

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 295/16 OF 2020

**THE REGISTRAR OF TRADE AND SERVICE MARKS APPLICANT
VERSUS**

**1. GODREJ CONSUMER PRODUCTS LIMITED }
2. HB WORLDWIDE LIMITED }RESPONDENTS**

**(Application for Extension of Time to lodge an Application for Revision
against the Judgment and Decree of the High Court of Tanzania,
(Commercial Division) at Dar es Salaam)**

(Magoiga, J.)

Dated the 22nd day of May, 2020

in

Commercial Appeal No. 2 of 2019

RULING

19th March & 8th April, 2021

KEREFU, J.A.:

The applicant herein has lodged this application seeking an order for extension of time within which to lodge an application for revision of the judgment and decree of the High Court of Tanzania (Commercial Division), at Dar es Salaam, (Magoiga, J.) dated 22nd May, 2020 in Commercial Appeal No. 2 of 2019. The application is brought by way of notice of motion lodged under Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). The application is supported by an affidavit dully sworn by one Raphael Jumanne Mtalima, Senior Officer of the applicant.

The second respondent has also filed an affidavit in reply affirmed by Mohamed Ramzanali Virani, Principal Officer of the second respondent. In the said affidavit, the second respondent has categorically declared that is not opposing the application.

The first respondent has also filed an affidavit in reply, dully sworn by Francis Kamuzora, learned counsel for the first respondent, opposing the application. In addition, the first respondent has lodged a notice of preliminary objection to the effect that: -

- 1. The notice of motion is defective and incompetent for having been drawn and filed by an unauthorized person contrary to Rule 30 (1) of the Tanzania Court of Appeal Rules, 2009; and contrary to Rules 4 (1) (b) (c) and 5 (5) of the office of the Solicitor-General (Establishment) Order, 2018, GN. No. 50 of 2018; and*
- 2. The notice of motion is incurably defective as it does not conform with FORM A in the First Schedule to the Tanzania Court of Appeal Rules, 2009 contrary to Ruie 48 (2) of the said Rules. The said notice of motion does not conform in the following particulars: -*
 - (a) It is undated and unsigned by the party or his advocate; and*
 - (b) It does not bear the date of filing nor the signature of the Registrar.*

At the hearing of the application, the applicant was represented by Mr. Charles Mtae, learned State Attorney assisted by Mr. Raphael

Mtalema, Senior Officer of the applicant. The first respondent was represented by Mr. Francis Kamuzora, learned counsel whereas the second respondent was represented by Mr. Gulam Hassan, also learned counsel.

As the practice of the Court demands, the preliminary objection has to be disposed first before determination of the application on merit. Having that in mind, I invited the counsel for the parties to address me on the preliminary objection raised by the first respondent.

Submitting on the first point of preliminary objection, Mr. Kamuzora argued that the notice of motion was drawn by Raphael Jumanne Mtalima who was not a party to the proceedings and even to this application. He added that, the said Raphael Jumanne Mtalima is also not an advocate of the applicant and was not authorized to handle the application. He cited Rule 30 (1) of the Rules and argued that a party to any proceedings before the Court is required to appear in person or by his advocate. He also added that under Rule 17 (1) of the Rules any document in relation to a matter before the Court is supposed to be drawn and filed by a party or his advocate but not by any other person. It was his strong argument that, since the notice of motion herein is not drawn and signed by a party to the proceedings or even his advocate, is incurably defective.

In addition, Mr. Kamuzora also referred to Order 5 (1), (4) and (5) of the Office of the Solicitor-General (Establishment) Order, 2018 and

argued that because the applicant in this application is represented by the office of the Solicitor-General, then the notice of motion was also required to be drawn and filed by an officer authorized to do so from that office. As such, he insisted that, since in this application, the notice of motion was drawn and filed by unauthorized person, then the same is incurably defective and deserve to be struck out with costs.

On the second point of objection, Mr. Kamuzora submitted that the notice of motion is incurably defective as it does not conform with Form A in the First Schedule to the Rules and it was prepared contrary to Rule 48 (2) of the Rules. He argued that the said notice of motion is not signed by the Court Registrar and there is no exactly date when it was lodged. Based on his submission, Mr. Kamuzora urged me to struck out the notice of motion with costs for being incompetent.

In response, Mr. Mtae challenged the first point of preliminary objection that it is not on a pure point of law to pass the test laid in **Mukisa Biscuit Manufacturing Co. Ltd v West Distributors Ltd** (1969) EA 696. He then argued that the notice of motion was drawn by Mr. Mtalima who is an employee of the applicant and a practicing Advocate with Registration Roll No. 3355. He said that these issues are however supposed to be established and proved by facts and evidence. In that regard, he urged me to overrule the said objection for devoid of merit.

However, Mr. Mtae conceded to the second point of the preliminary objection and he prayed to be granted leave to amend the notice of motion. It was his argument that if the said leave is granted, the respondents will not be prejudiced in anyway.

In a brief rejoinder, Mr. Kamuzora welcomed his learned friend's concession to the second point of objection but he disputed the prayer for an amendment of the notice of motion. He contended that the absence of signature of the Registrar and a missing date on when exactly the application was lodged in the Court cannot be cured by an order of amendment. He thus insisted for the application to be struck out with costs.

I have given a careful consideration to the arguments for and against the preliminary objection advanced by the learned counsel for the parties. Upon concession by Mr. Mtae on the second point of objection, I prefer to start with that point, which I feel should not detain me.

I have as well perused the notice of motion and I do agree with the learned counsel for the parties that the same is incurably defective for being crafted contrary to the Rules and the guiding procedures on filing of applications of this nature. Pursuant to Rule 48 (2) of the Rules the notice of motion is required to be prepared in accordance with Form A in the First Schedule to the Rules and must be signed by the applicant or his advocate. For the sake of clarity Rule 48 (2) provides that: -

"A notice of motion shall be substantially in the Form A in the First Schedule to these Rules and shall be signed by or on behalf of the applicant".

Again, Rule 17 (1) of the Rules provides that: -

"Any document may be signed on behalf of the person making it by any person entitled under Rule 30 to appear on his behalf".

Therefore, since under Rule 30 (1) of the Rules a party to any proceedings before the Court is required to appear in person or by an advocate, then it goes without saying that those are the only persons envisaged to prepare and sign documents for the Court, which is not the case herein.

It is also on record that the notice of motion before me is not signed and dated and there is also no evidence as to whether the said notice was lodged in this Court as it does not bear the stamp of the Court, signature of the Registrar and even the date when it was lodged. It is even not clear whether the said notice was indeed lodged in this Court to give it authenticity and credence to be placed before the Court. This is as good as the same does not exist in this Court. So, by all means this is an incompetent matter and there is nothing to be amended. In the circumstances, I agree with Mr. Kamuzora that the prayer for amendment

of the notice of motion made by Mr. Mtae, in the circumstances, is not practicable.

In my view, his point alone suffices to dispose of the matter and I feel that it is not necessary to dwell on discussing, the remaining point of the preliminary objection.

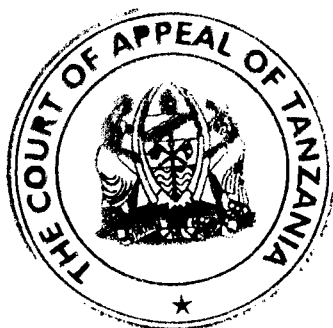
In the event, I sustain the second point of the preliminary objection raised by the first respondent. Accordingly, the notice of motion is hereby struck out with costs.

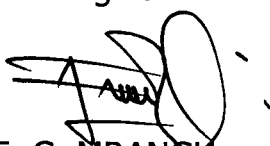
It is so ordered.

DATED at DAR ES SALAAM this 1st day of April, 2021.

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 8th day of April, 2021 in the presence of Mr. Raphael Mtalema, learned Senior State Attorney for the Applicant also Mr. Francis Kamuzora, learned counsel for the 1st Respondent holding brief of Mr. Hassan Ghullam, learned counsel for the 2nd Respondent, is hereby certified as a true copy of original.




E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL