

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 42 OF 2004

PRISMO UNIVERSAL ITALIANA S.r.l.....PLAINTIFF
VERSUS
TERMCOTANK (T) LIMITED..... DEFENDANT

R U L I N G

KIMARO, J.

Date of hearing 01/09/2005.

Ruling on 8/09/2005.

Apart from the application seeking for amendment of the
plaint, Ms Karume has also filed an application seeking for leave to
produce documents. Prof. Fimbo has also raised a preliminary
objection that the application is incompetent and bad in law on the
grounds that;

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- i) *it contravenes the provisions of Section 78 of the Civil
Procedure Code 1966 as amended by Act No.25 of 2002.*
- ii) *This court has no jurisdiction to review/revise its order made
on 2nd May 2005.*

iii) *It contravenes the provisions of Order VIIIA Rule 4 as well as Order VIIIB of the Civil Procedure Code 1966; the Applicant has failed or neglect to obtain an order for departure from scheduled order of resumption of hearing of the main suit on 15th, 16th and 17th August 2005."*

As both applications were argued simultaneously, and the preliminary objections are the same, the Advocates adopted the submissions made in respect of the application seeking for amendment of the plaint.

I will for the same reasons given in the application seeking for amendment of the plaint, uphold the preliminary objection on the ground of contravention of Order VIIIA Rule 4 as well as Order VIIIB of the Civil Procedure Code 1966.

I will further uphold the objection on the other two grounds that this court has no jurisdiction to revise the order made by this court on 2/05/2005. The plaintiff seeks to have the documents which were rejected on 2/05/2005 be admitted in evidence because they have been annexed to the proposed amended plaint.

While there is no dispute that this court has discretion under Order VII rule 18(1) of the Civil Procedure Code 1966 to allow the

plaintiff to produce documents not annexed to the plaint or entered into a list of documents to be relied upon by the plaintiff, this discretion can only be exercised where leave is sought before introducing the documents in evidence. If they are introduced in evidence without leave and the court rejects them, the plaintiff loses the right to request for such leave. In other words leave has to be sought before the order for rejection. If the leave is sought after an order for rejection, that application is for a review and this court has no jurisdiction to grant the same because Section 78 (2) as amended by Act No.25 of 2002 does not allow for such a review because the order for rejection is interlocutory.

For the reasons given above, the preliminary objection is upheld and the application is struck out with costs.

N.P.KIMARO,

JUDGE

05/09/2005

Date: 8.9.2005

Coram: Hon. N.P.Kimaro, Judge.

For the Applicant – Ms. Karume.

For the Respondent – Prof. Fimbo.

CC: R. Mtey.

Court: Ruling delivered today.

Order: The preliminary objection is upheld and the application is struck out with costs.

N.P.KIMARO,

JUDGE

8/09/2005

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I Certify that this is a true and correct
of the original order Judgement Rulling
Sign PN ma
Registrar Commercial Court Dsm.
Date 12/9/05