

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

**CIVIL APPLICATION NO. 70 OF 2002
In the Matter of an Intended Appeal**

BETWEEN

CONSOLIDATED HOLDING CORPORATION APPLICANT

AND

NYAKATO SOAP INDUSTRIES LTD. RESPONDENT

**(Application for leave to amend Notice of Appeal and
Memorandum of Appeal from the decision of the High
Court of Tanzania at Dar es Salaam)**

(Bubeshi, J.)

dated the 5th day of October, 2000

in

Civil Case No. 205 of 1999

R U L I N G

MROSO, J.A.:

In October, 2000 the High Court of Tanzania, Bubeshi, J., entered judgment against NBC Holding Corporation, which had been sued by Nyakato Soap Industries Ltd. The former was dissatisfied with the judgment and proceeded to appeal against it by duly filing a notice of appeal and, subsequently, a memorandum of appeal. The plaintiff in the case before the High Court filed a cross-appeal. Both the appeal and the cross-appeal are still pending in this Court.

In the year 2001 Parliament passed legislation, Act No. 10 of 2001, changing the name "NBC Holding Corporation" to "Consolidated Holding Corporation." In view of that change of name, the applicant has filed an application to this Court by a notice of motion praying for leave to change the name of the appellant both in the notice of appeal and in the memorandum of appeal to Consolidated Holding Corporation, in place of NBC Holding Corporation. The notice of motion is filed under Rules 46, 47 (1) and 104 of the Court Rules. It seems that the citing of Rule 46 was unnecessary.

At the hearing of the application the applicant was represented by Mr. Mwandambo, learned advocate, and the respondent was advocated for by Mr. Ndyanabo, learned advocate. Mr. Mwandambo urged two grounds which were supported by his affidavit. Apart from the ground relating to replacing of the name NBC Holding Corporation by the new name Consolidated Holding Corporation, he also prayed that the notice of appeal should state the part of the High Court decision against which the appeal is intended, which is

now missing from the filed notice of appeal. That would be in compliance with Rule 76 (3) of the Court Rules.

Mr. Ndyanabo did not oppose the application and seized the opportunity to make an oral application for leave to amend the notice of cross-appeal which he had also filed before NBC Holding Corporation was changed to Consolidated Holding Corporation. Mr. Ndyanabo did not cite the particular rule under which he made the informal application. Rules 45 (1) and (3) and 104 permit such application and as Mr. Mwandambo did not object to Mr. Ndyanabo making an informal application in the course of hearing the formal application, I entertained it.

Rule 45 (1) of the Court Rules provides that subject to the provisions of sub-rule (3) of that rule, all applications to the Court must be by motion which should conform to Form "A" in the First Schedule to the Rules of Court. However, sub-rule (3) of the Rule provides that an informal application may be made in the course of hearing. Can the Court allow amendment of filed documents, whether the application is formal or informal?

Rule 104 of the Court Rules provides –

The Court may at any time allow amendment of any notice of appeal or notice of cross-appeal or memorandum of appeal, as the case may be, or any other part of the record of appeal, on such terms as it thinks fit”.

Mr. Mwandambo, citing a ruling of this Court in **Hassan Nuru Hassan v. Consolidated Holding Corporation**, Civil Application No. 118 of 2001 (unreported), in which this Court allowed the amendment of a notice of appeal in order to substitute the name Consolidated Holding Corporation for NBC Holding Corporation, even where there had not been a formal application, argued that the Court should grant this application in which there had been a formal application. This argument is accepted and, in fact, supports more Mr. Ndyanabo’s informal application than Mr. Mwandambo’s which has been made squarely under Rule 104 of the Court Rules.

Both learned counsel’s applications to amend the notice of appeal and cross-appeal as well as the memorandum of appeal are granted, so that the name Consolidated Holding Corporation is substituted for the name NBC Holding Corporation.

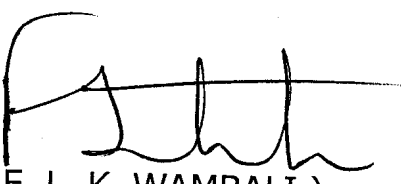
The second prayer by Mr. Mwandambo that the notice of appeal be amended so that the part of the High Court decision against which it is intended to appeal is specified in the notice of appeal, is also granted. The Notice of Appeal should state that it is intended to appeal against that part of the decision as decides on "the award of general damages, interest and costs."

The amended notice of appeal, memorandum of appeal and cross-appeal must be lodged in court within seven days of the date of this ruling. It is so ordered.

DATED at DAR ES SALAAM this 12th day of February, 2004.

J. A. MROSO
JUSTICE OF APPEAL

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


(F. L. K. WAMBALI)
DEPUTY REGISTRAR