

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

CIVIL APPLICATION NO 9 OF 2010

1. M/S CONSOLIDATED HOLDING CORPORATION
2. M/S CENTRAL MAINTENANCE SERVICES CENTRE LTD } **APPLICANTS**

VERSUS

M/S CONSOLIDATED INVESTMENT (T) LTD RESPONDENT

(Application from the Decision of the High Court of Tanzania
at Arusha)

(Bwana, J.)

dated the 15th day of November, 2007
in
Misc. Civil Application No. 38 of 2007

RULING

28th September, 2011
MSOFFE, J.A.:

This application which is by way of a notice of motion is supported by the affidavit of Elvaison Erasmo Maro. It is apparent from its contents and demands that M/S Maro and M/S Law Associates have been instructed by the respective applicants to appeal against the ruling and orders made by the High Court at Arusha in Miscellaneous Civil Application No. 38 of 2007.

In compliance with the instructions learned counsel filed the appeal on 12th July, 2010. Thereafter on 24th August, 2010 learned counsel realized that there was inadvertence in preparing the memorandum of appeal in that they omitted to make a provision for signing by the Registrar. After realizing the omission, this application was promptly filed on 30th August, 2010. In essence therefore, the applicants are praying for leave to file an amended memorandum of appeal incorporating the Registrar's signature.

On 15th October, 2010 the respondent filed a "*counter affidavit*" deponed to by Michael Njumba. It will be observed at once that the affidavit was wrongly titled "*counter affidavit*" because there is nothing like a "*counter affidavit*" in the Court Rules. Under **Rule 56(1)** of the **Tanzania Court of Appeal Rules, 2009** (the **Rules**) any person served with a notice of motion may file an "*affidavit in reply*". Anyhow, in the so called "*counter affidavit*" the respondent blames the applicants' omission as sheer inadvertence. On 26th September, 2011 however, Ms. Hamida Sheikh, learned advocate for the respondent, filed a notice of *non-contender* because in her respectful view, in the light of this **Court's** decision in **21st Century Food and Packaging Limited v. TSPC and 2**

Others (2005) TLR 1 it will be futile and expensive to contest the application.

At today's date of hearing Mr. Elvaison Erasmo Maro, learned advocate, appeared for the first applicant and also held the briefs of Mr. Rosan Mbwambo and Ms. Hamida Sheikh learned advocates for the 2nd applicant and the respondent, respectively. In brief, he was of the view that following the notice of *non-contender* the application should be granted.

I have carefully gone through the focused, well researched and thought out written submissions filed by Mr. Maro. In the end, I am satisfied that the application has merit. I accordingly grant the application. In terms of **Rule 20(1)** of the **Rules**, the applicants should file the amended version of the amended memorandum of appeal within a period of 14 (fourteen) days from today.

DATED at ARUSHA this 28th day of September, 2011.

J.H. MSOFFE
JUSTICE OF APPEAL

I certify that is a true copy of the original.

A handwritten signature in black ink, appearing to read 'E.Y. Mkwizu', is written over a horizontal line.

E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL