

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MAKAME, J.A., RAMADHANI, J.A., And LUBUVA, J.A.)

CIVIL APPEAL NO. 6 OF 1996

BETWEEN

TANZANIA OLYMPIC COMMITTEE APPELLANT

AND

PROF. ADOLPHE SIMBAULANGA. RESPONDENT

JUDGEMENT OF THE COURT

MAKAME, J.A.:

The present respondent, Prof. ADOLPHE SIMBAULANGA, sued the present appellant, TANZANIA OLYMPIC COMMITTEE, for a sum of money in connection with some interpretation work the respondent had done at Morogoro during a wrestling seminar. Apparently Prof. Simbaulanga is proficient in the French language.

In this appeal the parties retained the same counsel they had in the court below: Mr. Said El-Maamry and Mr. Maira, learned advocates, for the appellant and the respondent respectively.

In the original plaint, filed on 27th February, 1992, the respondent asked for the principal sum of Shs.440,000/- but this amount transformed into Shs. 3,598,500 in an amended plaint filed in March, 1993. Judgement for the higher sum was entered in favour of the present respondent by Mackanja, J. on 8th September, 1994 under Order VIII

Rule 14 (1) of the Civil Procedure Code, 1966. An application for Stay of Execution was allowed by Omar, J.A. on 27th April, 1995 and apparently no reference was taken from that decision.

There is no controversy that the appellant did not file an amended Written Statement of Defence. Mr. El-Maamry submitted, however, that Mackanja, J. should not have proceeded the way he did and enter judgement for the plaintiff, for one thing because he, Mr. El-Maamry, could not have filed an amended Written Statement of Defence because the amended plaint, as served upon his client, was incomplete in that it did not have an important document, Annexure C to the amended plaint; and for another, because, in any event, that was no occasion for Mackanja, J. to proceed ex-parte the way he did because there was a Written Statement of Defence, which took the matter out of the ambit of the Rule 14 of Order VIII the learned judge purported to apply. Mr. El-Maamry further argued, for good measure, that he was under no necessary obligation to file an amended Written Statement of Defence. What Mapigano, J. had done was merely to grant him permission to file an amended Written Statement of Defence, if any: He did not order him to do so necessarily. He asked for leave just in case he wanted to amend.

On his part Mr. Maira submitted that the respondent was served and that Mr. Wambali who represented the respondent in court (on 26/5/93) conceded as much. He argued also that while it was indeed optional for the appellant's counsel to file an amended Written Statement of Defence, counsel took that option and so, if he changed his mind, he should have indicated that he was not going to exercise it, in the event. According to Mr. Maira, the appellant had abandoned the original Written Statement of Defence for otherwise he would have indicated that he was going to rely on it to contend the amended plaint. Mr. Maira also urged that Mackanja, J. rightly acted under Order VIII rule 14(1).

We have carefully considered the chronology of events and we are satisfied that the rather frequent change of counsel might have helped to blur things. When on 26th May, 1993 Dr. Lamwai held the brief for Mr. Maira he was wrong to assert that that would be the third extension of time for filing the amended Written Statement of Defence. It would have been only the second, the only other one being on 21st April, 1993, the first Mention after Mapigano, J.'s order that Mr. El-Maanry be served with a copy of the amended plaint. Also there was in any event no question of re-service of Annexure C three weeks previously as there had not been any earlier service. We are satisfied that both learned counsel, Dr. Lamwai and Mr. Wambali

did not really appreciate at that stage that there would be two Annexures C. Mr. El-Maamry did point out to the Registrar of the High Court, in writing, that he had been furnished with the wrong Annexure C, that is the 27th March, 1991 letter from the appellant, and not the right Annexure C, a letter from the Civil Service Department dated 8th February, 1993, which is evidently what had made the amendment to be considered necessary. Indeed the respondent must have contributed to the confusion because, even in this Court's file, what appears as Annexure C to the amended plaint, and stapled to the latter, is still the letter from the appellant. We agree with Mr. El-Maamry that as long as he was not served with the right Annexure C he could not meaningfully have responded to the amended plaint or decided to rely on the original Written Statement of Defence. It was therefore inappropriate in the circumstances to apply Order VIII rule 14(1).

We accordingly allow the appeal and direct the High Court to order that the right Annexure C to the amended plaint, that is the letter from the Civil Service Department dated 8th February, 1993, be served on the appellant, the original plaintiff, and that he be given time to file an amended Written Statement of Defence. We order also that costs for this present appeal should follow the event.

DATED at Dar es Salaam this 4th day of July, 1997.

L. M. MAKAME
JUSTICE OF APPEAL

A.S.I. RAMADHANI
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

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


(B. M. LUANDA)
SENIOR DEPUTY REGISTRAR