

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: MUNUO, J.A., BWANA, J.A. And MANDIA, J.A.)

CIVIL APPLICATION NO. 113 OF 2011

CHRISTINA MRIMI.....APPLICANT

VERSUS

COCA COLA KWANZA BOTTLERS LTD.....RESPONDENT

(Application for Review of the Ruling of the Court of Appeal of Tanzania at  
Dar es Salaam)

(Munuo, Bwana, Othman, J.A.)

dated the 19<sup>th</sup> day of February, 2009

in

Civil Appeal No. 112 of 2008

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RULING OF THE COURT

17 April, & 3 May, 2012

MUNUO, J.A.:

The applicant, Christina Mrimi, through the services of Mr. Respicius Didace, learned advocate, brought the application for review under Rule 66(1) (a), (2) and (3) of the Court of Appeal Rules, 2009 moving the Court to review its Ruling of the 19<sup>th</sup> February, 2009 in Civil Appeal No. 112 of 2008 on the ground that:

*(a) the Ruling was based on a manifest error on the face of the record resulting in miscarriage of justice in that in the proceedings in Civil Appeal No. 112 of 2008, the respondent was by error referred to as Coca-Cola Kwanza Bottlers Ltd. which error has caused the victim irreparable loss.*

*(b) The wrong citing of the Respondent was inadvertent in that in Civil Appeal No. 112 of 2008 the Respondent assumed the name of Coca Cola Kwanza Bottlers Ltd.*

The respondent company was duly served on the 3<sup>rd</sup> April, 2012 but it defaulted in appearance. Hence, the application for review proceeded *exparte*.

Mr. Respicius Didace adopted the written submission he filed in support of the application for review. He stated that the respondent has consistently refused service on the ground that it is not Coca Cola Kwanza Bottlers Ltd., the name appearing in the application. Counsel for the applicant further stated that the respondent wrongly cited the name of

Coca Cola Kwanza Bottlers Ltd. in Civil Appeal No. 112 of 2008 instead of Coca Cola Kwanza Ltd, the correct name of the Respondent Company.

The confusion of the name of the respondent is not a fatal irregularity, counsel for the applicant contended. Such irregularity is minor and it is curable by deleting the word Bottlers from Coca Cola Kwanza Ltd., counsel for the applicant urged, in that Coca Cola Kwanza Ltd. is the only Company which manufactures Sprite, the drink in dispute in the tortuous suit. Hence the correct name of the Respondent should be amended to read Coca Cola Kwanza Co. Ltd.

Counsel for the applicant cited the cases of **Re J & P Sussman Ltd. (1958) 1 All ER 857** wherein the name of J & P Sussman Ltd. had been misspelt. The wrong name was discovered when the Company was being wound up. In that case the court observed: .

*"...The amendments in the petition which are not only to get the name "Sussmann" correctly spelt wherever it appears, but also the reference in the petition to the judgment should be amended like this: "The company is indebted to your petitioner*

*[in a sum of £.,] the amount of a final judgment obtained by your petitioner in an action in the High Court of Justice against the company in the said action described as J & P Sussman, Ltd." It will then state the judgment correctly, but it will indicate that it was obtained in the wrong name."*

Counsel for the applicant further cited the case of **Evans Construction Co. Ltd. versus Charrington & Co. Ltd. and Another (1983) I All E R 310** in which tenants inadvertently named the respondent as landlords instead of Bass Holding Ltd. Bass Holding Ltd. and Charrington & Co. Ltd. were in the same group of companies known as the Bass Charrington Group. In an application by the tenants to amend the application the Court held that –

*"...As the mistake in this case which led to using the wrong name of the current landlords did not mislead the Bass Holdings Ltd., and as in my view there can be no reasonable doubt as to the true identity of the person intended to be sued, this case falls within the scope of RSC Order 20, r.5 (3), it would be just to correct the name of the respondent from Charringtons Ltd. to Bass Holding Ltd."*

In view of the above authorities, counsel for the applicant prayed that the decision of the Court dated 19<sup>th</sup> February, 2009 in Civil Appeal No. 112 of 2008 be reviewed by ordering all proceedings to be amended by stating the correct name of the Respondent and that the appeal proceed on merit.

We are satisfied that it is just to correct the name of the Respondent from Coca Cola Kwanza Bottlers Ltd. to Coca Cola Kwanza Ltd. in the decision of the Court dated 19<sup>th</sup> February, 2009 in Civil Appeal No. 112 of 2008. The review is accordingly allowed.

**DATED at DAR ES SALAAM this 23<sup>rd</sup> day of April, 2012.**

E. N. MUNUO  
**JUSTICE OF APPEAL**

S. J. BWANA  
**JUSTICE OF APPEAL**

W. S. MANDIA  
**JUSTICE OF APPEAL**

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



(J. S. Mgetta)  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**