INTHE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUNUO, J.A, BWANA, J.A, OTHMAN, J.A)

CIVIL APPEAL NO. 112 OF 2008

CHRISTINA MRIMI..... APPELLANT

VERSUS

COCA COLA KWANZA BOTTLES LTD ..... RESPONDENT

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

(A.R. Mruma, J.)

dated the 13th September, 2007

in

Civil Appeal No. 170 of 2006

.....

RULING

6th & 19th February, 2009

BWANA, J,A.

On 16 February, 2004, Christina Mrimi, the Appellant herein, obtained an exparte judgment from the Dar es Salaam Resident Magistrate's Court pursuant to the provisions of Order VIII Rule 14(1) of the Civil Procedure Code, 1966 (the CPC). Thereafter, that is, over a month after the delivery of the said exparte judgment, execution

proceedings were commenced. The same were however, stayed by the same Court, ordering a hearing of the case interpartes.

What culminated in the above proceedings has its genesis in an incident which occurred at Kariakoo, Dar es Salaam on 27 September, 2002. On that day, the Appellant bought a "Sprite" soft drink at New Muna Restaurant. The sprite is said to have been bottled by the Respondent Company. While drinking the sprite, the Appellant found a contaminated substance at the bottom of the bottle. The bottle, together with its contents were photographed and further steps were taken, which eventually led to the case at the said Resident Magistrate's Court.

It was further avered that as a result of drinking the contaminated sprite, the Appellant fell sick and was taken to TMJ hospital for treatment. The Respondent issued a sick sheet to that effect and paid for the costs involved.

Instead of the parties proceeding with the hearing inter partes as had been ordered earlier, the Respondent herein preferred an appeal to the High Court of Tanzania. Initially Mandia, J. (as he then

was) dealt with the appeal but basically on matters of procedure involving service process in civil litigation and the effects thereof. Order VIII Rule 1(2) of the CPC were extensively considered by the said judge.

Subsequently the appeal was placed before Mruma, J. who upon hearing the issues before him, allowed the Respondent herein – Coca Cola Kwanza Bottles – to withdraw the appeal. That Ruling by Mruma, J. forms the basis of this second appeal.

The Appellant raised nine grounds of appeal against that Ruling which in essence, concern the judge's decision to allow security for costs deposited at the Resident Magistrate's Court to be returned to the Respondent. She also challenges the judge's decision to allow Coca Cola Kwanza Bottles Ltd – then the Appellant –to withdraw the appeal on the ground that it was not the party intended to be sued.

Aggrieved by that decision by Mruma,J.; Christina Mrimi , preferred this second appeal. Mr. Swai, Counsel for the purported Respondent, appeared before us. He applied to withdraw from these

proceedings, ostensibly because Coca Cola Kwanza Bottles Ltd (as referred to in this appeal or Coca Cola Kwanza Bottlers as referred to in Civil Appeal No. 170 of 2006 before the High Court) is not his client. He informed this Court that his client is Coca Cola Kwanza Ltd. Therefore the insertion of the words "Bottles" or "Bottlers" interchangeably in the record of appeal before this Court or before the High Court (and the Resident Magistrate's Court) meant that the Respondent cum Defendant is a different company altogether – so it was averred by Mr. Swai. On her part, the Appellant insists that the names mean and refer to the same company.

Faced with that situation, it is our considered view that need arises to settle this preliminary issue, before proceeding with the merits of the appeal. That is, we need to rule on the issue of the correct name of the would be respondent /defendant.

Companies, like human beings, have to have names. They are known and differentiated by their registered names. In the instant case, it is apparent that the names "Coca Cola Kwanza Bottles"; "Coca Cola Kwanza Bottlers Ltd" or "Coca Cola Bottlers Ltd" have

been used inter changeably. Although the Appellant wants this Court to hold that they mean one and the same Company, strictly, this view cannot be accepted without same risk of inexactitude. We are mindful of the provisions of Article 107A of the Constitution of the United Republic of Tanzania, an Article which requires Courts of law to give purposive interpretation of laws as they are and not impeding them with mere technicalities or procedural irregularities. However as has been held by this Court in some of its recent decisions, not all procedural or technical irregularities can be ignored. Some technical irregularities cannot be ignored as they touch on the very fundaments of the issue at hand. (see the decisions of this Court in : The Attorney General Vs Rev. C. Mtikila – Civil Appeal No. 2 of 2007; Fortunatus Masha Vs William Shija – 1979 TLR 91; Hotel Travertine's case: Civil Appeal No. 138 of 2004; Robert Edward Hawkins Vs Patrice Mwaigomole – Civil Appeal No. 109 of 2007; and Zuberi Musa Vs Shinyanga Town Council – Civil Appeal No. 100 of 2004)

It is our considered opinion that in the instant appeal, the REGISTERED NAME is fundamental to the whole case. There could be either different companies or simply a confusion in the use and

application of the correct name of a company which bottles "Sprite" soft drink. Given that interchangeable use of those names, we are of the view that the Appellant has the obligation to identity the correct name of the manufacturer of sprite and only then take the necessary legal steps if need be through legal aid. In the result, this appeal, incompetent for failure to identify the appropriate party, is struck out. We make no order as to costs.

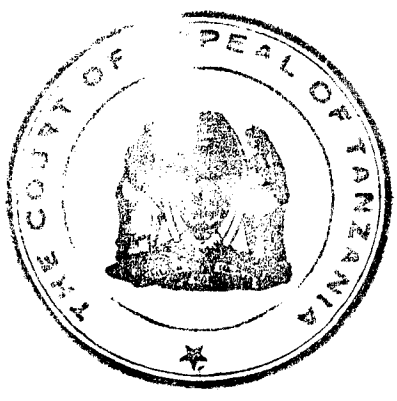
DATED at DAR ES SALAAM this 19th day of February, 2009.

E. N. Munuo
JUSTICE OF APPEAL

S. J. Bwana
JUSTICE OF APPEAL

M. C. Othman
JUSTICE OF APPEAL

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



P.B. Khaday
DEPUTY REGISTRAR