

TANZANIA / JUDGMENT

chang quing international investment ltd vs tol gas ltd 2016 tzca 190 13 december 2016

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13 December 2016

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IN I l i r C O U I U O l A I M' I A l O l 1 A N / A N I A A I O A K I S S A I A A M C I V U A P I M 1 C A I I O N N O. / ') ' J
() | J () \ U C H A N G Q I N G I N T E K N A l I O N A l I N V E S T M E N T L I M I T E
D , A m K A N r V I H S U S T O L G A S L I M I T E
D f # f S M O N W N f (A p p l i c a t i o n f o r E x t e
n s i o n o l t i m e I t) a p p l y l o r R e v i s i o n l i o m t h e d e r i s i o n o f t h e H i g h C o u r t o f T a n z a n i a a t
D a i e s S a l a a m , C o m m e r c i a l D i v i s i o n (M a n s o o r , I) d a t e d 4 , h d a y o f M a r c h , 2 0 1 6 I n
C o m m e r c i a l R e v i e w N o 1 o f 2 0 1 5

RULING

30fr November & 13tn December, 21)16 MZIRAY, J.A.; By a Notice of Motion, the applicant Chang Qing International Investment Limited is moving the Court for an order that: time be extended within which to file an application for a revision against the decision of the High Court of Tanzania (Commercial Division) at Dar es Salaam dated /V" March, 2016 in Commercial Review No. 1 of 2015. The application is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009, supported by the affidavit sworn by Audax Kahendaguza Vedasto, learned counsel for the applicant. Before the Notice of Motion could come for hearing, the respondent lodged a Notice of Preliminary Objection contending that the Notice of Motion was filed against a wrong party. At the hearing of the preliminary objection the applicant was represented by Mr. Audax Kahendaguza Vedasto, learned counsel, and the respondent was advocated for by Mr. Isaya Gibson Matambo, learned counsel. In arguing the ground of objection, Mr. Matambo submitted that in previous applications at the High Court the parties to the suit were CHANG QUING INTERNATIONAL INVESTMENT LIMITED VS. TOL GASES LIMITED. The learned counsel submitted that in this application the applicant is suing TOL GAS LIMITED who was not a party in the previous applications. The learned Counsel therefore submitted that the applicant has filed an application against a wrong party, thereby rendering the application fatally defective. The learned counsel referred the case of Christian Mrimi vs Coca Cola Kwanza Bottlers Limited, Civil Appeal No. 122 of 2008 in which the Court was of the view that the appeal was incompetent for failure to identify the appropriate party. The anomaly was taken to be fatal and the 2 Court

striked out the appeal with Costs. Basing on that decision, the learned counsel urged this Court to strike out the application for suing a wrong party. Mr. Vedasto conceded in the first place that the name of the respondent written in the application have two letters missing. He pointed out that the name appearing in the Notice of Motion is TOL GAS LIMITED instead of TOL GASES LIMITED as alleged by the learned counsel for the respondent. However, the learned counsel was quick to point out that the complained defect was corrected by the clarification which appears in the title of the respondent's Affidavit in Reply and in the Notice of Preliminary Objection in which the applicant's name was correctly written with all the letters as they appear in the Decree and the Ruling in Commercial Case No. 78 of 2013. On that basis therefore, the learned counsel urged this Court to rule out that the error has been corrected by the clarification aforesaid or else, the Court should allow the applicant to amend the Notice of Motion and the accompanied affidavit so as to write correctly the misspelled name. To support his argument, the learned counsel referred this Court to the decisions in the cases of Samwel Kimaro Vs. Hildaya Didas, Civil Application No. 200 of 2012, Sheikh Issa Seif Gulu Vs Rajab Mtoro & 10 Others, Civil Appeal No 124 of 2014, OTTU on behalf of p.L. Asenga and 109 others Vs. Ami, Civil Application of 2011, TANESCO Vs. Majura Mfungo, Civil Application No 199 of 2015, Zanzibar Shipping Corporation Vs. Mkunazini General Traders ZNZ, Civil Appeal No 6 of 2005 (All unreported) and a persuasive decision in the case of Evans Construction CO. Ltd Vs Carrington Co. Ltd and another [1983] IALL ER 310, whereas the Courts in those cases allowed amendment of the documents in Court to rectify the errors. The learned counsel however distinguished the decision in Chirstine Mrimi's Case (supra) from the facts of the case at hand on several grounds. He stated that in that case the Court found it as a fact that the name used had the effect of failure to identify the appropriate party, while in the present case the issue on failure to identify a party does not feature as the Affidavit in Reply and the Notice of Motion makes clear to whom exactly the application was against. Additionally, he argued that respondent has corrected the error by writing the correct name of the applicant. The learned counsel also distinguished the case of Christian Mrimi (supra) with the case at hand. He stated that the error in that case was of using a different name altogether, a scenario quite different from the present case. In this case only two letters in the same name are missing; instead of the word "G A S F S" in plural, it was written "G A S" in singular. The counsel further submitted that according to section 8 (c) of the Interpretation and General Clauses Act - Cap 1 RE 2002, the canon of interpretation makes singular to include plural and vice versa. In the circumstance the learned counsel argued that the error is not fatal to render the application incompetent. On that basis therefore the learned counsel urged the Court to overlook the error and ignore it or in the alternative, amendment be ordered to rectify the error so that the matter proceed on merit. In rejoinder submission the learned counsel for the respondent reiterated his submission in chief. He stressed that the anomaly is serious in nature because a wrong party has been included. He insisted that when the Notice of Motion was lodged on 26/9/2016, the name of the respondent appearing on the document is "TOL GAS LIMITED" instead of "TOL GASES LIMITED". As rightly pointedly by Mr. Vedasto, both the Affidavit in Reply and the Notice of Preliminary Objection by the respondent have cited the true and correct name of the respondent with all the missing letters "E S" in g on this, it seems to me that that the variance did not mislead the respondent to its prejudice. I am saying so because the impression I

get respondent in its Affidavit in Reply and the Notice of Preliminary Objection is that it corrected the error by properly spelling the name of the respondent as it had appeared in the Ruling and Decree of the High Court. I find the case of Christian Mrimi (supra) cited by the learned counsel for the respondent to be distinguishable in the circumstance of this case as the issue of failure to identify the appropriate party (respondent) could not arise, hence not relevant here. Under the circumstances and on the balance of convenience, I find and order that the error committed should be overlooked for and allow the matter to proceed on merit. The respondent's name should however read TOL GASES LIMITED as appearing in the Affidavit in Reply. I make no order as to costs. DATED at DAR ES SALAAM this 6th day of November, 2016. R.E.S. MZIRAY H1STICE OF APPEAL I certify that is a true copy of the original r®*

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/chang-qing-international-investment-limited-v-tol-gases-limited-Extensionoftime-tzca-2016--6a3ea5283b1caa91298206f2

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