IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 88 OF 2004

In the Matter of an Intended Appeal

BETWEEN

NATIONAL SHIPPING AGENCIES CO. LTD.
(As duly constituted Attorney of M/S
GLOBAL CONTAINER LINES LIMITED)……
APPLICANT

VERSUS

TANZANIA HARBOURS AUTHORITY……..
RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Bubeshi, J.)

dated the 6th day of July, 2004
in
Civil Case No. 134 of 1996

R U L I N G

MROSO, J.A.:

In Civil Application No. 88 of 2004 National Shipping Agencies Co. Ltd., as the duly constituted Attorney of M/S Global Container Lines Limited, applied for stay of execution of a decree of the High Court in Civil Case No. 134 of 1996, under Rule 9 (2) (b) of the Court Rules, 1979. A single judge of the Court, Munuo, J.A., struck out the application upon a preliminary objection which was raised by the Respondent, The Tanzania Harbours Authority. It is apparent that the application was struck out because a notice of appeal

against the High Court decision and the application itself were found to be defective. The judge had found as a fact that the party appearing as the applicant was no longer acting for its principal, Global Container Lines Ltd., since 15th July, 2004, which date preceded the date of the filing of the application on 19th day of July, 2004. The ruling by the learned judge said in part as follows:-

> Since NASACO (National Shipping Agencies Co. Ltd.) ceased being Attorneys of Global Container Lines Ltd. with effect from the 15th July, 2004, the Notice of Appeal and the present application had to be rectified by way of amendment in view of the fact that NASACO was no longer a party to the proceedings. As it is, neither the application nor the notice of appeal are properly before the Court. Hence the application is incompetent ... In the result the application is struck out with costs.

After the application for stay of execution was struck out the applicant in Civil Application No. 88 of 2004 filed in

that same application a notice of application for substitution and amendment of the name of the Applicant. It was intended to substitute the name M/S Global Container Lines Limited for National Shipping Agencies Co. Ltd. The notice is shown to have been given under Rules 3 (2) (a), 45 (3) (a) and 104 of the Court Rules, 1979. The orders to be sought in an informal application were the following, and I quote them verbatim:-

a) The name of NATIONAL SHIPPING AGENCIES LTD. who have hitherto been suing on behalf of their principals, M/S GLOBAL CONTAINER LINES LIMITED, be struck out from the proceedings and in their place, the Principal, M/S GLOBAL CONTAINER LINES LIMITED be granted leave to continue with the proceedings in their own name;

b) The Notice of Appeal and all the other documents filed in the proceedings before the Court of Appeal and the High Court be amended to reflect the removal of the National Shipping Agencies Co.

Ltd. and its substitution thereof of the name of M/S GLOBAL CONTAINER LINES LIMITED.

Mr. Mchome, learned advocate for the respondent, filed a notice of preliminary objections purportedly under Rule 100 of the Court Rules, 1979, raising four grounds or reasons as follows:-

i) This is not a matter governed by rule 3 (2) (a) of the Court of Appeal Rules, 1979 as there is a specific provision governing the matter.

ii) The effect of entertaining this informal application for substitution of parties and amendment of the Notice of Appeal will be to pre-empt main appeal since the ruling of the High Court (Mihayo, J.) dated 23rd March, 2005 in Misc. Civil Application No. 196 of 2004 which refused a similar application is being appealed

against (see Appendix 1 herein which is a Notice of Appeal).

iii) The Notice of intention to make an application does not conform with the requirement of the rules.

iv) The subject matter of the main application is stay of execution and Notice of Appeal is a mere annexture. Application to amend an annexture is incompetent.

To begin with, rule 100 of the Court Rules, 1979 under which the Preliminary Objection was raised is inappropriate. A preliminary objection under Rule 100 is taken only in the case of an appeal or any part of it. It does not apply to applications and it seems that there is no specific provision in the Rules providing for taking a preliminary objection to an application. I am fortified in this view by observations of this Court (full Court) in the **University of Dar es Salaam v. Sylvester Cyprian and 210 Others,** Civil Application No. 5 of 1995 in which it was said –

It is apparent that rule 100 (of the Court

> of Appeal Rules, 1979) applies to appeals only. It is also apparent that there is no specific rule concerning preliminary objection to an application filed in the Court. We are however satisfied that in the absence of such specific rules, the general provisions of rule 3 apply.

The respondent, therefore, should have invoked the provisions of Rule 3 (2) (a) of the Court Rules when he took preliminary objection to the notice of intention to apply for substitution and amendment of the name of the applicant. Even so, I do not consider the error to be of such magnitude as to justify the striking out of the notice of preliminary objection and I will proceed to consider other aspects of the matter before me.

I observe, as indicated earlier, that the “notice of application” as filed by Dr. Lamwai is made in Civil Application No. 88 of 2004. I have asked myself whether that application survived the order of this Court – Munuo, J.A., to which I have already referred. As already mentioned, that application was struck out upon a preliminary objection, the learned judge having found it incompetent for the reasons she gave in the ruling.

In my view, the judge having struck out the application (No. 88 of 2004), that put an end to it. It was no longer alive. It cannot be open to Dr. Lamwai to give notice to apply to amend anything under it or even to apply to amend it, unless and until there is a successful reference against the order of Munuo, J.A.

The provisions he cited as enabling him to file the notice to apply such as Rules 3 (2) (a), 45 (3) (a) and 104 do not seem to me to be authority for what Dr. Lamwai is trying to achieve. Rule 3 (2) (a) which is a general provision dealing with any matter for which no provision is made by the Rules cannot be said to envisage a situation in which a party is considering amendment under proceedings which no longer exist. I think, therefore, that the "Notice of Application" is misconceived and for that reason alone, the notice of application to substitute and amend the name of the applicant is struck out. I now find no need to discuss and decide the grounds in the preliminary objection.

I also received a copy of the ruling of the High Court – Mihayo, J. – in Civil Application No. 196 of 2004. The High Court dismissed an application by M/S Global Container Lines Ltd. in which among other things it was prayed –

> That this honourable court may be pleased to issue an order that the name of the applicant be introduced into the High Court Civil Case No. 134 of 1996 in substitution of the name of the National Shipping Agencies Limited.

That prayer, referred to in the ruling as a “ground”, was stayed upon application. It is not indicated who made the application to “Stay” the prayer or ground. In view of the decision I took above, I find no need to make any comment regarding that part of the High Court (Mihayo, J.) ruling.

In view of the blunder by the applicant which has necessitated the striking out of the “Notice of Application” the applicant will have to use another method of achieving its intention.

Since the ground on which the matter was struck out has been raised by the Court *suo motu,* there will be no order for costs.

GIVEN AT DAR ES SALAAM this 4th day of May, 2005.

J.A. MROSO
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR