI

B E T W E E N:

SARDAH MOHAMED MAHERALLY SHROFF

Appellant

- and -

THE COMMISSIONER OF INCOME TAX

Respondent

C A S E F O R T H E A P P E L L A N T

Record

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1. This is an appeal from an Order of the Court of Appeal for Eastern Africa (Forbes V-P., and Crawshaw and Newbold, JJ.A.) dated the 18th October, 1962, dismissing an Order of the Supreme Court of Kenya (Madan J.) dated the 6th December, 1961, dismissing consolidated applications by the Appellant for an extension of time to present Memoranda of Appeal against estimated Assessments (Nos. 52/39386 and 52/39387) made upon the Appellant for the years of income 1960 and 1961 respectively.

p.41

p. 30

pp.1 & 7  
pp. 45 and  
46

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2. The issues, very briefly, are, first, whether on a true construction of the relevant provisions and in the circumstances of the case the learned judge was entitled to dismiss the said applications (thereby in effect determining the Appellant's right of appeal) and, second, if he had a discretion in the matter whether he had the appropriate considerations in mind when he failed to exercise it in favour of the Appellant.

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3. The matter arose in the following way.

(a) The assessments in question are dated the 28th January, 1961, and notices of objection were duly given on the 30th January, 1961.

pp.45 & 46

Record

- pp.45 & 46  
No.10 of 1958  
pp. 3 & 9
- (b) On the 5th April, 1961, the Respondent gave notices confirming the assessments and the Appellant duly appealed against the assessments to the Local Committee in accordance with Section 111 (1) (a) of the East African Income Tax (Management) Act, 1958, (hereinafter called "the Act"). These appeals were heard on the 25th July, 1961, and, by letters dated 28th July, 1961, the Clerk to the Local Committee informed the Appellant of the Committee's decision that the appeals had not been upheld. 10
- pp. 4 & 10
- (c) On the 8th September, 1961, the Appellant duly appealed against the assessments to the Supreme Court of Kenya by giving written notices of appeal to the Respondent as provided by Section 111 (2) of the Act.
- Legal Notice  
No.83,1959
- (d) Rule 3 of the Income Tax (Appeal to Kenya Supreme Court) Rules, 1959, (hereinafter called "the Rules") provides (so far as relevant) that, subject to the Court's power to extend the period in certain circumstances, such an appeal is to be presented to the Registrar within 75 days after the date of service upon the Appellant of the Local Committee's decision. Section 145(3)(a) of the Act provides that, in the absence of proof to the contrary, a notice is deemed to be served 14 days after the date of posting. No evidence was given as to the actual dates when the letters notifying the Local Committee's decision were posted. On the assumption that they coincided with the date at the top of the respective letters, the Memoranda of Appeal should have been presented on the 25th October, 1961. 30
- pp. 3 & 9
- pp. 3 & 9  
pp. 1 & 7
- pp. 1 & 7
- (e) The actual Memoranda of Appeal in this case were dated the 26th October, 1961, and on the same day the Appellant made Affidavits in support of applications to the Court to extend the period for presenting the Memoranda, the main ground being that he had suffered from high blood pressure for some years and that on or about the 12th September, 1961, he had had a severe attack of hypertension 40
- pp. 16 & 19

as a result of which he was unable to instruct his Advocate to proceed with the appeal, and finally, that he was only fit to resume work again on the 12th October, 1961.

(f) The said Memoranda of Appeal were in fact presented and filed on the 27th October, 1961, duly accompanied by Statement of Facts and the other documents required by Rule 5 of the Rules. On the same day Notices of Motion were taken out stating that on 21st November, 1961, application would be made to the Court on the grounds set out in the said Affidavits (inter alia) that the time for filing the said Memoranda of Appeal should be enlarged.

pp. 5 & 11

pp. 13 & 14

pp. 16 & 19

4. The Statements of Facts and the Affidavits disclose, inter alia, the following matters :-

pp. 5 & 11  
pp. 16 & 19

(a) The Appellant who normally lives in Karachi entered East Africa on or about the 1st June, 1960, on a Visitor's Permit for 14 days (subsequently extended twice by periods of three months) and, on the 4th February, 1961, was issued with a Prohibited Immigrant's Pass to enable him to finalise the issue of his liability to tax in Kenya.

(b) The Appellant, who had been represented by accountants before the Local Committee, was advised by them to instruct a firm of advocates to appeal to the Supreme Court, and gave the necessary instructions on or shortly before the 8th September, 1961.

(c) The Appellant contends that on the basis of accounts duly submitted to the Respondent his true liability to tax was nil in each year.

(d) The Appellant proposed at the appeal hearing to support his contentions with documentary evidence consisting of correspondence with the East African Tax Department and various banks and money exchangers,

Record

statements of account, and vouchers and other supporting documents, and by means of oral testimony from himself and other witnesses.

5. The provisions of the Act which are relevant to the matters in dispute are as follows:-

Interpre-  
tation

2.(1) In this Act, unless the context otherwise requires -

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"year of income" means the period of 12 months commencing on 1st January in any calendar year and ending on 31st December in such calendar year.

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Income in  
respect of  
which tax  
charged

3.(1) Tax shall, subject to this Act, be charged for each year of income upon the income of any person which -

(A) accrued in, was derived from or was received in East Africa, in the case of a resident person; or,

(B) accrued in or was derived from the territories, in the case of a non-resident person,

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in respect of -

.....

Returns of  
income and  
notice of  
chargeability

81. (1) The Commissioner may, by notice in writing require any person to furnish him within a reasonable time, not being less than 30 days from the date of service of such notice, with a return of income for any year of income prior to that in which the notice is served containing a full and true statement of the income of such person, including income deemed to be his under this Act, liable to tax under this Act and of such particulars as may be required for the purposes of this Act; and such return shall include a declaration signed by such person, or by the person in whose name he is assessable and chargeable, that such return is such a full and true statement.

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Commissioner  
to make  
assessment.

102.(1) Subject to sub-section (3) and to Section 103, the Commissioner shall proceed to assess every person chargeable with tax as expeditiously as possible after the expiry of the time allowed to such person under Sections 81 and 99 for the delivery of a return of income.

.....

10 (3) Where a person has not delivered a return of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers that such person is liable to tax, he may, according to the best of his judgment, determine the amount of the income of such person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person under this Act.

20 (4) The Commissioner shall cause a notice of assessment to be served, either personally or by registered post, on each person assessed; and such notice shall state the amount of income assessed and the amount of tax payable and shall inform the person assessed of his rights under Section 109.

103.(1) Where -

Assessment  
of person  
about to  
leave the  
Territories.

30 (a) the Commissioner has reasonable cause to believe that any person may leave the Territories within a short time; and

(b) such person has not been assessed to tax on income chargeable to tax for a year of income,

40 then the Commissioner may, according to the best of his judgment, determine the amount of the income of such person for such year of income and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person under this Act.

(2) The Commissioner shall cause the notice of assessment made under this Section to be served personally on the person assessed; and such notice shall state the

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amount of income assessed and the amount of tax payable and shall inform the person assessed of his rights under Section 109.

Notice of objection to assessment.

109. (1) Any person who disputes an assessment made upon him under this Act may, by notice in writing to the Commissioner, object to the assessment; and no such notice shall be valid unless it states precisely the grounds of objection to the assessment and is received by the Commissioner within 30 days after the date of service of the notice of assessment:

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.....

Powers of Commissioner on receipt of objection.

110. (1) Where a valid notice of objection has been received, the Commissioner may-

(a) amend the assessment in accordance with the objection; or

(b) amend the assessment in the light of the objection according to the best of his judgment; or

(c) refuse to amend the assessment.

(2) Where the Commissioner either -

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(a) agrees to amend the assessment in accordance with the objection; or

(b) proposes to amend the assessment in the light of the objection and the person objecting agrees with the Commissioner as to such proposed amendment,

the assessment shall be amended accordingly and the Commissioner shall cause a notice setting out such amendment and the amount of the tax payable to be served, either personally or by registered post, on such person.

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(3) Where the Commissioner -

(a) proposes to amend the assessment in the light of the objection and the person objecting does not agree with the Commissioner as to such proposed amendment, the assessment shall be amended as proposed by the Commissioner and he shall cause a notice setting out such amendment and the

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amount of the tax payable to be served, either personally or by registered post, on such person;

(b) refuses to amend the assessment, he shall cause a notice confirming the assessment to be served, either personally or by registered post, on such person.

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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 -

Right of appeal from Commissioner's determination of objection.

(a) to the local committee appointed for the area in which he resides or, if he is a non-resident person, for the area which includes the capital of the Territory from which any income included in the assessment accrued or was derived; or

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(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 such sub-section (3).

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(2) Any person who, having appealed to a local committee, is dissatisfied with the decision of such committee may, notwithstanding such decision, again appeal against the assessment to a judge upon giving notice of appeal in writing to the Commissioner within 45 days after the date on which a notice of such decision has been served upon him under paragraph (f) of Section 112.

(3) .....

(4) .....

112. In every appeal to a local committee under paragraph (a) of sub-section (1) of Section 111 the following provisions shall apply -

Appeal to local committee

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(f) the local committee shall, within seven days of its decision, cause a notice of such decision and of the date

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thereof to be issued; and such notice shall be served on the Commissioner and on the person appealing;

.....

Appeal to  
Judge

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;

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.....

(c) the onus of proving that the assessment objected to is excessive shall be on the person assessed;

(d) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as he may think fit;

.....

(f) where the decision of the judge results in any amendment to the assessment, the assessment shall be amended accordingly and the Commissioner shall cause a notice setting out such amendment and the amount of tax payable to be served either personally or by registered post on the person assessed;

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(g) the decree following the decision of the judge who heard the appeal shall have effect, in relation to the amount of tax payable under the assessment as determined by the judge, as a decree for the payment of such an amount, whether or not the amount of such tax is specified in the decree;

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Finality of  
assessment

114.(1) Subject to Section 116, where -

(a) no valid notice of objection to an assessment has been given under this Part; or

(b) a valid notice of objection has been given and -

(i) the assessment has been amended under sub-section (2) of Section 110; or

(ii) a notice has been served under sub-section (3) of Section 110 but no valid appeal has been brought under Section 111; or

(iii) the assessment has been determined on appeal,

10 the assessment as made, or so amended, or determined on appeal, as the case may be, shall be final and conclusive for the purposes of this Act.

.....

116. (1) Where for any year of income a person has made a return of income under Section 81 and has been assessed to tax under paragraph (a) of sub-section (2) of Section 102 and he alleges that the assessment was excessive by reason of some error or mistake of fact in such return, then he may, not later than seven years after the expiry of such year of income, make an application to the Commissioner for relief.

(2) On receiving any such application the Commissioner shall enquire into the matter and, after taking into account all relevant circumstances, shall give such relief by way of repayment as is reasonable and just:

30 Provided that no relief shall be given in respect of an error or mistake as to the basis on which the liability of the applicant should have been computed where the return of income was in fact made on the basis or in accordance with the practice generally prevailing at the time such return of income was made.

40 117. (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.

Power to make rules for appeals to the Court.

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118. (1) Subject to this section, to section 119, to section 123, and to any rules made under paragraph (a) of sub-section (1) of section 148, the tax charged in an assessment made on any individual shall be payable in two equal instalments, the first instalment on or before 31st October in the year following the year of income in respect of which the tax is charged, and the second instalment on or before the following 31st March:

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.....

(4) Where a valid notice of objection has been given under section 109, then the first instalment of the tax charged in the assessment or, where the tax charged is not payable in instalments, one-half of the tax so charged shall, notwithstanding anything contained in any law and notwithstanding that the assessment has not been finally determined, be payable in accordance with this Section with the second instalment or the remaining one-half, as the case may be, shall be payable in accordance with Section 119; and if the amount of tax payable under the assessment as finally determined is less than the amount paid in accordance with this sub-section then the amount overpaid shall be refunded under Section 127:

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Provided that the Commissioner, in his discretion, may permit any lesser amount or nothing to be paid in accordance with this sub-section, in which case the balance of the amount or the whole amount, as the case may be, otherwise so payable shall be payable at the same time as the amount payable under Section 119.

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119. (1) Subject to sub-section (2), where a valid notice of objection has been given under Section 109, then the second instalment of the tax charged in the assessment or, where the tax charged is not payable in instalments, the remaining one-half of the tax so charged shall be payable -

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(a) in any case to which sub-section

(2) of Section 110 applies, on or before a date 45 days after the date of service of the notice under that sub-section;

(b) in any case to which sub-section (3) of Section 110 applies but no valid appeal has been brought under Section 111, on or before a date 45 days after the date of service of the notice under that sub-section;

10 (c) in any case where the assessment has been finally determined on appeal by the local committee and the decision of the local committee -

(i) has not resulted in any amendment to the assessment, on or before a date 45 days after the date of service of the notice under paragraph (f) of Section 112; or

20 (ii) has resulted in an amendment to the assessment, on or before a date 45 days after the date of service of the notice under paragraph (g) of Section 112;

(d) in any case where the assessment has been finally determined on appeal by a judge and the decision of the judge -

(i) has not resulted in any amendment to the assessment, on or before a date 45 days after the date of such decision;

30 (ii) has resulted in an amendment to the assessment, on or before a date 45 days after the date of service of the notice under paragraph (f) of Section 113.

(2) Where the due date under sub-section (1) for the payment of the second instalment or the remaining one-half, as the case may be, of the tax charged in the assessment is earlier than the relevant due date for the payment thereof under Section 118, then the due date for the payment thereof shall be that set out in such Section.

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40 120. (1) Subject to sub-section (3), if any tax is not paid on the due date - Penalty for non-payment of tax.

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(a) a sum equal to 20 per cent of the amount of the tax payable shall be added thereto as a penalty; and

(b) the Commissioner shall cause a demand note to be served, either personally or by registered post, on the person assessed;

and if payment of the tax penalty is not made within 30 days from the date of service of such demand note, then such tax and penalty may be recovered in accordance with this Act.

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Collection of tax from persons shortly leaving Territories.

123. (1) Where the Commissioner has assessed any person under Section 103, then, notwithstanding anything in Sections 118 and 119, he may, by notice in writing served personally on the person assessed, require -

(a) that payment of the whole of the tax assessed be made within such time as may be specified in the notice; or

(b) that security to his satisfaction be given for such payment.

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.....

(3) Where any notice has been served on any person under sub-section (1) or (2), then the amount of the tax assessed and required to be paid, shall, notwithstanding that a valid notice of objection to or appeal against the assessment has been given or is pending, be deemed to be due on the date specified in such notice, and in default of compliance with such notice the Commissioner shall, in addition to any action taken under sub-section (4), be entitled to sue forthwith for the recovery of the tax under Section 124, or to distrain forthwith under Section 125:

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Provided that, if subsequent to the commencement of any suit under this section compliance is made with such notice, then such suit shall be discontinued and no order for costs thereon shall be made.

(4) Where any person has failed to comply with the notice served on him under sub-section (1) or (2), the Commissioner may apply to a judge

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for the arrest of such person; and if the judge is satisfied by affidavit or otherwise -

- (a) that an amount of tax is due by such person; and
- (b) that such person has failed to comply with such notice; and
- (c) that there is reason to believe that such person may leave the Territories within a short time;

10 the judge may issue a warrant to arrest such person and bring him before the court to show cause why he should not pay such tax or give security therefor to the satisfaction of the Commissioner:

Provided that such person shall not be arrested if he pays to the officer entrusted with the warrant the amount of the tax due.

20 (5) Where any person brought before the Court under sub-section (4) fails to show cause as required by that sub-section, the judge may order him either forthwith to pay the amount of tax due or forthwith to give security therefor to the satisfaction of the Commissioner, and, in default of compliance, to be committed to prison until either such tax due is paid or such security given:

Provided that -

- (a) no such person shall be detained in prison for a longer period than six months;
- 30 (b) the detention in prison of any such person shall not release such person from the liability to pay such tax.

(6) In any proceedings under sub-sections (4) and (5) the production of a certificate signed by the Commissioner giving the name and address of the person and the amount of tax due by him shall be sufficient evidence that such amount of tax is due by such person.

40 (7) The compliance by any person with the notice served on him under sub-section (1) or (2) shall not prejudice his right to object to the assessment under Section 109

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or his right to appeal under Section 111; and if, after the assessment has been finally determined, the amount of tax due by such person is -

(a) less than the amount paid, then the amount overpaid shall be refunded under Section 127 together with interest thereon at such rate as the court may order;

(b) more than the amount paid, then the amount underpaid shall be payable under Section 119 as if it were the second instalment of the tax charged in the assessment. 10

Services of notices, etc.

145. ....

(3) Where a notice or other document is served or given by ordinary or by registered post, then service shall, in the absence of proof to the contrary, be deemed to have been effected - 20

(a) where it is sent to any address in East Africa, 14 days after the date of posting;

(b) where it is sent to any address outside East Africa, at the time at which the notice would be delivered in the ordinary course of post;

and in proving such service it shall be sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted: 30

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6. The provisions of the Rules relevant to the present appeal are as follows:-

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 40

- (b) the amending notice; or
- (c) the notice of the decision of the Commissioner; or
- (d) the notice under paragraph (f) of Section 112 of the Act of the decision of the local committee,

as the case may be:

10        Provided that, where a Judge is satisfied that, owing to absence from the Colony, sickness, or other reasonable cause, the appellant was prevented from presenting such memorandum of appeal within such period and that there has been no unreasonable delay on his part, the Judge may extend the period within which such memorandum of appeal shall be presented.

20        4. The memorandum of appeal shall contain an address for service, shall be signed by the appellant or his advocate and shall set forth concisely under distinct heads the grounds of appeal without any argument or narrative; and such grounds shall be numbered consecutively.        Memorandum of appeal

5. The memorandum of appeal shall be accompanied by -        Statement of facts of appellant

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

40        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        Registration of memorandums of appeal.

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date of presentation, and the appeal shall be entered in the Register of Appeals in accordance with Rule 8 of Order XII of the Civil Procedure (Revised) Rules, 1948.

Dismissal of appeal for appellant's default.

11. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may, subject to paragraph (a) of Section 113 of the Act, make an order that the appeal be dismissed.

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.....

13. Where an appeal is dismissed under rule 11 or rule 12 of these Rules the appellant may apply to the Court to which such appeal is preferred for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

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Grounds of appeal.

15. The appellant shall not, except by leave of the Court and upon such terms as the Court may determine, rely on any ground other than a ground stated in the memorandum of appeal.

16. Should it appear to the Court at the hearing of the appeal that evidence other than that referred to in the statement of facts of the appellant or respondent should be admitted, the Court may admit such evidence, whether documentary or oral.

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21. The rules determining procedure in civil suits before the Court in so far as such rules relate to .....the enlargement of time 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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7. The relevant provisions of the Civil Procedure (Revised) Rules 1948 are as follows:

ORDER XLIX Rule 5: "Where a limited time has been fixed for doing an act or taking any proceedings under these Rules, or by summary notice or by order of the Court, the Court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require ....."

10 8. The Appellant's consolidated applications to enlarge the time for serving the Memoranda of Appeal were heard by Mr. Justice Madan on the 21st November, 1961. A reserved ruling was given on the 27th November, 1961.

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20 9. The learned judge found it unnecessary to express a final opinion on the Respondent's submission that there was no jurisdiction to extend the time unless an application to do so were made within the 75 day period. He expressed the view that the Appellant was in a position from the 12th until the 25th October, 1961, to instruct his advocate to file the appeal and also that he could have done so before he was ill, namely, between the 11th August and the 12th September. In his opinion, the Appellant had to satisfy the Court on three matters and failed on all of them: first he had recovered from his illness by the 12th October; second, he did not allege he was "prevented" from presenting the memorandum of appeal nor was there anything in his Affidavit to justify a finding that he was hindered or stopped while fit; and, third, there has been unreasonable delay on his part.

p.27, 1.14

p.27, 1.28

p.28, 1.1

30 The learned Judge did not consider the expressed grounds of appeal as so complex that the memorandum of appeal could not have been finalised within the statutory time.

p.28, 1.38

40 He further considered that, as the period was prescribed by statute, the fact that the memorandum was filed only two days after the expiry of the 75 - day period was irrelevant.

p.29, 1.2

10. On the 6th December, 1961, the Appellant asked for leave to appeal against the Ruling; this was opposed by the Respondent. The learned Judge gave the Appellant leave to appeal.

p.29, 1.33

11. The appeal came on for hearing before the

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p.42 Court of Appeal for Eastern Africa (Forbes, V-P., Crawshaw, J.A. and Newbold, J.A.) on the 18th October, 1963, on which day the Court unanimously dismissed the appeal with costs.

p.47 12. The Court of Appeal gave no reasons for their decision but in so far as it is ascertainable from the Judges' notes of argument it would seem that the main ground was that the medical certificate produced at the hearing before the learned Judge did not state that the Appellant was so unwell that he could not give instructions to his lawyers. 10

p.37, 1.22  
p.39, 11.1 & 9

p.40 11.21-13. On 26th April, 1963, leave to Appeal to Her Majesty in Council was granted. 30  
p.43

14. It is respectfully submitted that the Appellant should not be shut out from his right of appeal by reason of a comparatively minor procedural defect which can scarcely have prejudiced the Respondent; that the case should be heard on its merits, and that the Appellant should accordingly be given the opportunity to have his liability to tax determined in accordance with the normal rules of computation rather than by reference to an unadjusted "estimate". 20

15. The Appellant humbly submits that this appeal should be allowed, that the judgment and order of the Court of Appeal for Eastern Africa should be set aside, and that he should be awarded costs throughout for the following among other 30

R E A S O N S

(1) BECAUSE the Appellant, having given valid notices of appeal to the Supreme Court of Kenya pursuant to Section 111(2) of the Act, had a statutory right to pursue such appeals.

(2) BECAUSE valid appeals under Section 111 of the Act being in existence, the provisions of Section 113 regarding the hearing of the appeals apply and must be duly carried out in the absence of a specific statutory authority to the contrary. 40

- (3) BECAUSE there was no such conduct by the Appellant (nor was any alleged) as would justify the Court in shutting him out from his right to appeal.
- 10 (4) BECAUSE Rule 3 of the Income Tax (Appeal to the Kenya Supreme Court) Rules, 1959, was intended for the general guidance of appellants and respondents and was not intended to form an inflexible code any breach of which would result in the appellant being debarred from pursuing his appeal.
- (5) BECAUSE in so far as Rule 3 of the said Rules would have the effect on a true construction of barring an appellant from his right to appeal in the event of failure to observe the time limit precisely, it is ultra vires.
- 20 (6) BECAUSE valid appeals having been made pursuant to Section 111(2) of the Act, the Court must hear the same in order that the assessment may be duly determined.
- (7) BECAUSE the learned Judge held the erroneous view that time began to run from the date of the letters notifying the Local Committee's decision and not from the time when the letters were actually posted.
- 30 (8) BECAUSE in the absence of proof by the Respondent or admission by the Appellant that the letters notifying the Local Committee's decision were posted on the day on which they purported to have been written, the learned Judge should not have concluded that the appeals were out of time.
- (9) BECAUSE having regard to the uncertainty whether the appeals were in fact out of time, the learned Judge should have exercised his discretion (if any) in favour of the Appellant.
- 40 (10) BECAUSE when exercising his discretion (if any) the learned Judge should have taken into account as a relevant consideration the possibility that the appeals were not out of time.
- (11) BECAUSE the learned Judge was wrong in holding that for the Appellant to obtain an extension

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of time it was necessary for him to satisfy the provisions contained in the proviso to Rule 3 (1) of the Rules.

- (12) BECAUSE the learned Judge was wrong in failing to appreciate that a general power to enlarge time was conferred on the Court by Rule 21 of the Rules and Order XLIX Rule 5 of the Civil Procedure (Revised) Rules 1948.
- (13) BECAUSE the learned Judge gave too narrow an interpretation to the word "prevented" in Rule 3 (1) of the Rules. 10
- (14) BECAUSE there was no basis in law or in fact for the learned Judge's view that there had been unreasonable delay on the part of the Appellant.
- (15) BECAUSE no question of delay could arise until expiry of the 75 days and the learned Judge accordingly must have misdirected himself in law when he found that presentation of the Memorandum of Appeal two days late involved "unreasonable delay". 20
- (16) BECAUSE the learned Judge erred in considering the length of the delay was an irrelevant consideration.
- (17) BECAUSE the learned Judge erred in not taking into account, or in not taking sufficiently into account, the serious hardship which the Appellant might suffer if deprived of his right to appeal against the estimated assessments. 30
- (18) BECAUSE the learned Judge erred in not taking into account, or in not taking sufficiently into account, the fact that the delay had not prejudiced the Respondent.
- (19) BECAUSE on the assumption that the learned Judge had a discretion to dismiss the Appellant's application for an extension of time, he wrongly exercised such discretion without adequate regard to what the justice of the case required. 40
- (20) BECAUSE the learned Judge erroneously permitted himself to be influenced by the brevity and apparent simplicity of the

Record

Memorandum of Appeal and failed to appreciate that the said document did not necessarily reflect the time and labour involved in taking instructions for preparing the appeal and the statutory annexures thereto.

(21) BECAUSE the Court of Appeal for Eastern Africa was wrong in not reversing the Ruling of the learned Judge for the foregoing reasons or one or more of them.

(22) BECAUSE the Court of Appeal for Eastern Africa was wrong in dismissing the Appellant's appeal against the Ruling of the learned Judge.

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PETER ROWLAND

No. 11 of 1963

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL FOR EASTERN  
AFRICA AT NAIROBI

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B E T W E E N :-

SARDAH MOHAMED MAHERALLY SHROFF  
Appellant

- and -

THE COMMISSIONER OF INCOME TAX  
Respondent

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C A S E FOR THE APPELLANT

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Temple, London,  
E.C.4.