



# MANJU SALUM MSAMBYA *v.* THE ATTORNEY GENERAL AND ANOTHER

## COURT OF APPEAL OF TANZANIA

### AT MWANZA

(LUBUVA. J.A. LUGAKINGIRA. J.A. And MROSO. J.A)

#### CIVIL APPEAL NO. 2 OF 2002

(Appeal from the decision of the High Court of Tanzania at Tabora, Lukelelwa J, dated the 10th day of August, 2001, in Miscellaneous Civil Cause No. 6 of 2000)

*Civil Practice and Procedure – jurisdiction of the court in evidence – Whether an appellate court has the mandate to review evidence given in the trial court.*

*Civil Practice and Procedure – principles of election petitions – who has the burden of proof in an election petition.*

Manju Salum Msambya contested and lost on a Chama Cha Mapinduzi (CCM) ticket in the Kigoma South Constituency. His opponents were the second respondent, Kifu Gulamhussein Kifu of NCCR-Mageuzi, who was the successful candidate, and Mustapha Wambali of Chadema, who was a distant third. The appellant was dissatisfied with the results of the election and petitioned the High Court to avoid the same. He cited the Attorney General as the first respondent in compliance with the law. The petition was based on a single ground, namely, that during the election campaign, the second respondent and/or his agents made statements with the intent to exploit tribal differences in relation to the petitioner. At the conclusion of the trial, the High Court held that the petitioner had failed to establish his case and dismissed the petition with costs.

#### **Held:**

- (i) The burden of proof placed on a petitioner is a heavy one; he is required to prove his allegations to the satisfaction of the court.
- (ii) As a general rule, an appellate court will be slow to interfere in findings of fact by the trial court. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction that should be exercised with caution.



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Appeal allowed with costs.

**Statutory provisions referred to**

- (i) National Elections Act.
- (ii) The Evidence Act

**Case referred:**

- (iii) Mbowe v. Eliufoo, [1967] E. A. 240
- (iv) Bater v. Bater [1950] 2 All ER 458
- (v) Reddy v. Sultan [1976] 3 S.C.R. 452
- (vi) Peters v. Sunday Post [1958] E.A. 424
- (vii) Lutter Nelson v. A.G. and Ibrahim Msabaha, Civil Appeal No. 24 of 1999
- (viii) Martha Wejja v. A.G. & Three Others [1982] T.L.R. 35, 57

