I find Mr Nyangarika's submissions quite attractive but I am satisfied that the provisions of section 44(1)(a) of the Magistrates' Courts Act 1984 has clothed the High Court with wide powers to make intervention and give directions necessary in the interests of justice. These powers in my view include the determination of whether or not a district or resident Magistrate Court acted without jurisdiction and or illegally in dealing with a matter before it.

As clearly shown in the complaint filed by the Port Manager of the Tanzania Harbours Authority the District Court of Ilala acted without jurisdiction in entertaining a matter falling beyond its scope of competence, i.e an admiralty matter. Equally, the Court acted illegally on issuing an exparte interim injunction without giving notice to the opposite party, a mandatory requirement under Order 37 of the Civil Procedure Code as amended.

In the final analysis I am satisfied that the complaint filed has merit and is sustained. The proceedings in Civil Case Number 122 of 2002 are quashed and the orders thereto are set aside. The applicant will have its costs in this cause. Order accordingly.

TANZANIA COTTON MARKETING BOARD *v.* COGECOT COTON COMPANY S.A.

COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(Ramadhani, Lugakingira and Mroso, JJ.A.)

CIVIL APPEAL No. 60 OF 1998

(From the decision of the High Court of Tanzania at Dar es Salaam, Mapigano, J., dated 25 November 1997, in Miscellaneous Civil Cause No. 34 of 1998)

Limitation – Limitation of Time – Arbitration – Whether there is a period of limitation for a petition to set aside arbitration award – Section 21 of the

Law of Limitation Act 1971, or Item 21 of Part III of the First Schedule thereto. A

Arbitration – Awards – Petition to set aside an award – Whether such petition is a suit or an application – Section 15 of the Arbitration Ordinance Chapter 15, and rules 5 and 6 of the Arbitration Rules 1957. B

Civil Practice and Procedure – Appeals – Matter not canvassed in the trial High Court – Whether competent to raise the matter on appeal.

The appellant appealed against the decision of the High Court dismissing its application C
to impeach an award on the ground that it was time barred. The appellant argued that the petition was a suit founded an a judgment and the limitation period was therefore twelve years reckoned from the date the notice of filing the award was served on the applicant. In the alternative the appellant argued that the period spent prosecuting a D
previous proceeding between the parties which was terminated on June 16, 1997 ought to have been excluded.

Held: (i) As the issue of whether the present matter is a suit or an application was not canvassed before the High Court it is therefore not competent to raise the same E
on appeal.

(ii) Section 21 of the Law of Limitation Act 1971, does not apply as the matter which terminated on 16 June 1997 was not prosecuted in a Court which was incompetent to entertain it for lack of jurisdiction. F

(iii) Since the Act does not prescribe for the of the limitation for applications the present application fell under Item 21 of Part III of the First Schedule to the Act which prescribes the period as sixty days.

G

Appeal dismissed with costs

Statutory provisions referred to:

1. Arbitration Ordinance (Chapter 15) rules 5 and 6. H
2. Law of Limitation Act 1971, section 21, First Schedule Part III item 21.

I

A

JUDGMENT

(Dated 2 September 2002)

B **Lugakingira, J.A.:** The appellant Board's petition to impeach an award under section 15 of the Arbitration Ordinance (Chapter 15) and rules 5 and 6 of the Arbitration Rules 1957, was dismissed by the High Court on the ground that it was time-barred. This appeal is
C against that decision. Counsel for the appellant had two alternative arguments: First, that the High Court erred in holding that the time of limitation was 60 days. In his submission the petition was a suit founded on a judgment, namely the award, therefore the time of limitation
D is 12 years reckoned from the date the notice of filing the award was served on the appellant. In the alternative, that section 21 of the Limitation Act 1971, applied and that period spent prosecuting a previous proceeding between the same parties which terminated on 16 June 1997, ought to have been excluded.

E

There is no merit in either of these arguments. With the first argument, and as observed by counsel for the respondent, the issue about the petition being a suit was never canvassed before the high
F Court. That Court cannot be judged on an issue it never had an opportunity to consider and express an opinion. In fact the position taken then was the opposite. Counsel who appeared for the appellant before the High Court stated categorically: "This is not a suit." That was, indeed, correct and not a slip. A petition under rules 5 and 6 of the
G Arbitration Rules is an application rather than a suit. rule 5 states in part: "... all applications made under the ordinance shall be made by way of petition." A petition is therefore the prescribed mode of making an application under the Arbitration Ordinance, and it is common
H knowledge that other modes are prescribed under other laws.

Applications under the ordinance fall under Item 21 of Part III of the First Schedule to the Limitation Act, since the Ordinance itself does not provide for the period of limitation, and the period
I is 60 days. Although the period the High Court reckoned was the

period from 11 December 1996, the correct date was, in our vied, 11 March 1996, that being the date the appellant acknowledged receiving notice of the filing of the award. The petition, the subject of this appeal, was filed on 2 July 1997, well beyond the 60-day limit. The High Court was therefore correct in holding as it did even on the basis of the date it adopted.

The alternative argument is equally misconceived. In order for section 21 to apply, and for time spent in the prosecution of another proceeding to be excluded, it has to be shown, *inter alia*, that the other proceeding was prosecuted in a Court which, from defect of jurisdiction, was incompetent to entertain it. Counsel for the appellant was not heard to say that the proceeding which terminated on16 June 1997 [*Tanzania Cotton Marketing Board v. Cogecot Cotton Company SA* (1)] was prosecuted in a Court incompetent to entertain it. It is obvious to us that the whole of the instant proceeding is a bad tactic.

The appeal is dismissed with costs.

SGS SOCIETE GENERALE DE SURVEILLANCE S.A. *v.* VIP ENGINEERING AND MARKETING LTD

COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM

(Ramadhani, Lubuva and Lugakingira, JJ.A.)

CIVIL APPLICATION No. 84 OF 2000

(Application for Revision of an order of the High Court of Tanzania, Commercial Division, at Dar es Salaam, Nsekela, J., dated 28 September 2000 in Commercial Case No. 16 of 2000)

Civil Practice and Procedure – Revision – Application for revision – Competency of the Court to hear revision application – Section 5(2)(d) of the Appellate Jurisdiction Act 1979 as amended by Act Number 17 of 1993.

Civil Practice and Procedure – Revision – Basis upon which the Court could be moved to invoke its revisional jurisdiction.