

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

CIVIL REVISION NO.66 OF 2004

MOHAMED I.A. ABDUL HUSSEINAPPLICANT

VERSUS

PITA KEMPAP LTDRESPONDENT

R U L I N G

A.Shangwa,J.

This is a second preliminary objection raised by learned counsel for the Respondent MS Maira and Co; Advocates on 15/8/2005 against the Applicant's application filed by MS Rwebangira and Co; Advocates on 23/5/2005.

The first preliminary objection against the Applicant's application was made by learned counsel for the Respondent on 24/2/2005. It was to the effect that the Applicant's

application dated 28/9/2004 was incompetent for being supported by an incurably defective affidavit. On 10/5/2005, I upheld that objection and I did strike it out.

In this preliminary objection which is a second one, MS Maira and Co; Advocates are saying that the Applicant's chamber summons filed on 23/5/2005 is bad in law for lumping the two orders in one application and is supported by only one affidavit. They are asking this Court to strike it out with costs.

In his chamber summons which is the subject of this preliminary objection, the Applicant is seeking for two things namely :

1. An extension of time for filing an application for leave to prefer an appeal against the decision of this Court to the Court of Appeal.

2. Leave to lodge an appeal against the decision of this Court made by Mihayo, J. on 3/9/2004.

The Application is supported by the affidavit of Mohamed I.A. Abdulhussein who is the Applicant.

The major complaint against the chamber summons is that there are two applications which have been lumped together for consideration by this Court. One is for extension of time for filing an application for leave to appeal to the Court of Appeal and another one is for leave itself. These are two different applications. They are two in one and they are supported by a single affidavit.

Indeed, as correctly submitted by MS Maira and Co; Advocates, the law requires that every application made under the Civil Procedure Code, 1966 must be supported by affidavit. See O.XLIII, r.2 of the said Code.

In practice, it is wrong to lump two different applications together for consideration by the Court. In law, it is wrong to support two different applications by a single affidavit . As it was correctly argued by MS Maira and Co; Advocates, doing so is contrary to O.XLIII r.2 of the Civil Procedure Code, 1966.

In cases where the Applicant fails to file an application for leave to appeal to the Court of Appeal within the statutory period of time, it is advisable that an application for extension of time to file an application for such leave should be preferred first. Once it is granted, then the application for leave should follow. If it is refused the matter will end there unless an appeal is preferred to the Court of Appeal against such a refusal.

My advise does not intend to attract a multiplicity of applications, instead, it is intended to lay down a systematic

approach in legal practice where the Bar is required to move step by step in order to avoid confusion.

For the reasons I have given, I once again strike out the Applicant's application. As the previous application was similar in form to this one, and learned counsel for the Respondent omitted to object to it on similar grounds, I order that each party should bear its own costs.


A. Shangwa,

JUDGE

6/12/2005

Delivered in Court this 6th day of December, 2005.


A. Shangwa

JUDGE

6/12/2005