



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: AKIWUMI, TUNOI & SHAH, JJ.A.)

CIVIL APPEAL NO. 285 OF 1997

BETWEEN

ELIZABETH BRAGANZA APPELLANT

AND

TYSONS HABENGA LIMITEDRESPONDENT

JUDGMENT OF TUNOI, J.A.

(Appeal from a Judgment of the High Court at Nairobi (the Honourable Justice Lady Owuor) given on 16th day of October, 1997

in

H.C.C.C. NO. 105 OF 1991)

I have had the advantage of reading the judgment of Shah, J.A. with which I agree. I add my views only on the way the learned Judge conducted this case. Mr. Goswami, counsel for the appellant, invited our attention to the fact that the learned Judge took nearly 15 months to deliver the judgment and delivered the same only after some more than 30 vain attendances by the appellant's advocates. He submitted that this long delay resulted in the learned Judge making material findings which were not justified by the evidence on record.

Delay in delivering judgment may arise due to a variety of reasons but is solely the responsibility of the judge who heard the case. What constitutes delay, however, depends on the particular circumstances of each case.

In this case the delay was too inordinate and should not have occurred unless there were compelling reasons which the learned Judge should have explained in the judgment. No doubt, by the time she wrote her judgment, human as she is, the learned Judge lacked the "feel" of the case. Also, the length of time between hearing the case and writing of judgment gave rise to suspicion that a miscarriage of justice occurred through submissions being forgotten or lost.

Again, it has been suggested that due to incessant complaints over the delay by the appellant's counsel the judgment was vindictive. It cannot be gainsaid that this conduct of the learned Judge in delaying the delivery of her judgment added great weight to the substance of the appeal, and together with the forceful and persuasive submissions of the counsel for the appellant, resulted in the reversal of judgment in the

appeal.

For these reasons and the reasons given in Shah, J.A.'s judgment, I would allow this appeal and grant the relief suggested by Shah, J.A.

Dated and delivered at Nairobi this 20th day of March, 1998.

P. K. TUNOI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR