

~~67-264~~

Judgment
27, 1964

IN THE PRIVY COUNCIL

No.11 of 1963

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA AT NAIROBI

B E T W E E N

SARDAR MOHAMED MAHERALLY SHROFF

Appellant

- and -

THE COMMISSIONER OF INCOME TAX

Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

RECORD OF PROCEEDINGS

78607

MERRIMAN, WHITE & CO.,
3, King's Bench Walk,
Inner Temple,
London, E.C.4.
Solicitors for the Appellant.

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

IN THE PRIVY COUNCILNo.11 of 1963

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA AT NAIROBI

B E T W E E N

SARDAR MOHAMED MAHERALLY SHROFF Appellant

and

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF KENYA</u> <u>AT NAIROBI</u>		
1	Memorandum of Appeal. Civil Appeal No.44 of 1961	26th October 1961	1
2	Appendix A annexed to Memorandum of Appeal		3
3	Appendix B annexed to Memorandum of Appeal		4
4	Appendix C annexed to Memorandum of Appeal		5
5	Memorandum of Appeal Civil Appeal No.45 of 1961	26th October 1961	7
6	Appendix A annexed to Memorandum of Appeal		9
7	Appendix B annexed to Memorandum of Appeal		10
8	Appendix C annexed to Memorandum of Appeal		11

No.	Description of Document	Date	Page
9	Notice of Motion Civil Appeal No.44 of 1961	27th October 1961	13
10	Notice of Motion Civil Appeal No.45 of 1961	27th October 1961	14
11	Affidavit of S.M.M.Shroff in support of Motion Civil Appeal No.44 of 1961	26th October 1961	16
12	Affidavit of S.M.M.Shroff in support of Motion Civil Appeal No.45 of 1961	26th October 1961	19
13	Court Notes	21st November 1961 and 27th November 1961	22 24
14	Ruling	27th November 1961	25
15	Court Notes (continued)	28th November 1961 and 6th December 1961	29 29
16	Order	6th December 1961	30
17	Notice of Appeal	7th December 1961	31
18	Notice of address for service	15th December 1961	33
<u>IN THE COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI</u>			
19	Memorandum of Appeal	15th February 1962	34
20	Notes of Argument of Forbes V-P.	18th October 1962	36
21	Notes of Argument of Crawshaw J.A.	18th October 1962	38
22	Notes of Argument of Newbold J.A.	18th October 1962	39

iii.

No.	Description of Document	Date	Page
23	Order	18th October 1962	41
24	Order granting Final Leave to Appeal to Her Majesty in Council.	26th April 1963	43

EXHIBITS

Exhibit Mark	Description of Document	Date	Page
S.1.A.	Income Tax Assessment No:52/39386	28th January 1961	45
S.2 A	Income Tax Assessment No:52/39387	28th January 1961	46
S.1	Medical Certificate exhibited to Affidavit of S.M.M.Shroff in Civil Appeal No.44 of 1961.	12th October 1961	47
S.1	Medical Certificate exhibited to Affidavit of S.M.M.Shroff in Civil Appeal No.45 of 1961.	12th October 1961	47

IN THE PRIVY COUNCIL

No.11 of 1963

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA AT NAIROBI

B E T W E E N:

SARDAR MOHAMED MAHERALLY SHROFF Appellant

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

No.1

10

MEMORANDUM OF APPEAL

CIVIL APPEAL NO.44 OF 1961

IN HER MAJESTY'S SUPREME COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO.44 OF 1961

SARDAR MOHAMED MAHERALLY SHROFF Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

In the Supreme
Court of Kenya

No.1

Memorandum
of Appeal
Civil Appeal
No.44 of 1961
26th October
1961

MEMORANDUM OF APPEAL

20

The Appellant above-named, being aggrieved by Notice Reference File No. 28673 of 6th April, 1961 served upon him by the Respondent, pursuant to s.110(3) of the East African Income Tax (Management) Act, 1958, confirming Assessment No. 52/39386 for the Year of Income 1960, appeals to This Honourable Court, pursuant to s.111(2) of the said Act, against the said Assessment upon the following grounds:-

1. The said estimated Assessment has no basis or justification in fact or in law.
2. The Appellant is not chargeable with any tax in respect of the period referred to in the

30

In the Supreme
Court of Kenya

No.1

Memorandum
of Appeal
Civil Appeal
No.44 of 1961
26th October
1961
continued

Assessment in view of the fact that his income during the said period did not exceed the personal allowances granted in the said Assessment.

3. The Respondent erred in law in purporting to act under the provision of ss. 103 and 123 of the East African Income Tax (Management) Act and in disregarding the provisions of ss.81(1) and 81(3) of the said Act.
4. Pursuant to rule 5 of the Income Tax (Appeal to the Kenya Supreme Court) Rules, 1959, the Appellant attaches. 10
5. (a) A copy of the decision of the Local Committee made on the 25th day of July 1961 (marked Appendix "A").
- (b) A copy of the Notice of Appeal (marked Appendix "B").
- (c) A Statement of Facts (marked Appendix "C").

The Appellant therefore prays:- 20

- (a) That the Assessment may be annulled or varied;
- (b) For such further or other relief as this Honourable Court may see fit to grant, together with the costs of the Appeal.

DATED at NAIROBI this 26th day of October, 1961.

A.S.G.KASSAM

Advocate for the Appellant.

Drawn by:
Messrs.S.R.Kapila & Kapila,
Advocates,
NAIROBI.

Filed by:
A.S.G.KASSAM,
Advocate,
NAIROBI

To be served upon:
The Legal Secretary,
E.A.High Commission,
Advocate for the Respondent,
High Commission Building,
NAIROBI.

30

40

3.

NO.2

APPENDIX A. CIVIL APPEAL NO.44 OF 1961.

In the Supreme
Court of Kenya

No.2

APPENDIX A.

File No. 90271 (L.C.)/4.

Appendix A.
Civil Appeal
No.44 of 1961

The Local Committee,
Nairobi Area,
P.O. Box 30165,
NAIROBI.

Date 28th July 1961.

10 TO: Sardar Mohamed Maherally Shroff,
Box 552,
NAIROBI.

Dear Sir,

At a meeting held on 25th July 1961
The Local Committee made the following decision
in your case:-

APPEAL NOT UPHELD.

Yours faithfully,

SGD. ?

20 CLERK TO THE LOCAL COMMITTEE.

Copy to:

- (1) Assessor of File No.2/28673 for informa-
tion and necessary action.
 - (2) Harrisson Storm and Partners, Box 2064,
NAIROBI.
-

4.

In the Supreme
Court of Kenya

NO.3

No.3

APPENDIX B. CIVIL APPEAL NO.44 OF 1961.

APPENDIX B.

Appendix B.
Civil Appeal
No.44 of 1961

RE: SARDAR MOHAMED MAHERALLY SHROFF.

Notice of intended Appeal to Her Majesty's
Supreme Court of Kenya at Nairobi in respect
of:

Assessment No: 52/39386 - year of Income 1960.

Assessment No. 52/39387 - year of Income 1961.

NOTICE OF APPEAL

10

TAKE NOTICE that the above-mentioned Appellant,
SARDAR MOHAMED MAHERALLY SHROFF, being dis-
satisfied with the decision of the Local Com-
mittee made at its meeting held on the 25th day
of July 1961, in the above matter, intends to
appeal to Her Majesty's Supreme Court of Kenya
at Nairobi against the above assessments, under
Section 111(2) of the East African Income Tax
(Management) Act, 1958 and pursuant to the
Provisions of the Income Tax (Appeal to the
Kenya Supreme Court) Rules, 1959.

20

DATED at Nairobi this 8th day of September,
1961.

(Sgd) A.S.G.KASSAM.

Advocate for the Appellant.

The address for service for the purposes of the
intended appeal of the Appellant is care of
A.S.G.Kassam, Advocate, Sheikh Building, Vic-
toria Street, P.O. Box 9040, NAIROBI.

TO:

30

The Commissioner of Income Tax,
P.O. Box 30165,
NAIROBI.

(posted by Registered Post).

In the Supreme
Court of Kenya

No.4

Appendix C.
Civil Appeal
No.44 of 1961
continued

5. On the 30th day of January, 1961, the Appellant duly objected to the said Assessment in accordance with the requirements therein set out, and on the 6th day of April, 1961, the Respondent served upon the Appellant a Notice under Section 110(3) of the East African Income Tax (Management) Act, 1958, (hereinafter called "the said Act") confirming the said Assessment.

6. On the 12th day of July, 1961, the Appellant lodged an appeal against the said Assessment to the Local Committee at Nairobi through his accountants, Harrison, Storm and Partners of Nairobi. The said Appeal was heard by the Local Committee on the 25th July, 1961, and by their letter dated 28th July, 1961, the Local Committee notified the Appellant that the said appeal was not upheld. 10

7. The Appellant will testify to the effect that during the period for which he has been assessed, he was involved in a number of transactions involving (a) the sale of foreign currency notes to various money exchangers in Kenya at no profit whatsoever, the said notes having been received by him for sale on behalf of various other parties; (b) the sale of some sarees whereon the Appellant made a profit of Shs: 1168/94; and (c) the receipt of deposits in respect of a proposed property transaction, whereof a substantial sum was refunded and the balance treated as a loan to the Appellant and invested by him together with a further loan received by him from his uncle, one Jaffer Ahamed Nizari of Kuwait, on a mortgage where from the Appellant made a profit of Shs. 73/97. 20 30

8. The Appellant will testify that he had no income other than as stated above during the period for which he had been assessed, and at the hearing hereof the Appellant will adduce documentary evidence consisting of correspondence with the East African Income Tax Department and with various banks and money exchangers in Kenya, statements of accounts relating to the above stated transactions together with vouchers and other documents supporting the same, and will call witnesses in relation to the said transactions. 40

Dated at Nairobi this 26th day of October, 1961.
(Sgd.)

A.S.G.KASSAM
Advocate for the Appellant

In the Supreme
Court of Kenya

No.5

Memorandum of
Appeal
Civil Appeal
No.45 of 1961
26th October
1961
continued

act under the provision of ss.103 and 123 of the East African Income Tax (Management) Act and in disregarding the provisions of ss.81 (1) and 81(3) of the said Act.

4. Pursuant to rule 5 of the Income Tax (Appeal to the Kenya Supreme Court) Rules, 1959, the Appellant attaches:-

(a) A copy of the decision of the Local Committee made on the 25th day of July, 1961 (marked Appendix "A").

10

(b) A copy of the Notice of Appeal (marked Appendix "B").

(c) A Statement of Facts (marked Appendix "C").

The Appellant therefore prays:-

(a) That the Assessment may be annulled or varied;

(b) For such further or other relief as this Honourable Court may see fit to grant, together with the costs of this Appeal.

20

DATED AT NAIROBI this 26th day of October, 1961.

A.S.G.KASSAM
Advocate for the Appellant.

Drawn by:
Messrs.S.R.Kapila and Kapila,
Advocates,
NAIROBI.

Filed by:-
A.S.G.Kassam,
Advocate,
Sheikh Building,
Victoria Street,
NAIROBI.

30

To be served upon:-
The Legal Secretary,
E. A. High Commission,
Advocate for the Respondent,
High Commission Building,
NAIROBI.

40

9.

NO.6

APPENDIX A. CIVIL APPEAL NO.45 OF 1961

In the Supreme
Court of Kenya

No.6

APPENDIX A.

Appendix A
Civil Appeal
No.45 of 1961

The Local Committee,
Nairobi Area,
P.O. Box 30165,
NAIROBI.

File No.90271 (L.C.)/4. 28th July 1961.

TO: Sardar Mohamed Maherally Shroff.

10

Box 552,
Nairobi.

Dear Sir,

At a meeting held on 25 July 1961

The Local Committee made the following decision
in your case :-

APPEAL NOT UPHELD

Yours faithfully,

SGD. ?

CLERK TO THE LOCAL COMMITTEE.

20

Copy to:

- (i) Assessor of File No.2/28673 for information and necessary action.
 - (2) Harrison Storm and Partners Box 2064.
NAIROBI.
 - (3)
-

In the Supreme
Court of Kenya

NO.7

APPENDIX B. CIVIL APPEAL NO.45 OF 1961

No.7

APPENDIX B.

Appendix B.
Civil Appeal
No.45 of 1961

RE: SARDAR MOHAMED MAHERALLY SHROFF.

Notice of intended Appeal to Her Majesty's
Supreme Court of Kenya at Nairobi in respect
of:

Assessment No: 52/39386 - year of Income 1960.

Assessment No: 52/39387 - year of Income 1961.

TAKE NOTICE that the above-mentioned Appellant,
SARDAR MOHAMED MAHERALLY SHROFF, being dis-
satisfied with the decision of the Local
Committee made at its meeting held on the 25th
day of July 1961, in the above matter, intends
to appeal to Her Majesty's Supreme Court of
Kenya at Nairobi against the above assessments,
under section 111 (2) of East African Income
Tax (Management) Act 1958 and pursuant to the
provisions of the Income Tax (Appeal to the
Kenya Supreme Court) Rules, 1959.

10

20

DATED at Nairobi this 8th day of September,
1961.

A.S.G.KASSAM,

Advocate for the Appellant.

The address for service for the purposes of the
intended appeal of the Appellant is care of
A.S.G.Kassam, Advocate, Sheikh Building, Vic-
toria Street, P.O. Box 9040, Nairobi.

TO:

The Commissioner of Income Tax,
P.O. Box 30165,
NAIROBI.

30

(Posted by Registered Post).

NO.8

In the Supreme
Court of Kenya

APPENDIX C. CIVIL APPEAL NO.45 OF 1961

No.8

APPENDIX C.

IN HER MAJESTY'S SUPREME COURT OF KENYA AT
NAIROBI

Appendix C
Civil Appeal
No.45 of 1961

CIVIL APPEAL NO.45 OF 1961.

IN THE MATTER OF: THE EAST AFRICAN INCOME TAX
(MANAGEMENT) ACT 1958, and
THE INCOME TAX (APPEAL TO
THE KENYA SUPREME COURT)
RULES, 1959.

10

SARDAR MOHAMED MAHERALLY SHROFF Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

STATEMENT OF FACTS

1. The Appellant is a citizen of Pakistan and normally resides in Karachi, Pakistan.

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2. The Appellant arrived at Nairobi on or about the 1st day of June 1960, on a visit to East Africa from Bombay to investigate the possibility of capital investment in East Africa.

30

3. On arrival at Nairobi the Appellant possessed internal airway tickets to visit all the capital cities of East Africa and return air tickets to Bombay, and was issued with a Visitor's Permit by the Kenya immigration authorities for a period of 14 days which was subsequently twice extended by periods of three months each. Since 4th February, 1961, the Appellant has remained in Kenya on a Prohibited Immigrant's Pass which was issued to him to enable him to finalize the issue of his income tax liability in Kenya.

4. On or about the 28th day of January, 1961, the Appellant was served with Income Tax Assessment No.52/39387 claiming the sum of Shs: 97,935/- by way of income tax for the year of income 1961, (hereinafter called "the said Assessment").

In the Supreme Court of Kenya

No.8

Appendix C
Civil Appeal
No.45 of 1961
continued

5. On or about the 30th day of January, 1961 the Appellant duly objected to the said Assessment in accordance with the requirements therein set out, and on the 6th day of April, 1961, the Respondent served upon the Appellant a Notice under Section 110(3) of the East African Income Tax (Management) Act 1958, (hereinafter called "the said Act") confirming the said Assessment.

6. On the 12th day of July 1961 the Appellant lodged an appeal against the said assessment to the Local Committee at Nairobi through his accountants, Harrison Storm and Partners, of Nairobi. The said appeal was heard by the Local Committee on the 25th day of July, 1961, and by their letter dated 28th July 1961, the Local Committee notified the Appellant that the said appeal was not upheld.

10

7. The Appellant will testify to the effect that during the period for which he has been assessed, he was involved in a number of transactions involving (a) the sale of foreign currency notes to various money exchangers in Kenya at no profit whatsoever, the said notes having been received by him for sale on behalf of various other parties; (b) dealings in deposits received in respect of a proposed property transaction, whereof a substantial sum was refunded and the balance treated as a loan to the Appellant and invested by him together with a further loan received by him from his uncle, one Jaffer Ahmed Nizari of Kuwait, on a mortgage wherefrom the Appellant made a profit of Shs: 207/20.

20

30

8. The Appellant will testify that he had no income other than as stated above during the period for which he has been assessed, and at the hearing hereof the Appellant will adduce documentary evidence consisting of correspondence with the East African Income Tax Department and with various banks and money exchangers in Kenya, statements of accounts relating to the above stated transactions together with vouchers and other documents supporting the same, and will call witnesses in relation to the said transactions.

40

Dated at Nairobi this 26th day of October 1961.
(sgd)

A.S.G.KASSAM
Advocate for the Appellant.

Drawn & Filed by :

A.S.G.KASSAM
Advocate,
Sheikh Building,
Victoria Street,
NAIROBI.

In the Supreme
Court of Kenya

No.8
Appendix C
Civil Appeal
No.45 of 1961
continued

NO.9

NOTICE OF MOTION

CIVIL APPEAL NO.44 OF 1961.

No.9

Notice of
Motion,
Civil Appeal
No.44 of 1961
27th October
1961

10

IN HER MAJESTY'S SUPREME COURT OF KENYA AT
NAIROBI

CIVIL APPEAL NO.44 OF 1961.

IN THE MATTER OF: THE EAST AFRICAN INCOME TAX
(MANAGEMENT) ACT, 1958, and
THE INCOME TAX (APPEAL TO
THE KENYA SUPREME COURT)
RULES, 1959.

SARDAR MOHAMED MAHERALLY SHROFF

Appellant

versus

20

THE COMMISSIONER OF INCOME TAX

Respondent

NOTICE OF MOTION

The Income Tax (Appeal to the
Kenya Supreme Court) Rules, 1959,
Rule 3(1)

30

TAKE NOTICE that this Honourable Court will
be moved on Tuesday the 21st day of November,
1961, at 10.30 o'clock in the forenoon or so soon
thereafter as Counsel can be heard by the Counsel
for the Appellant that on the grounds stated in
the annexed Affidavit of SARDAR MOHAMED MAHERALLY
SHROFF and other reasons to be adduced at the

10 be moved on Tuesday the 21st day of November, 1961, at 10.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by the Counsel for the Appellant that on the grounds stated in the annexed Affidavit of SARDAR MOHAMED MAHERALLY SHROFF and other reasons to be adduced at the hearing of this application, this Honourable Court be pleased to enlarge the time for filing the Memorandum of Appeal in the above appeal,

AND THAT this Honourable Court be pleased to make such Order as to costs and such other orders as may seem just to this Honourable Court.

DATED at Nairobi this 27th day of October, 1961.

(Sgd) D.J.DEVINE
DEPUTY REGISTRAR,
SUPREME COURT OF KENYA,
NAIROBI.

20 This Notice of Motion was taken out by:

A.S.G.KASSAM,
Advocate,
Sheikh Building,
Victoria Street,
NAIROBI.

To be served upon:

30 The Legal Secretary,
E.A.High Commission,
Advocate for the Respondent,
High Commission Building,
NAIROBI.

In the Supreme
Court of Kenya

No.10

Notice of
Motion,
Civil Appeal
No.45 of 1961
27th October
1961
continued

In the Supreme
Court of Kenya

NO.11

No.11

AFFIDAVIT OF S.M.M.SHROFF

CIVIL APPEAL NO.44 OF 1961

Affidavit of
S.M.M.Shroff
Civil Appeal
No.44 of 1961
26th October
1961

IN HER MAJESTY'S SUPREME COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO.44 OF 1961.

IN THE MATTER OF THE EAST AFRICAN INCOME TAX
(MANAGEMENT) ACT, 1958, and THE INCOME
TAX (APPEAL TO THE KENYA SUPREME COURT)
RULES, 1959.

10

SARDAR MOHAMED MAHERALLY SHROFF

Appellant

versus

THE COMMISSIONER OF INCOME TAX

Respondent

AFFIDAVIT

I, SARDAR MOHAMED MAHERALLY SHROFF, temporarily residing in Nairobi in the Colony of Kenya, make oath and say as follows:-

1. I am a citizen of Pakistan and normally reside in Karachi, Pakistan.

20

2. On or about the 28th day of January, 1961, I was served with Income Tax Assessment No.52/39386 claiming the sum of Shs: 773,125/- by way of Income Tax for the year of income 1960 (hereinafter called "the said Assessment").

3. On the 30th day of January, 1961, I duly objected to the said Assessment in accordance with the requirements therein set out, and on the 6th day of April, 1961, the Commissioner of Income Tax served upon me Notice under Section 110(3) of the East African Income Tax (Management) Act, 1958 (hereinafter called "the said Act") confirming the said Assessment.

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In the Supreme
Court of Kenya

—————
No.11

Affidavit of
S.M.M. Shroff
Civil Appeal
No.44 of 1961
26th October
1961
continued

10 4. On the 12th day of July 1961, I lodged an appeal against the said Assessment to the Local Committee at Nairobi through my Accountants, Harrison, Storm and Partners of Nairobi aforesaid. My said Appeal was heard by the Local Committee on the 25th day of July, 1961 and by their letter dated the 28th day of July, 1961 (the exact date of service whereof on me is not within my recollection) the Local Committee notified me that my said appeal was not upheld.

5. After receipt of the said letter from the Local Committee I consulted my said accountants who advised me to instruct a firm of advocates to appeal against the said Assessment to this Honourable Court on my behalf under Section 111 (2) of the said Act.

20 6. On or about the 8th day of September, 1961 I instructed my advocate, A.S.G.Kassam of Nairobi aforesaid, to give a Notice of Appeal to the Commissioner of Income Tax.

7. I am advised by my said advocate, and I verily believe, that on the 8th day of September, 1961 he gave the required Notice of Appeal to the Commissioner of Income Tax.

30 8. I have been suffering from high blood pressure for some years, and on or about the 12th day of September, 1961 I received a severe attack of hyper-tension, as a result whereof I was unable to instruct my said Advocate to proceed with my said intended appeal to this Honourable Court, and I am advised by my said advocate, and I verily believe that he was consequently unable to proceed with my said intended appeal.

40 9. During my said illness I was treated by Dr. A.N. Bowry, medical practitioner, of Nairobi aforesaid, and on the 12th day of October, 1961 I was advised by my said doctor that I was fit to resume work and on the same day he gave me a certificate to that effect, a copy whereof is annexed hereto and marked S1.

10. I have duly submitted my accounts to the Commissioner of Income Tax and I verily believe that on the basis of these accounts I am not liable to pay any income tax at all for the year of income

In the Supreme Court of Kenya

No.11

Affidavit of S.M.M.Shroff Civil Appeal No.44 of 1961 26th October 1961 continued

in respect of which I have been assessed.

11. I have deposited with the Commissioner of Income Tax my passport No.300682 issued to me by the Government of Pakistan and a security in the sum of Shs: 200,000/- pending the disposal of my intended appeal or appeals against the said Assessment and Assessment No.52/39387 which claims from me the sum of Shs: 97,935/- by way of income tax for the year of income 1961, and against which assessment I also intend to appeal to this Honourable Court.

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12. For the reasons above stated I was prevented from presenting my Memorandum of Appeal to this Honourable Court within the period provided therefor.

13. I verily believe that there has been no unreasonable delay on my part.

14. I make this Affidavit in support of my application to this Honourable Court for enlargement of time for filing my said intended appeal.

20

SWORN at Nairobi this 26th day of October, 1961.

(signed) Sardar Mohamed.

Before me:

Sgd. J.N.DESAI

A COMMISSIONER FOR OATHS

Drawn and filed by:

A.S.G.KASSAM, Advocate, Sheikh Building, Victoria Street, Nairobi.

30

NO.12

In the Supreme
Court of Kenya

AFFIDAVIT OF S.M.M.SHROFF

CIVIL APPEAL NO.45 OF 1961

No.12

IN HER MAJESTY'S SUPREME COURT OF KENYA

AT NAIROBI

Affidavit of
S.M.M.Shroff
Civil Appeal
No.45 of 1961
26th October
1961

CIVIL APPEAL NO.45 OF 1961.

IN THE MATTER OF THE EAST AFRICAN INCOME TAX
(MANAGEMENT) ACT, 1958, and the INCOME
TAX (APPEAL TO THE KENYA SUPREME COURT)
RULES, 1959.

10

SARDAR MOHAMED MAHERALLY SHROFF Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

AFFIDAVIT

I, SARDAR MOHAMED MAHERALLY SHROFF, temporarily residing in Nairobi in the Colony of Kenya, make oath and say as follows:-

1. I am a citizen of Pakistan and normally reside in Karachi, Pakistan.

20

2. On or about the 28th day of Jānuary, 1961 I was served with Income Tax Assessment No.52/39387 claiming the sum of Shs: 97,935/- by way of income tax for the year of income 1961 (hereinafter called "the said Assessment").

3. On the 30th day of January, 1961 I duly objected to the said Assessment in accordance with the requirements therein set out, and on the 6th day of April, 1961 the Commissioner of Income Tax served upon me Notice under Section 110(3) of the East African Income Tax (Management)

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In the Supreme
Court of Kenya

No.12

Affidavit of
S.M.M.Shroff
Civil Appeal
No.45 of 1961
26th October
1961
continued

Act, 1958 (hereinafter called "the said Act")
confirming the said Assessment.

4. On the 12th day of July, 1961 I lodged an appeal against the said Assessment to the Local Committee at Nairobi through my accountants, Harrison, Storm and Partners of Nairobi aforesaid. My said appeal was heard by the Local Committee on the 25th day of July, 1961 and by their letter dated the 28th day of July, 1961 (the exact date of service whereof on me is not within my recollection) the Local Committee notified me that my said appeal was not upheld. 10

5. After receipt of the said letter from the Local Committee I consulted my said accountants who advised me to instruct a firm of advocates to appeal against the said Assessment to this Honourable Court on my behalf under Section 111 (2) of the said Act.

6. On or about the 8th day of September, 1961 I instructed my advocate, A.S.G.KASSAM, of Nairobi aforesaid, to give a Notice of Appeal to the Commissioner of Income Tax. 20

7. I am advised by my said advocate, and I verily believe, that on the 8th day of September, 1961, he gave the required Notice of Appeal to the Commissioner of Income Tax.

8. I have been suffering from high blood pressure for some years, and on or about the 12th day of September, 1961, I received a severe attack of Hyper tension, as a result whereof I was unable to instruct my said advocate to proceed with my said intended appeal to this Honourable Court, and I am advised by my said advocate, and I verily believe, that he was consequently unable to proceed with my said intended appeal. 30

9. During my said illness I was treated by Dr. A.N.Bowry, medical practitioner, of Nairobi aforesaid, and on the 12th day of October, 1961, I was advised by my said doctor that I was fit to resume work and on the same day he gave me a certificate to that effect, a copy whereof is annexed hereto and marked S.1. 40

10. I have duly submitted my accounts to the Commissioner of Income Tax and I verily believe that on the basis of these accounts I am not liable to pay any income tax at all for the year of income in respect of which I have been assessed.

In the Supreme Court of Kenya

No.12

Affidavit of S.M.M.Shroff Civil Appeal No.45 of 1961 26th October 1961 continued

10

11. I have deposited with the Commissioner of Income Tax my passport No.300682 issued to me by the Government of Pakistan and a security in the sum of Shs: 200,000/- pending the disposal of my said intended appeal or appeals against the said assessment and Assessment No: 52/39386 which claims from me the sum of Shs: 773,125/- by way of income tax for the year of income 1960 and against which assessment I also intend to appeal to this Honourable Court.

20

12. For the reasons above stated I was prevented from presenting my Memorandum of Appeal to this Honourable Court within the period provided therefor.

13. I verily believe that there has been no unreasonable delay on my part.

14. I make this affidavit in support of my application to this Honourable Court for enlargement of time for filing my said intended appeal.

SWORN at Nairobi this)
26th day of October,)
1961.)

(Sgd.) SARDAR MOHD.

BEFORE ME:

30

(Sgd.) J.N.DESAI.
A COMMISSIONER FOR
OATHS.

Drawn & Filed by:
A.S.G.KASSAM,
Advocate,
Sheikh Building,
Victoria Street,
Nairobi.

In the Supreme
Court of Kenya

NO.13

COURT NOTES

No.13

IN HER MAJESTY'S SUPREME COURT OF KENYA

Court Notes.
21st November
1961

AT NAIROBI

APPELLATE SIDE

CIVIL APPEAL NO.44 OF 1961.

(From the Original Assessment No.52/39386 for
the year of Income 1960).

SARDAR MOHAMED MAHERALLY SHROFF

Appellant

versus

10

THE COMMISSIONER OF INCOME TAX

Respondent

21.11.61.

A.R.Kapila (Kassam with him) for Applicant.

Thornton for Respondent.

Kapila: In Camera?

Thornton: No Objection.

Order: Application to be heard in camera.

Kapila: Appeal against estimated assessment.
Application. Enlargement of time. Appeal and
motion filed on 27.10.61. As also C.A.45/61.
Identical grounds except amount of assessment
and year. Grounds of Appeal.

20

Thornton: Not served with Memo of Appeal.

Kapila: Memo of Appeal filed together with
Motion. Fee paid. Can hand Thornton copy
of Memo of Appeal. Do so now.

Thornton: Prepared go on.

Kapila: Rule 3 Legal Notice No.12/59. Proviso

period 75 days from date of service upon Appellant of decision of Local Committee. Rule 3 (1)(d). Local Committee's decision letter of dismissal dated 28.7.61. Deemed to be served within 14 days after posting. Section 145 (3) unable state exact date of receipt. Service would be deemed on 11.8.61 and 75 days would run from that date which would go up to 25.10.61. In absence of proof to the contrary.

In the Supreme
Court of Kenya

No.13

Court Notes
21st November
1961
continued

10 Appellant's sickness during material time of 75 days. Notice to appeal filed on 8.9.61 well within time. Respondent informed of intention to appeal. No prejudice to Respondent. Appellant ill from 12.9.61 to 12.10.61. Confined to bed. Most material period, instructions. From 12.10.61 to 27.10.61 when appeal filed, complicated examination. Estimated assessment. Tax estimated over £40,000 for about eight months residence. Appellant's con-
20 tention income practically nil. Wide gulf. Investigation bound take time.

Similarly C.A. 45/61 estimated assessment about Shs: 97,000/-. Appellant - contends income only Shs: 207/20.

Of 75 days, deprived of 30 days owing to illness. Onus discharged over Rule 3. Not bound show that appeal could have been filed during balance of 75 days.

30 Magnitude of appeal. No injustice to Respondent.

Thornton: Oppose application.

(i) No jurisdiction to extend time unless application made within 75 days.
CIT v A.Q. Case 43 Vol. 2, part, p.192.
Decision under 1952 Act. Rule 3 substantially same.

40 Facts different. Commissioner wished appeal. Mayers J. p.200. No difference between this application and case 43.

No express provision in Rules for enlargement of time as in civil procedure

In the Supreme Court of Kenya

No.13

Court Notes
21st November
1961
continued

rules. Latter not applicable.

(ii) Of jurisdiction, proviso Rule 3 not satisfied. 75 days from 11.8.61 to 25.10.61. Two days out. Medical certificate. Para 8 of Affidavit. Certificate unsubstantiated. Do not question certificate, not genuine but evidence of illness thin. No reason to doubt certificate. Even if ill, Appellant still had 13 days to file appeal. Not "prevented". About one month before Appellant fell ill. Not the type of illness to "prevent". Case 43 "Prevent".

10

Court: Appeal No.45. Para 2 of Affidavit. Assessment 28.1.61. for year of Income 1961?

Thornton: Correct Assessment.

Kapila: In case No.43 position different. Under section 145 proof to contrary is possible only in respect of date of service. Service cannot be challenged. Two periods.

20

(i) before illness only 4 days between giving of notice and falling ill. Appeal to Local Committee not by Advocate. Accountant.

(ii) After illness; 13 days. If appeal could have been prepared at all, would have been filed. Only 2 days out. Voluminous papers and documents. If Thornton right, Appellant must prove illness right up to 75th day.

30

Every effort made to file in time but still out by two days. Proves impossibility.

Ruling reserved.

C.B.Madan. J.

27th November
1961

27.11.61.
Kassam for Applicant.
Thornton for Respondent.
Ruling delivered.

C.B.Madan. J.

40

NO.14

In the Supreme
Court of Kenya

R U L I N G

IN HER MAJESTY'S SUPREME COURT OF KENYA

No.14

AT NAIROBI

Ruling
27th November
1961

APPELLATE SIDE

CIVIL APPEAL NO.44 of 1961.

(From the Original Assessment No:52/
39386 for the year of Income 1960).

SARDAR MOHAMED MAHERALLY SHROFF Appellant

10

versus

THE COMMISSIONER OF INCOME TAX Respondent

R U L I N G

This is an application for an extension of time to present memorandum of appeal against the decision of the Local Committee which rejected the Appellant's appeal against Assessment No.52/39386 for the year of Income 1960. The Applicant seeks leave to appeal to this court under section 111(2) of the East African Income Tax (Management) Act, 1958.

20

The decision of the Local Committee is dated the 28th July 1961, and it was conveyed to the Applicant at his postal address but there is no evidence as to the actual date of service. It, therefore, must be deemed to have been served upon the Applicant on the 11th August, 1961, that is fourteen days after the date of posting as laid down by section 145(3)(a) of the Act.

30

The application is made under Rule 3 of the Income Tax (Appeal to the Kenya Supreme Court) Rules, 1959, which reads 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

In the Supreme
Court of Kenya

No.14

Ruling
27th November
1961
continued

- (a)
- (b)
- (c)
- (d) the notice under paragraph (f) of section 112 of the Act of the decision of the local committee, as the case may be:

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."

10

The application and memorandum of appeal were filed in court on the 27th October, 1961, that is late by two days as the 75th day fell on the 25th October 1961.

20

Mr. Thornton for the Respondent submitted that the court had no jurisdiction to extend the time unless the application for such extension is made within the statutory period of 75 days. Mr. Thornton relied upon the authority of Commissioner of Income Tax v. A.Q., Tax Case No.43, E.A.Tax Cases, Vol.2 - Part 111, p.192. In that case Mayers J. held that there was no inherent power in the court to grant an extension of time for lodging an appeal, and also that the court has no power to grant an extension of time for lodging an income tax appeal unless the application therefor is made within the time for appealing, i.e. within 75 days in the instant case.

30

If I did not arrive at the conclusion which I set out later, I would have respectfully permitted myself to consider whether the court is excluded from entertaining an application to grant an extension of time for lodging an appeal unless the application therefor is made within the time for appealing. What, for example, would be the result in a case where the applicant being dissatisfied with the decision of the local committee and having given notice of appeal in writing to the Commissioner within 45

40

In the Supreme
Court of Kenya

In my opinion the application fails on all these three grounds.

No.14

Ruling
27th November
1961
continued

The applicant had recovered from his illness on the 12th October. He has not stated that he was "prevented" from presenting his memorandum of appeal, neither is there any matter in his Affidavit which would justify me in holding that the applicant was hindered or stopped from lodging in court his memorandum of appeal during the period of his fitness.

10

I also consider that there was unreasonable delay on the Appellant's part. Apart from the period so nearly a fortnight which the Appellant had at his disposal after his recovery, the memorandum of appeal which I feel I am entitled to look at, has failed to impress me as being a document for the drafting and preparation of which the period of time which was available to the applicant was not sufficient. The memorandum of appeal, apart from the prayers, and compliance with the statutory requirements under Rule 5 to annex to it certain documents, consists only of the following three grounds:

20

1. "The said estimated Assessment has no basis or justification in fact or in law.
2. The Appellant is not chargeable with any tax in respect of the period referred to in the Assessment in view of the fact that his income during the said period did not exceed the personal allowances granted in the said assessment.
3. The Respondent erred in law in purporting to act under the provisions of sections 103 and 123 of the East African Income Tax (Management) Act and in disregarding the provisions of sections 81(1) and 81(3) of the said Act".

30

I do not consider that the foregoing three grounds of appeal were so taxing or complex legally that the memorandum of appeal could not have been finalised within the statutory period of 75 days.

40

I also find myself unable to accept the argument that because there was a delay of two days

only in filing the memorandum of appeal, this application should therefore be granted. The period of time for presenting memorandum of appeal is prescribed by statute. In the context of statutory limitation, the length or shortness of the delay is irrelevant.

For all these reasons the application is dismissed with costs.

10 A similar application in Civil Appeal No.45 of 1961 between the same parties was consolidated with the instant application. For the aforesaid reasons that application is also dismissed with costs.

C.B.Madan J.

28.11.61.

Mr. Kassam advocate for Applicant.

Ex parte :-

20 Date for mention before the Honourable Mr. Justice Madan fixed for 6th day of December, 1961, at 9.30 a.m.

Notice on payment to other party.

D.J.Devine.
Deputy Registrar.

6.12.61.

Vohra for Kassam for Applicant.

Thornton for Respondent.

30 Vohra: Apply for leave to appeal against ruling. Not applied for when ruling delivered because Kassam not instructed then and applicant was in Mombasa on day of delivery of ruling. Leave necessary. Section 75 C.P.O.

Thornton: Oppose application.

Order: Leave to appeal, also in Civil Appeal No.45/61.

C.B.Madan.

I certify that is a true copy of the original.

(sgd.) D.J.DEVINE

Deputy Registrar.

15.12.61.

In the Supreme
Court of Kenya

No.14

Ruling
27th November
1961
continued

No.15

Court Notes
continued
28th November
1961

6th December
1961.

In the Supreme
Court of Kenya

NO.16

O R D E R

No.16

IN HER MAJESTY'S SUPREME COURT OF KENYA

AT NAIROBI

Order
6th December
1961

APPELLATE SIDE.

CIVIL APPEAL NO.44 of 1961.

(From the Original Assessment No.52/39386 of
the year of Income 1960).

SARDAR MOHAMED MAHERALLY SHROFF Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

10

AND

CIVIL APPEAL NO.45 of 1961

(From the Original Assessment No.52/39387 for the
year of Income 1961.)

SARDAR MOHAMED MAHERALLY SHROFF Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

(CONSOLIDATED by Order of this Court dated 21st
November, 1961.)

20

O R D E R

THIS CONSOLIDATED APPLICATION presented to this
Court by Counsel for the Appellant on the 27th day
of October, 1961, and coming on the 21st day of
November 1961 for hearing and on the 27th day of
November 1961 and the 6th day of December, 1961
for ruling before the Honourable Mr. Justice Madan
in the presence of Counsel for the Appellant and
Counsel for the Respondent and UPON READING the
Affidavits of the Appellant sworn on the 26th day
of October, 1961, with annexures thereto, in
support of the said application and UPON HEARING
Counsel for the Appellant and Counsel for the
Respondent, IT IS ORDERED:

30

1. That the Appellant's application in Civil

In the Court
of Appeal for
Eastern Africa

NO.19

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR

EASTERN AFRICA AT NAIROBI

CIVIL APPEAL NO.15 OF 1962.

No.19

Memorandum of
Appeal
15th February
1962

B E T W E E N

SARDAR MOHAMED MAHERALLY SHROFF Appellant

AND

THE COMMISSIONER OF INCOME TAX Respondent

(An Appeal from the Ruling and Order of Her Majesty's Supreme Court of Kenya at Nairobi (the Honourable Mr. Justice Madan) dated the 27th day of November, 1961 and the 6th day of December, 1961) 10

in

CIVIL APPEAL NO.44 of 1961

Sardar Mohamed Maherally Shroff Appellant

versus

The Commissioner of Income Tax Respondent

A N D

CIVIL APPEAL NO.45 of 1961

Sardar Mohamed Maherally Shroff Appellant

versus

The Commissioner of Income Tax Respondent

(Consolidated by Order of Court dated the 21st day of November, 1961)

MEMORANDUM OF APPEAL

SARDAR MOHAMED MAHERALLY SHROFF, the Appellant above-named, appeals, with the leave of the Court below and after due compliance with the conditions upon which such leave was granted, 30

to Her Majesty's Court of Appeal for Eastern Africa against the whole of the decision above-mentioned, on the following grounds, namely:-

In the Court
of Appeal for
Eastern Africa

No.19

Memorandum of
Appeal
15th February
1962
continued

10

1. The learned judge misdirected himself in holding that the Appellant had not stated that he was prevented from presenting his Memorandum of Appeal and misconstrued the meaning of the word "prevented" in the proviso to Rule 3 of the Income Tax (Appeal to the Kenya Supreme Court) Rules, 1959.

2. The learned judge erred in finding that there had been an unreasonable delay on the Appellant's part.

3. The learned judge erred in holding that the fact that the Memorandum of Appeal had been presented only two days out of time was irrelevant.

20

4. The learned judge erroneously permitted himself to be influenced by the brevity and apparent simplicity of the 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.

5. The learned judge erred in refusing the application for extension of time for the lodgment of appeal in all the circumstances of the case.

DATED at Nairobi this 15th day of February, 1962.

30

A.S.G.KASSAM,
Advocate for the Appellant.

TO:

The Honourable the Judges of Her Majesty's
Court of Appeal for Eastern Africa.

And to:

The Legal Secretary, Eastern African Common
Services Organisation, High Commission
Building, P.O. Box 30005, NAIROBI.

The address for service of the Appellant is :

In the Court
of Appeal for
Eastern Africa

No.19

Memorandum of
Appeal
15th February
1962
continued

care of A.S.G.KASSAM, Advocate, Sheikh
Building, Victoria Street, Nairobi.

FILED the 15th day of February, 1962, at
Nairobi.

(Sgd.) R.M.PATEL
for REGISTRAR,
COURT OF APPEAL FOR EASTERN AFRICA.

Drawn and filed by:
A.S.G.KASSAM,
Advocate,
Sheikh Building,
Victoria Street,
P.O.Box 9040,
NAIROBI.

10

No.20

Notes of
Argument of
Forbes V-P.
18th October
1962

NO.20

NOTES OF ARGUMENT OF FORBES V-P.
H.M.COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI
CIVIL APPEAL NO:15 OF 1962

BETWEEN

SARDAR MOHAMED MAHERALLY SHROFF Appellant
and
THE COMMISSIONER OF INCOME TAX Respondent

20

Notes taken by the Hon.the Vice-President
Sir Alastair Forbes

18.10.62 Coram: Forbes V-P.
Crawshaw J.A.
Newbold J.A.

K.C.Gautama for the Appellant
G.C.Thornton for the Respondent

30

Gautama: Appeal from refusal to grant enlarge-
ment of time.

1959 E.A. Sub. Leg. p.47.
L.N. 12/1959 rule 3(1).
Refer Proviso to rule 3(1).
P.28 of Record, 1.15.
P. 5 of Record, para.8; para.12.

Submit the applicant had deponed that

In the Court
of Appeal for
Eastern Africa

NO.21

NOTES OF ARGUMENT OF CRAWSHAW J.A.

No.21

H. M. COURT OF APPEAL FOR EASTERN AFRICA

AT NAIROBI

Notes of
Argument of
Crawshaw J.A.
18th October
1962

CIVIL APPEAL NO: 15 OF 1962

SARDAR MOHAMED MAHERALLY SHROFF Appellant

AND

THE COMMISSIONER OF INCOME TAX Respondent

Notes taken by the Hon. Justice of Appeal 11
Mr. Justice Crawshaw.

10

18.10.62 Coram: Forbes V-P
10.30 a.m. Crawshaw J.A.
Newbold J.A.

K.C.Gautama for Kassam for the
Appellant
G.C.Thornton for the Respondent.

Gautama: L. N. 12 of 1949 p.47 rule 3(1)-75 days to
apply to J. - Proviso for extension in
case of illness, etc.

28/14 - 34) Submit affidavit showed
5 para. 8) he was ill and advocate
and para.12) could not therefore pro-
ceed with app.

20

Service on 11th August.

Notice on 8th September, - 28 days.

Ill - 12th October.

25/10 Submit no unreasonable delay,
and that J. wrong in saying that only 2
days late was irrelevant.

Ground 4: Rule 5. J only looked at Memo
and not the S/Affairs. Large sum involved.

30

Ground 16: I agree medical certificate does not in so many words say that the Appellant unable to attend to any business.

In the Court of Appeal for Eastern Africa

No.21

Court: Thornton not called upon.
Appeal dismissed with costs.

E.D.W.Crawshaw, J.A.
18.10.62.

Notes of Argument of Crawshaw J.A. 18th October 1962 continued

10

N.B. Medical certificate insufficient. Grounds of appeal to J. presumably similar to those before committee as Committee gave no reasons for dismissing appeal.

E.D.W.Crawshaw.

NO.22

No.22

NOTES OF ARGUMENT OF NEWBOLD J.A.

H. M. COURT OF APPEAL FOR EASTERN AFRICA

AT NAIROBI

CIVIL APPEAL NO: 15 OF 1962

Notes of Argument of Newbold J.A. 18th October 1962.

20

SARDAR MOHAMED MAHERALLY SHROFF Appellant

AND

THE COMMISSIONER OF INCOME TAX Respondent

Notes taken by the Hon. Justice of Appeal III
Mr. Justice Newbold.

18.10.62. Coram: Forbes V-P.
10.30 a.m. Crawshaw J.A.
Newbold J.A.

30

K.C. Gautama for the Appellant
G.C. Thornton for the Respondent.

Gautama: Appeal from refusal to extend time.

IT (Appeal to K S C) Rules, 1959 rule 3(1) proviso.

P.28 1.14 and 29 - prevented.

In the Court
of Appeal for
Eastern Africa

No.22

Notes of
Argument of
Newbold J.A.
18th October
1962
continued

P.5 para.8 - unable to instruct
advocate
12 - stated A. prevented.

Ill from 12th September to 12 October -
and prevented from filing affidavit.

Rule 3(1) - 75 days.

Service presumed on 11th August.

N/A filed on 8th September, i.e.28 days.

P.25 1.10 - if appeal could have been
prepared would have been filed.

10

Submit period from 12th September to
12th October most material.

No unreasonable delay.

Submit that only two days out of time
is relevant and not material.

Rule 5 - statement of facts.

Submit Memo and Statement of Facts
equivalent to pleadings.

Assessments amount to large sum.

Statement of facts take some time.

20

To Ct.
(V-P):

Medical certificate does not state in
so many words that A. unable to attend
to business.

Court:

Do not require to hear Thornton.

Forbes.
(V-P):

J. not satisfied that A. prevented from
presenting appeal medical certificate
does not show A could not give instruc-
tions - grounds same as before L.C. -
cannot say J. wrong. I should dismiss
appeal with costs.

30

Crawshaw:

I agree.

Newbold:

Agree.

C.D.Newbold

J.A.

18.10.62.

41.

NO.23

O R D E R

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN

AFRICA

AT NAIROBI

CIVIL APPEAL NO:15 OF 1962.

In the Court
of Appeal for
Eastern Africa

No.23

Order
18th October
1962

BETWEEN

SARDAR MOHAMED MAHERALLY SHROFF Appellant

and

10 THE COMMISSIONER OF INCOME TAX Respondent

(An Appeal from the Ruling and Order of Her Majesty's Supreme Court of Kenya at Nairobi (The Honourable Mr. Justice Madan) dated the 27th day of November, 1961 and the 6th day of December, 1961).

in

Civil Appeal No:44 of 1961

BETWEEN

SARDAR MOHAMED MAHERALLY SHROFF Appellant

versus

20 THE COMMISSIONER OF INCOME TAX Respondent

AND

Civil Appeal No:45 of 1961

. BETWEEN

SARDAR MOHAMED MAHERALLY SHROFF Appellant

versus

THE COMMISSIONER OF INCOME TAX Respondent

(CONSOLIDATED by Order of Court dated the 21st

In the Court
of Appeal for
Eastern Africa

No.23

Order
18th October
1962
continued

day of November, 1961).

In Court this 18th day of October, 1962.
Before the Honourable the Vice-President (Sir
Alastair Forbes) and the Honourable Mr. Justice
Crawshaw, a Justice of Appeal and the Honour-
able Mr. Justice Newbold, a Justice of Appeal.

O R D E R

THIS APPEAL coming on for hearing this
day AND UPON HEARING K.C.Gautama, Esq. of
Counsel for the Appellant and G.C.Thornton, Esq.
of Counsel for the Respondent Being not called
on IT IS ORDERED that the Appeal be and is
hereby dismissed AND that the Appellant do
pay to the Respondent the costs of this Appeal.

GIVEN under my hand and the Seal of the
Court at Nairobi the 18th day of October 1962.

(Sgd.) F. HARLAND
REGISTRAR.

Issued this 11th day of December, 1962.

NO.24

ORDER GRANTING FINAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL.

In the Court
of Appeal for
Eastern Africa

No.24

IN THE COURT OF APPEAL FOR EASTERN AFRICA

AT NAIROBI

CIVIL APPLICATION NO:8 OF 1962.

Order Granting
Final Leave to
Appeal to Her
Majesty in
Council
26th April
1963.

(In the matter of an Intended Appeal to Her
Majesty in Council).

BETWEEN

10 SARDAR MOHAMED MAHERALLY SHROFF Appellant
(Applicant)

AND

THE COMMISSIONER OF INCOME TAX Respondent

(An Appeal from the Judgment and Order of
Her Majesty's Court of Appeal for Eastern
Africa at Nairobi dated the 18th day of
October, 1962 in Civil Appeal No:15 of
1962.)

SARDAR MOHAMED MAHERALLY SHROFF Appellant

AND

20 THE COMMISSIONER OF INCOME TAX Respondent

IN CHAMBERS this 26th day of April, 1963.

Before the Honourable Mr. Justice Newbold,
Justice of Appeal.

O R D E R

UPON the application presented to this

In the Court
of Appeal for
Eastern Africa

No.24

Order Granting
Final Leave to
Appeal to Her
Majesty in
Council
26th April
1963.
continued

Court on 8th day of April, 1963 by Counsel for
the above-named Applicant for Final Leave to
Appeal to Her Majesty in Council AND UPON
READING the affidavit of ABDUL SULTAN - -
GULAMHUSSEIN KASSAM of Nairobi in the Colony
of Kenya, Advocate, sworn on 8th day of April,
1963 in support thereof AND UPON HEARING
Counsel for the Applicant AND UPON HEARING
Counsel for the Respondent THIS COURT DOTH
ORDER that the application for final leave
to appeal to Her Majesty in Council be granted
AND DOTH DIRECT that the Record including
this Order be dispatched to England within a
week from the date of issue of this Order AND
DOTH FURTHER ORDER that the costs of this
application be costs in the appeal to Her
Majesty in Council.

10

DATED at Nairobi this 26th day of April,
1963.

(Sgd.) F. HARLAND

20

REGISTRAR.

COURT OF APPEAL FOR EASTERN AFRICA.

Issued this 2nd day of May 1963.

45.

EXHIBIT S.l.A.

SEE PHOTOGRAPH PRINTED
ON REVERSE.

Appellant's
Exhibits

S.l.A.

Income Tax
Assessment
No: 52/39386
28th January
1961.

EAST AFRICAN INCOME TAX DEPARTMENT 31
 INCOME TAX—YEAR OF INCOME, 1960.

NOTICE OF ASSESSMENT

Please Quote in any Communication FILE No. 28673
 ASSESSMENT No. 52/39386

TO: **MR. BARDAR MOHAMED METRALI SHROFF**
 P.O. Box 552
 NAIROBI.

Take notice that you have been assessed under the East African Income Tax (Management) Act, 1958, as shown hereon.

If you dispute this Assessment you must give me notice of objection in writing, stating precisely the grounds of objection, within 30 days from the date of service of this Notice of Assessment.

D. J. DAVIES
 Assistant/Regional Commissioner of Income Tax
 (N.O.I. 2nd District)

Date: 28.1.61

SOURCE OF INCOME		INCOME
Agriculture	...	55000
Trade, Profession, etc.	...	
Pension	...	
Employment, Salary, Self	...	
Wife	...	
Quarters	...	
Rents, etc.	...	
Annual Value Property	...	
Dividends	...	
Interest	...	
Other Income	...	
Income from outside East Africa	...	
TOTAL		£ 55000
Less Interest Paid	...	
Losses	...	
Passage Deduction	...	
Retirement benefit payments	...	
Alimony	...	
TOTAL INCOME		£ 55000
Less Personal Allowances		
Single	Married	Child
Education	Dependant	Age
Life Assurance	Prov. Fund	
225		
CHARGEABLE INCOME		£ 54775
Income Tax on Chargeable Income		77125
Less Life Assurance		Sh.
£	@ Sh.	
£	@ Sh.	
Double Taxation Relief		
Net Tax Chargeable		
Less Tax Paid at Source		
TAX PAYABLE		Sh. 77125
Additional Tax		
Hospital Contribution on Total Income £ 55000		2000
A TOTAL CHARGE/NET REPAYMENT		Sh. 77325

YEAR OF INCOME, 1960 ASSESSMENT NO. 52/39386 FILE NO. 28673 P.F. NO.

Tax Payable	77125
Additional Tax	
Less Tax Paid on Account	
Overpaid Asst.	19
Net Tax Payable	
Hospital Contribution Payable	A 2000
Less Paid on Account	
Overpaid Asst.	19
Net Contribution	2000
TOTAL PAYABLE	Sh. 77325

NOTES
 Please make payment to me by post or personally at

Cheques, Money Orders and Postal Orders should be crossed and made payable to "East African Income Tax Department."

Your attention is drawn to the provisions of the East African Income Tax (Management) Act, 1958, which imposes a penalty of 20% of the total tax if payment of any instalment is not made by the appropriate due date (see opposite).

No further reminder will be issued.
 Please produce this slip when making payment.

Payment to be made on or before 31st January 1961 or alternatively 31st September 1961 if such payment is made by cheque or postal order.

Address: P.O. Box 552, NAIROBI.

46.

EXHIBIT S.2.A.

Appellant's
Exhibits

S.2.A.

SEE PHOTOGRAPH PRINTED
ON REVERSE

Income Tax
Assessment
No: 52/39387

Please Quote in any Communication FILE No. 28673
ASSESSMENT No. 52/39381

TO MR SARDAR MOHAMED METRALI SHROFF
PO Box 552
NAIROBI

Take notice that you have been assessed under the East African Income Tax (Management) Act, 1958, as shown hereon.
If you dispute this Assessment you must give me notice of objection in writing stating precisely the grounds of objection, within 30 days from the date of service of this Notice of Assessment.

D. J. DAVIES
Assistant Regional Commissioner of Income Tax
(NBI. 2nd District)

Date 28.1.61

SOURCE OF INCOME								INCOME	
Agriculture	...	...	...	...	...	...	...	10,000
Trade, Profession, etc.	...	...	...	...	...	...	...
Pension	...	...	...	...	...	...	...
Employment, Salary, Self	...	...	...	...	...	...	...
Wife	...	...	...	...	...	...	...
Quarters	...	...	...	...	...	...	...
Rents, etc.	...	...	...	...	...	...	...
Annual Value Property	...	...	...	...	...	...	...
Dividends	...	...	...	...	...	...	...
Interest	...	...	...	...	...	...	...
Other Income	...	...	...	...	...	...	...
Income from outside East Africa	...	...	...	...	...	...	...
TOTAL								£ 10,000	
Less Interest Paid	...	...	...	...	...	...	...
Losses	...	...	...	...	...	...	...
Passage Deduction	...	...	...	...	...	...	...
Retirement benefit payments	...	...	...	...	...	...	...
Alimony	...	...	...	...	...	...	...
TOTAL INCOME								£ 10,000	
Less Personal Allowances	Single	Married	Child	Edu-cation	Depen-dant	Age	Life As-surance	Prov. Fund	
	225								225
CHARGEABLE INCOME								£ 9,775	
Income Tax on Chargeable Income								Sh. 96125	
Less Life Assurance								Sh.	
£ @ Sh.									
£ @ Sh.									
Double Taxation Relief									
Net Tax Chargeable									
Less Tax Paid at Source									
TAX PAYABLE								Sh. 96125	
Additional Tax								1810	
Hospital Contribution on Total Income £ 10000								1810	
A TOTAL CHARGE/NET REPAYMENT								Sh. 97935	

YEAR OF INCOME, 1961 ASSESSMENT NO. 52/39381 FILE NO. 28673 C.F. NO.

Tax Payable	...	...	...	...	...	...	...	Sh. 46125
Additional Tax	...	...	...	...	...	...	...
Less Tax Paid on Account	...	...	...	...	...	...	...
Overpaid Asst.	19							
Net Tax Payable	...	...	...	...	...	...	...
Hospital Contribution Payable	A	1810						
Less Paid on Account	...	...	...	...	...	...	...
Overpaid Asst.	19							
Net Contribution	...	...	...	...	...	...	...	1810
TOTAL PAYABLE								Sh. 47935

NOTES
Please make payment to me by post or personally at

Cheques, Money Orders and Postal Orders should be crossed and made payable to "East African Income Tax Department."

Your attention is drawn to the provisions of the East African Income Tax (Management) Act, 1958, which imposes a penalty of 20% of the total tax if payment of any instalment is not made by the appropriate due date (see opposite).

No further reminder will be issued.
Please produce this slip when making payment.

PAYABLE TO BE MADE ON OR BEFORE JANUARY 1962 OR ALTERNATIVELY THAT SATISFACTORY SECURITY IS GIVEN WITHIN THIS TIME FOR SUCH PAYMENT

Address PO Box 552 NAIROBI
Name SARDAR MOHAMED METRALI SHROFF 28673

EXHIBIT S.1.CIVIL APPEAL NO.44 OF 1961Appellant's
Exhibits

S.1.

Dr. A.N.Bowry
Victoria Court
(Old Central Hotel)
L.A.H.(Dublin),L.M.
(Rotunda), Tel.No.24965
L.P.S.I.,L.M.P.C.P.(nag.) P.O.Box 4091
Nairobi.
Retired (Kenya Medical
Service) Date 12.10.1961.

Medical
Certificate
Civil Appeal
No.44 of 1961
12th October
1961

10

To whom it may concern:-

This is to notify that Mr.Sardar Mohd. has been suffering from Hyper tension since 12.9.61 both inclusion, and is fit to resume his duties.

(Sgd.) A.N. Bowry.

EXHIBIT S.1.CIVIL APPEAL NO.45 OF 1961.

S.1.

Dr. A.N.Bowry
Victoria Court
(Old Central Hotel)
L.A.H.(Dublin) L.M.
(Rotunda), Tel.No.24965
L.P.S.I.,L.M.P.C.P.(Nag.) P.O.Box 4091,
Nairobi.
Retired (Kenya Medical
Service). Date 12.10.1961.

Medical
Certificate
Civil Appeal
No.45 of 1961
12th October
1961.

20

To whom it may concern:-

This is to notify that Mr. Sardar Mohd. has been suffering from Hyper tension since 12.9.61 both inclusion, and is fit to resume his duties.

(Sgd.) A.N. Bowry.

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA AT NAIROBI

B E T W E E N

SARDAR MOHAMED MAHERALLY SHROFF

Appellant

- and -

THE COMMISSIONER OF INCOME TAX

Respondent

RECORD OF PROCEEDINGS

MERRIMAN, WHITE & CO.,
3, King's Bench Walk,
Inner Temple,
London, E.C.4.
Solicitors for the Appellant.

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