



**KAJI, J. A.:**

On 27<sup>th</sup> October, 2004 this Court delivered judgment in Civil Appeal No. 72 of 2002 against the applicant, by then the appellant, Stella Temu. The applicant was dissatisfied. Since there is no further appeal, the applicant decided to come back to the Court by way of an application for review which was lodged on 17<sup>th</sup> December, 2004. According to the notice of motion, the application was made under Article 13 (b) (a) of the Constitution of the United Republic of Tanzania, Rules 3 (1) and 3 (2) (a) and (b) and 45 of the Court of Appeal Rules, 1979, together with any other enabling provisions of law. In the notice of motion for review the applicant, through her advocate Mr. Malamsha, from N and M Law Associates (Advocates), preferred six (6) grounds for review.

On 26<sup>th</sup> February, 2007, the applicant's advocate filed a notice of intention to amend the notice of motion. The notice which was made under Rule 3 (2) of the Court of Appeal Rules, 1979 is couched in the following terms:-

TAKE NOTICE that on the first day of hearing the above mentioned application, Mr. Malamsha, advocate for the applicant above mentioned, shall pray for leave of this Court to amend the notice of motion filed on 17<sup>th</sup> December, 2004 by amending Rule 3 (1) and (3) (a) and (b) to read Rule 3 (2); and Rule 45 so as to read Rule 45 (1) and(2); and to incorporate new and important evidence, and to correct errors apparent on the face of the record, and to substantially comply with Form A in the First Schedule to the Court of Appeal Rules, 1979.

On 27<sup>th</sup> February, 2007 another advocate of the applicant, Dr. Lamwai, lodged a supplementary notice of informal application for amendment of the motion. The notice reads as follows:-

TAKE NOTICE that at the hearing of the application for review, the applicant will informally move the Court for an order granting the applicant leave to amend the motion in the following terms:-

- i. In addition to the reasons cited in the motion to add the reason that there is an error of law on the face of the record in that the applicant was already in the employment of the respondent by operation of the law and thus she could not have been re-employed and / or seconded to the respondent;
- ii. By expunging from the notice of motion all the matters which are argumentative and instead by putting those matters in the affidavit in support of the motion.

At the hearing of the application Dr.Lamwai told us why he decided to move the Court informally. He said he had been instructed just

the previous day and could not make all the necessary processes for a formal application within that short span of time. Dr. Lamwai pointed out the intended amendments to the notice of motion which include:-

1. Addition of Section 4 (3) of the Appellate Jurisdiction Act, 1979.
2. Recasting the current notice of motion by moving the grounds thereat to the affidavit so as to conform with Rule 45 (2) of the Court Rules, 1979.
3. By stating in the notice of motion an addition of section 28(3) of the Tanzania Revenue Authority Act, read together with Government Circular No. 7 of 1995 which, in his view, were raised by the Court suo motu during the judgment and were limited to the amount of money (quantum) to be paid rather than to the status of the applicant, and that counsel had no opportunity to address the court on the point adequately.

In reply, Mr. Lugaiya, learned counsel for the respondent, Tanzania Revenue Authority, resisted the applicant's prayer to make an informal application on the ground that there is no sufficient cause for departing from the usual practice of filing a formal application whereby he would be in a better position to know precisely the type of the intended amendments, and to file his reply thereat if necessary. Mr. Lugaiya remarked that the proposed amendments as narrated by Dr. Lamwai appear to be a departure from what was proposed in the notice lodged on 26.2.2007, and that by removing the grounds from the notice of motion and shifting them to the affidavit will leave the notice of motion naked without supporting grounds which will render it incurably defective. To support his argument on the point the learned counsel cited the decision of a single judge of the court in the case of **Citibank Tanzania Limited V Tanzania Telecommunications Co. LTD and three others- Civil Application No. 64 of 2003** (unreported). Mr. Lugaiya observed that, the intended addition of section 28(3) of the Tanzania Revenue Authority, read together with

Government Circular No. 7 of 1995 in the proposed amendment, will not be an amendment of the notice of motion but will bring in a new notice of motion which will change the nature of the application from a review to the re-hearing of the appeal itself.

In his rejoinder Dr. Lamwai remarked that, there is no provision in the Court Rules for a formal application to amend notice of motion. He considered Rules 47 and 104 of the Court Rules, 1979 to be inapplicable. The learned counsel contended that, the proposed amendments will not leave the notice of motion naked but that it will have one more ground added. He denied the intended addition of section 28(3) and Government Circular No. 7 of 1995 to change the nature of the application from a review to the re-hearing of the appeal.

It is the general practice of the Court as provided for under Rule 45 (1) of the Court Rules 1979, that all applications to the Court must be formal, except those falling under the

exceptions provided under Rule 45(3) of the Court of Appeal Rules, 1979, or under any other rule allowing informal applications.

The exceptions under sub rule (3) are:-

- (a) Applications made in the course of hearing which may be made informally; or
- (b) Applications made by consent of all parties which may be made informally by letter.

In the instant case, the applicant's prayer to make an informal application for leave to amend the notice of motion has been strongly opposed by the respondent's counsel for the reasons we have already stated above.

We have carefully considered Dr. Lamwai's explanation why he decided to pray for an informal application for the proposed amendments, and Lugaiya's grounds for opposing the move. While we highly appreciate the efforts made by Dr. Lamwai who had been instructed just a day before the hearing date, yet under the circumstances of the case, we think, in the interest of justice, the applicant must make a formal application so that the respondent's

counsel can be in a better position to know exactly the nature of the proposed amendments so that he may give a rational reply thereat if he so wishes. On the day when Dr. Lamwai addressed the court why he intended to make an informal application for the proposed amendments, Mr. Lugaiya appeared to have been taken by surprise. We think the position would have been different had the application been formal, and preferably with a draft of the proposed amended notice of motion with its accompanying affidavit. We therefore direct the applicant to lodge a formal application for amendment of the notice of motion, if she wishes, with a draft of the intended amended notice of motion with its accompanying affidavit. If she decides to do so she must do so within a period of 14 days from the date of delivery of this ruling.

DATED at DAR ES SALAAM this 14<sup>th</sup> day of March 2007.

A.S.L. RAMADHANI  
**JUSTICE OF APPEAL**

H.R. NSEKELA  
**JUSTICE OF APPEAL**

S.N. KAJI  
**JUSTICE OF APPEAL**

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

S. M. RUMANYIKA  
**DEPUTY REGISTRAR**