



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: E.M. GITHINJI, HANNAH OKWENGU & J. MOHAMMED, JJ.A.)**

**CIVIL APPLICATION NO. OF 65 OF 2015**

**BETWEEN**

**LEMSOFT CONSULTANCY LTD.....APPLICANT**

**AND**

**KABASA GUEST HOUSE LTD.....1<sup>ST</sup> RESPONDENT**

**MOCHAMA & COMPANY ADVOCATES.....2<sup>ND</sup> RESPONDENT**

***(An Application relating to High Court Civil Appeal No. 100 of 2013, Court of Appeal Civil Application No. 1 of 2015 and the Orders and the Ruling that followed.***

**RULING OF THE COURT**

[1] This is an application dated 18<sup>th</sup> November, 2015, and filed in Court on 27<sup>th</sup> November, 2015. The applicant in essence seeks an order that the decision of a single Judge of this Court in **Civil Application No. 1 of 2015** dated **15<sup>th</sup> October, 2015** be reconsidered by the Court and that the applicant be allowed to proceed with the original application lodged at the Court of Appeal on 29<sup>th</sup> December, 2014 without paying court fees.

[2] The application is supported by the affidavit of **Lawrence Esilia Moses** who describes himself as the Managing Director of the applicant's company. He also describes himself as a "*free-lance legal case worker (Civil), legal consultant.*"

[3] In **Civil Application No. 1 of 2015**, Musinga, JA. on 15<sup>th</sup> October, 2015, dismissed an application brought by the same applicant herein in which he sought an order that the Court be pleased

**“to set aside orders allowing the applicant to proceed with the original appeal of the Court of Appeal without paying court fees...”**

In paragraph 10 of the Ruling, Musinga, JA., said:

**“If the applicant's intention is to seek relief from paying court fees, it has to comply with the requirements of Rule 115 of the Court of Appeal Rules. No such application has so far been made.”**

[4] The present application is shown to have been made under Rule 115 of the Court of Appeals. It is a

fresh application with a new serial number. It seems that it does not seek reference of the ruling of the learned Judge to the full Court under **Rule 55** Court of Appeal Rules as it does not in any way fault the decision of the single Judge.

In the circumstances, the application is treated as an application under **Rule 115** of Court of Appeal Rules for relief from paying court fees and security for costs in respect of the application or appeal lodged by the applicant at the registry on 29<sup>th</sup> December, 2014.

[5] As provided by Rule 115, the applicant has to satisfy the Court that:

- (i) he lacks the means to pay the required fee or to deposit security.**
- (ii) the appeal is not without reasonable possibility of success.**

The applicant company was represented by Lawrence Esilia Moses who did not make any attempt to demonstrate that the company lacks the means to pay court fees and security for costs. No affidavit of means or any other evidence, documentary or otherwise, was produced to show that the applicant has no means to pay court fees and security for costs.

Secondly, the applicant has not disclosed the nature of the proceedings it has filed or intends to file or the grievance for which it seeks redress. Not even a copy of the judgment or ruling, the subject matter of the previous litigation has been annexed nor any reference to previous proceedings made.

[6] In the premises, we find that the applicant has not satisfied the conditions for waiver of court fees and security for costs.

Accordingly, the application has no merit and is dismissed with costs.

**Dated and Delivered at Kisumu this 22<sup>nd</sup> day of February, 2018.**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**