

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL APPEAL NO.491 OF 2020**

BETWEEN

**GODREJ CONSUMER PRODUCTS
LIMITED.....APPELLANT**

VERSUS

HB WORLDWIDE LIMITED.....1ST RESPONDENT

THE REGISTRAR OF TRADE

AND SERVICE MARKS.....2ND RESPONDENT

Date of last Order:22/06/2021

Date of Ruling: 22/04/2022

R U L I N G

MGONYA, J.

Before this Honourable Court is filed a Miscellaneous Application by the Applicant herein seeking for the following:

a) To produce documentary evidence relevant to show its locus standi in instituting Civil Appeal No. 147 of 2019 (the "underlying Appeal");

b) To summon in court for oral examination Mr. Raphael Mtalima in order to determine his credentials and authority to preside over

cancellation proceedings of Trade Mark Registration No. TZ/T/2011/147 under section 35 of the Trade of the Trade and Service Marks Act, Cap. 326 [R. E. 2002].

Submitting on the application the applicant avers that in terms of the application and the supporting affidavit, the Applicant seeks for an order of this Court to allow the Applicant to produce documentary evidence so as to prove that the Applicant has *locus standi* in instituting an appeal before this Court.

The Applicant has moved this Court by the provisions of **section 76 (1)(d) and Order XXXIX Rule 27 (1) (b) of the Civil Procedure Code Cap. 33 [R. E. 2019]**, It was named in the submissions that the said documentary evidence reiterates on the amalgamation scheme and the applicant finds the same of essence to establish *locus standi* of the Applicant in the appeal filed before this Court.

It is the Applicant's contention that this Court call one Mr. Raphael Mtalima in order to determine his credentials and authority for presiding of the proceeding for cancelling a Trade Mark Registration, since the same was done while Mr. Mtalima had no authority to sit in the said proceedings.

In reply to the Application, both Respondents rivalry and vigorously argued against the Application and orders sought by the Applicant. It was the position of the 1st Respondent that the general rule is that the appellate Court should not admit additional evidence for the purpose of disposal of an appeal and the parties are not entitled to produce additional evidence whether oral or documentary in the appellate Court. Additional evidence can only be taken subject to certain conditions. However, the aspect of additional evidence is upon the Court to call for the same and not for a party to request for the Court to take additional evidence. And additional evidence is never meant for one to cover up the weak points at the hearing on appellant stage.

Submitting on the second prayer, the 1st Respondent stated that the attempts by the Applicant to call Mr. Mtalima are futile and premature since the Applicant's *locus standi* is still nebulous. It is until when the matter on locus is settled, then the Applicant will have room to sought for other prayers. Either from the record, Mr. Mtalima signed the letter on behalf on the Registrar and not as the Registrar.

Arguing the application, the 2nd Respondent on the first prayer on additional evidence stated that, the

requirement of additional evidence or document to be produced before any appellate court on the basis of law is the discretion of the court through a *suo motto* practice to enable the court to pronounce judgment. Further that the law does not give room for such an application to be made by the Applicant for the purpose of curing anomalies on his pleadings and thus therefore this application is unjustified.

Moreover, the list of documents that the Applicant seeks to produce are ones that were in the Applicant's possession at the material time of hearing the said matter. The Applicant was levied with the duty to produce the same and not seek to produce the said documents at an appeal stage.

Submitting on the second prayer the 2nd respondent declared that, the Applicant is misleading the Court upon the whole circumstance of the Trade Mark that was expunged from records as per the records. The claim that Mr. Mtalima had no authority to entertain the matter is a misconception. Mr. Mtalima acted under the instructions of the Registrar where he also signed a letter/notification on behalf of the Registrar of Trade and Service Mark and not in his personal capacity as wrongly construed by the Applicant herein.

I have examined and considered the application and above submissions and their context by the parties. I am obliged to make a decision hereto.

Beginning with the 1st prayer sought on producing addition evidence this court has been moved by the provisions of **section 76 (1)(d) and Order XXXIX Rule 27 (1) (b) of the Civil Procedure Code Cap. 33 [R. E. 2019]**. Revisiting the provisions of **section 76 (1) (d) of the Civil Procedure Code (supra)**, I find that one of the powers that the High Court is vested with is taking of addition evidence. This Court for prudent reasons further glanced to the provisions of **Order XXXIX Rule 27 (1) (b) of the Civil Procedure Code** and the whole provision at large and it came to the knowledge that, the law also allows the court to allow production of evidence if the same was not admitted at the court from which a decree is appealed from, this is specifically under **Order XXXIX Rule 27 (1) (a) of the same Act.**

Following the circumstance and nature of the matter at hand. The matter before this court traces its history from the Registrar of Trade and Service Marks. The underlying appeal originated from the said office. Having thoroughly gone through the records, I find that the application in respect to the 1st prayer for producing

additional is sought so as to establish that the Applicant has locus in filing the appeal. Tracing as to why the applicant seeks such an order is on the bases that the said document be tendered is said to be missing from the records of the Registrar of Trade and Service Marks.

However, from the records and submissions together with documentary evidence, the applicant states that the document sought to be reproduced was filed with the said office and a receipt that proved the same to have been filed with the Registrar was issued to the Applicant. Therefore, missing of the said document with proof of the same to have been filed with the said office is upon the Registrar's office to trace its whereabouts and not to punish the Applicant for negligence of the Registrar's office upon the whereabouts of the said document intended to be reproduced.

It has come to my knowledge that the document prayed to be reproduced is concerned with the fact of amalgamation of which thereto states the *locus* of the Applicant to have legal personality in appealing in the appeal herein. Moreover, tracing the history back to the objections that were raised in the appeal and the arguments therein, I find that the intended document to be tendered for interest of justice and powers vested to

this court as provided for under **Order XXXIX Rule 27(1) (a) of the Civil Procedure Code**. The intended document is of utmost importance to be reproduced for the reasons stated above.

In determination of the **2nd prayer** sought by the effect that Mr. Raphael Mtalima be ordered to appear to state his credentials. This is required so as to reveal that he acted within the powers conferred to him by law. It was both the Respondents' argument that the said prayer is irregular and does not have legal basis.

It is from the records that Mr. Raphael Mtalima is an employee of Trade and Service Marks office under BRELA the fact which has not been disputed. The Records demonstrate that Mr. Mtalima was working under the instructions of the Registrar and that the letter was signed on behalf of the Registrar.

However, it is strange that the applicant seeks for an order to summon Mr. Mtalima to state his credential so as to prove his legality on the acts done by him as reiterated in the records. It is a matter of practise and law that when one is aggrieved by a decision the same has the right to appeal to an upper authority against the said decision. One cannot appeal against a person at his/her personal

capacity since the same was working under instruction and on behalf of the Registrar.

Having said all of the above and for the reasons stated **I find that the application filed by the Applicant is hereby granted only for reproducing the document to show validity of his claimed *locus standi*.**

It is so ordered.

Right of appeal is explained.




L. E. MGONYA

J U D G E

22/04/2022

Court: Ruling delivered before Hon. Kiwonde, Deputy Registrar in the presence of Mr. Gulam Hashim, Advocate for the 1st Respondent also holding brief of Mr. Kamuzora, Advocate for the Applicant but in the absence of the 2nd Respondent and Richard- RMA.


L. E. MGONYA

J U D G E

22/04/2022

