

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

(CORAM: JUMA, C.J., MWARIJA, J.A., And MZIRAY, J.A.)

CIVIL APPLICATION NO. 163 /20 OF 2018

ACE DISTRIBUTORS LIMITEDAPPLICANT

VERSUS

THE COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY.....RESPONDENT

**(Application for leave to amend the Record and Memorandum of Appeal in
an appeal against the Judgment and Decree of the
Tax Revenue Appeals Tribunal
at Dar es Salaam)**

(Mataka, Vice Chairperson)

Dated the 15th day of October, 2011

in

VAT Appeal No. 13 of 2010

RULING OF THE COURT

25th & 28th June, 2018

MWARIJA, J.A.:

The applicant, ACE Distributors Limited has, by a notice of motion, brought this application seeking an order granting it the following:-

"...leave to file supplementary record of appeal by including the respondent's reply to statements of appeal before the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal and the parties' correspondences during objection proceedings (the documents) which were not included in the record of appeal lodged by the Applicant on 4th October, 2017."

The application, which was brought under Rules 96(6) and 4(2)(a) and (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules), is supported by the affidavit of Sylivastus Sylvianus Mayenga, advocate.

At the hearing on 25/6/2018, the applicant was represented by Mr. Sylvianus Mayenga, learned counsel whereas the respondent, The Commissioner General (TRA), was represented by Mr. Harold Gugami, learned counsel. The respondent did not file an affidavit in reply and therefore, the application stood unopposed. In the circumstances, Mr. Mayenga urged the Court to grant the prayer on account of the reasons advanced in the notice of motion and the supporting affidavit.

Mr. Gugami did not resist the application. He stated that the respondent did not, from the beginning, object to the application in which the applicant was granted extension of time to file the present application.

From the record, the application arises from Civil Appeal No. 250 of 2017. In that appeal, the applicant appealed against the decision of the Tax Revenue Appeals Tribunal in VAT Appeal No. 13 of 2010. Having filed the said appeal in this Court, it realized that the documents which are

sought to be included in the record of the appeal were omitted from the record.

Under Rule 96(6) of the Rules, the applicant had the liberty of including the omitted documents in the record of the appeal within fourteen days from the date of filing the appeal. Within that period, an appellant does not require the leave of the Court. It is imperative from that provision that after expiry of the prescribed period of fourteen days, the documents can only be included after obtaining the leave of the Court. For this reason, the applicant applied for extension of time through Civil Application No. 40/20 of 2018. That application was granted on 23/4/2018, and consequently, the application at hand was filed.

Before we proceeded to determine the application, we found it apposite to consider the nature of the application as presented by the applicant. Firstly, as stated above, the applicant is seeking to be granted leave to file supplementary record consisting of the omitted documents. Secondly, in the title of the notice of motion and the affidavit, it is shown that the application is *"for leave to amend the Record and Memorandum*

of Appeal in an appeal against the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam”.

When Mr. Mayenga was asked to clarify on that mix-up, he conceded that, because what is sought is inclusion of the omitted documents, the process does not amount to amendment of the record. In our view, that is a correct position because under Rule 111 of the Rules which vests the Court with the powers of ordering amendment of documents, the amendment envisaged in that Rule involves the documents such as; a notice of appeal, memorandum of appeal or a notice of cross-appeal which are contained in an already filed record of appeal. The provision does not allow for introduction of the documents which were not in the record at the time of filing the appeal.

With regard to the issue whether inclusion of the omitted documents can be made by way of filing a supplementary record, the learned counsel for the applicant argued that it is proper to do so. He relied on the provisions under which the Court has been moved. On the basis of what we have earlier stated above, we agree that the Court has been properly moved under Rule 96(6) of the Rules. However, since the documents

which, by virtue of the provisions of Rule 96(1) of the Rules are essential to the appeal, the same cannot be filed through a supplementary record of appeal.

The position was clearly stated in the case of **Haruna Mpangaos & 902 Others v. Tanzania Portland Cement Co. Ltd**, Civil Appeal No. 10 of 2007 (unreported). In that case, the Court had the occasion of interpreting the provisions of Rules 89(1) and 92(1) of the Tanzania Court of Appeal Rules, 1979 (now Rules 96(1) and 99(1) of the Rules respectively). The court stated as follows:-

"....a supplementary record of appeal presupposes the existence of a complete record of appeal lodged by an appellant. Complete in the sense that it contains all the essential documents itemized under Rule 89(1). Under Rule 92(1) the use of the words containing copies of any further documents or additional parts of documents which are, in his opinion required for the proper determination of the appeal' mean, in effect, that the supplementary record of appeal may be lodged for the purpose of making good deficiencies in the record of appeal not affecting the competence of the appeal. A supplementary record of appeal should,

therefore, add something to the otherwise complete record of appeal."

On the basis of the above stated position, inclusion of the omitted documents cannot be made through a supplementary record. The same are to be lodged and served in accordance with the procedure of filing documents after institution of an appeal.

That having been said, we hereby grant the application. The applicant is granted leave to include the omitted documents in the record of appeal. It has to do so within 14 days from the date of delivery of this ruling.

Each party shall bear its own costs.

DATED at DODOMA this 27th day of June, 2018.


I.H. JUMA
CHIEF JUSTICE

A.G.MWARIJA
JUSTICE OF APPEAL

R.E. MZIRAY
JUSTICE OF APPEAL



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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL