

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CIVIL APPEAL 102 OF 2000

1 JAYANTKUMAR VRAJLAL SHAH

2 MRS. SHIKSHA DEVI DAS.....APPLICANTS

AND

1 MIDCO HOLDINGS LIMITED

2 SUMMIT TEXTILE (E.A.) LTD.....RESPONDENTS

R U L I N G

By this motion the applicants seek for orders:- “1. That this Honourable Court be pleased to confirm to the applicants herein that service need not be effected on any person who took no part in the proceedings in the High Court.

ALTERNATIVELY 2. That leave be granted to serve the Notice and Record of Appeal on the remaining Shareholders of the Companies, namely, MIDCO HOLDINGS LIMITED and SUMMIT TEXTILES (E.A.) LIMITED.

3. That as some of the Shareholders have died that leave be granted to serve the Notice and Record of Appeal as soon as it is ascertained as to who are the Legal Representatives thereof within such time as is deemed fit and proper.”

This is about the fourth time this matter is coming up to this Court due, mainly, to the inability of the applicants to lodge a valid appeal due to a variety of breaches of the relevant rules. In this regard, therefore, I need not rehash the facts that have given rise to the application as they are now of common knowledge.

The respondent companies have in total nineteen shareholders, excluding the applicants. They reside in various places – Nairobi, Mombasa and London. Three of them are now deceased. One shareholder only could be said to have taken active participation in the suit since he swore affidavits which were used in the proceedings. The rest are blissfully passive.

It is generally agreed, and the respondents’ counsel have not disputed, that the shareholders of the respondent companies are persons directly affected by the appeal. That being the position, then this application under rule 76(1) of the Court of Appeal Rules is well merited. However, Mr. Oraro for the respondent companies, has opposed the application on the grounds, firstly; that the orders sought are ambiguous in that the court is being asked to make an election, secondly; that the parties to be served are unknown, thirdly; that this motion amounts to an abuse of the court process since so many applications of more or less similar nature have been dismissed, and finally; that the grant of the application would be prejudicial to the respondents.

True, the applicants have lodged myriad applications before this Court. I do not consider them an abuse of the process of court but a manifestation of fervent desire to pursue the appeal before the final court on the land. The applicants subject to compensating the respondents by way of costs should be allowed to appeal. As the matter before the court is a Winding-Up Cause, I do not think that any prejudice would be caused to the respondents if all shareholders, and, indeed, other interested parties were incorporated in the appeal. Also, I do not think that the interested parties can be said to be unknown to the applicants.

In the circumstances, I grant the application as prayed. Leave is hereby granted to the applicants to serve Notice of Appeal and Record of Appeal on the remaining shareholders of the respondent companies. Leave is also granted to serve Legal Representative of the dead shareholders. Service upon them of the aforesaid documents shall be done within 21 days hereof.

Costs of this application are awarded to the respondents.

DATED and DELIVERED at Nairobi this 1 st day of February, 2005.

P.K. TUNOI

JUDGE OF APPEAL

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