IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

CIVIL APPLICATION NO. 22 OF 2014

1. MR. WILFRED LUCAS TARIMO
2. MR. DERICK WILFRED TARIMO
3. DOREEN WILFRED TARIMO .....**APPLICANTS**
4. MRS. IRENE WILFRED TARIMO

VERSUS

THE GRAND ALLIANCE LIMITED..... RESPONDENT

(Application for correction of the Notice of Motion against the decision of the High Court of Tanzania Commercial Division at Arusha)

(Makaramba, J.)

Dated 22nd day of August, 2014
in
Commercial Case No. 9 of 2012

RULING

16th & 21st October, 2014.

MBAROUK, J.A.:

By notice of motion made under Rule 4 (2) (b) of the Court of Appeal Rules, 2009, the applicant has moved the Court for the following orders:-

"(a) That, the Honourable Court be pleased to allow the Applicants to correct the Notice of Motion filed on the 09th day of September, 2014 applying for stay of execution of the decree passed against them."

The application is supported by an affidavit sworn by Mr. Nelson S. Merinyo, learned counsel for the applicants.

Arguing in support of the application, Mr. Nelson, prayed to adopt the affidavit filed in support of the application. To appreciate what is contained in the affidavit sworn by Mr. Nelson to which the same reads as follows:

" 1. That, I am the counsel for the Applicants in the above cited Application filed by the Applicants on

15/09/2014 seeking for a correction of notice of motion in Application No. 21 of 2014.

2. *That, in that Notice of Motion I cited through a typing error that Application No. 21 of 2014 is brought under Rule 11 (1) (b) of the Court of Appeal Rules, 2009.*
3. *That, the correct provision under which the Application No. 21 of 2014 should have been brought is Rule 11 (2) (b) of the Court of Appeal Rules, 2009."*

Having adopted the contents of his affidavit, the learned counsel for the applicants, had nothing much to submit, but, he prayed for his application to be granted by allowing him to

amend what he called it as a "typing error". He then urged the Court to use its discretion and allow the application in the interest of justice.

On his part, Mr. Melchisedeck Lutema, learned counsel for the respondent submitted that, it is now settled that failure to cite a proper enabling provision renders the application incompetent. He added that, by citing Rule 11 (1) (b) instead of Rule 11 (2) (b) renders the application sought to be amended incompetent. He further added that a nullity cannot be amended. For that reason, Mr. Lutema urged the Court to find this application as a non-starter, hence dismiss it with costs.

In his rejoinder submissions, Mr. Nelson responded by submitting that, what have been submitted by the counsel for the respondent is like raising a preliminary objection on a point of law. However, he said that, the learned advocate for

the respondent failed to raised it earlier before this application was set for hearing by giving a notice as per the requirements of the Rules. He then repeated his earlier prayer and claimed that Rule 50 of the Court of Appeal Rules, 2009 (the Rules) allows an applicant to file a formal application for leave to amend any document. Hence, he reiterated his prayer to amend the notice of motion filed on 9th September, 2014.

Having examined the rival submissions, I am of the opinion that, I have to consider whether the reasons advanced by the learned counsel for the applicants have shown good cause to grant this application. In doing so, I have asked myself,

(1) Whether a wrongly cited application can be perceived as a "typing error" subject to be amended.

(2) Whether with the presence of a specific Rule under Rule 50 of the Rules, can the applicant invoke Rule 4

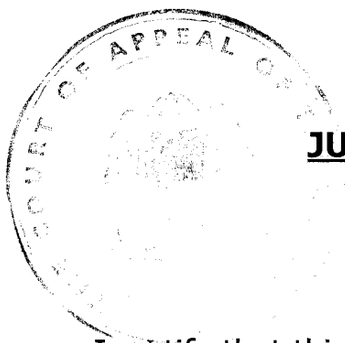
(2) (b) of the Rules to move the Court to amend a document?

In dealing with the first question, I do not think that a wrongly cited application can be taken as a "typing error". I am of the considered opinion that each Rule in the Court of Appeal Rules or any other law intended to be cited has its own format, appearance, content and its purpose. For example Rule 11 (1) (b) of the Rules is different in its format, appearance, and its purpose compared to Rule 11 (2) (b) of the Rules. Hence I think those are two different numbers, with a different format, appearance of that Rule and different purpose. That defect cannot be taken as a mere "typing error" subject to be amended as Mr. Nelson wants me to believe. Typing error may be accepted if it is from the spelling of a word and not in a specific number of a section or Rule of the Court.

As to the second question, I am of the considered opinion that as far as there is specific Rule in the Court of Appeal Rules concerning applications for leave to amend, which is Rule 50 of the Rules, hence the applicants cannot rely on a general rule under Rule 4 (2) (b) of the Rules to apply for leave to amend. For that reason, that makes the applicants to have wrongly moved the Court for citing a wrong citation of the applicable Rule. There is a plethora of authorities of the decisions of this Court to the effect that non citation or wrong citation, renders the matter before Court incompetent and is liable to be struck out. For example, see **China Henan International Co-operation Group v. Salvand K. A. Rwegasira**, Civil Reference No. 22 of 2005 and **NBC v. Sadrudin Meghji**, Civil Application No. 20 of 1997 (both unreported) to name a few.

For the reasons stated above, I find the application lacks merit and the same is incompetent for having wrongly moved the Court for wrong citation. Hence, this application is struck out with costs.

DATED at **ARUSHA** this 21st day of October, 2014.



M. S. MBAROUK
JUSTICE OF APPEAL

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

F. J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL