

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 54 OF 2013

ECONOFINANCE COMPANY LTD (EFC).....APPLICANT

VERSUS

1. ANCHOR-CLEARING AND FORWARDERS }
2. NURALI SOMJI }.....RESPONDENTS

(An application to move a single judge of the Court for an order to extend time for filing a Record of Appeal out of time in an appeal from a Judgment and decree in appeal of the High Court of Tanzania at Dar es salaam)

(Manento, J.)

Dated the 21st day of June, 2005

in

Civil Appeal No. 157 of 2004

RULING

19th July & 9th August, 2016

ORIYO, J.A.:

By way of a notice of motion made under Rules 4(2)(b), 10 and 111, of the Court of Appeal Rules, 2009 (the Rules), the applicant company is moving a single judge of the Court to extend time within which to file a Record of Appeal. The application is supported by an affidavit of the applicant's Managing Director, Mumba Mabu.

The reasons advanced for the delay to lodge the record of appeal within time are stated in the Notice of Motion and the supporting affidavit thereof to the following effect:-

" That the applicant was issued with two defective Drawn Orders by the lower courts; namely the Kisumu Resident Magistrates Court and similarly, the High Court at Dar es Salaam, also erroneously issued defective decree and drawn order to the applicant".

Subsequent thereto, the applicant had to return to the lower courts the defective documents to be exchanged for another set of correctly drawn decrees and drawn orders; hence the delay.

At the hearing of the application, the applicant was represented by the Managing Director, Mr. Mumba Mabu and the respondents were represented by Mr. Omari Mdemu, learned counsel.

At the outset the learned counsel for the respondents raised an objection on the competency of the application; on a number of issues.

Firstly, he pointed out the defects in the affidavit accompanying the application as follows:-

- Absence of name of the attesting officer in the jurat;
- Paragraphs of affidavit not verified;
- Name of verifier not in the verification clause; among others.

On the basis of the above alleged defects, Mr. Mdemu submitted that the affidavit is incurably defective and ought to be struck out.

Relying on the mandatory nature of Rule 48 (1) of the Rules that, all applications to the Court have to be by a notice of motion supported by affidavit. Mr. Mdemu submitted that as the affidavit is incurably defective; once it is struck out, the notice of motion is left with no leg to stand on. He concluded that in the absence of a supporting affidavit, the application will be rendered incompetent and consequently, ought to be struck out. The learned counsel prayed that the application be struck out with costs.

On his part Mr. Mabu complained that the objection raised by the learned counsel took him by surprise in that he is a layman. He prayed

that, in the absence of prior notice from the respondents on the objection raised, each party be condemned to bear own costs.

On whether the application for the extension of time is defective or not, **Rule 48** of the Court Rules, comes into play. It states as follows:-

*" 48 -(1) Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, every **application to the Court shall be by notice of motion supported by affidavit.** It shall cite the specific rule under which it is brought and state the ground for the relief sought."* [Emphasis supplied].

In terms of Rule 48 (1) (supra), it is crystal clear that for any application to be legally valid in this Court and be acted upon, it must be presented by way of a notice of motion supported by a correctly drawn affidavit.

As it was conceded by the Managing Director of the applicant, in the course of hearing of the application and upon my perusal of the defects in the application and affidavit in support, there is no doubt that the said

affidavit is incurably defective and it ought to be accordingly struck out. As correctly observed by Mr. Mdemu, once the affidavit in support is struck out; there is no valid application left in Court; See **Bulk Distributors Ltd VS Happiness William Mollé**, Civil Application No. 4 of 2008; (unreported).

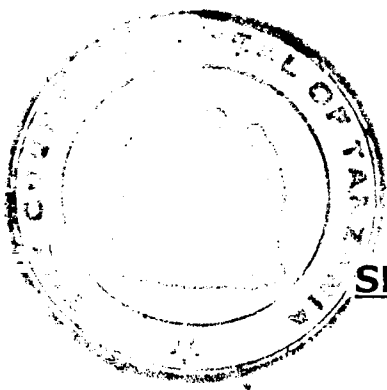
As readily conceded by the applicant company that the application before the Court is incurably defective, there is no other option left but to strike it out, as I hereby do. And further, by consent of parties each to bear own costs.


It is ordered.

DATED at DAR ES SALAAM this 5th day of August, 2016.

K.K. ORIYO
JUSTICE OF APPEAL

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




P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL