



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: VISRAM, KARANJA & MARAGA, JJ.A.)**

**CIVIL APPLICATION NO.NAI. 81 OF 2010 (UR 62/2010)**

**BETWEEN**

**KENYA COMMERCIAL BANK LIMITED.....APPLICANT**

**AND**

**KENYA PLANTERS CO-OPERATIVE UNION.....RESPONDENT**

***(Being an application for leave to appeal from the ruling and order of the High Court of Kenya  
(Apondi, J.) dated 18<sup>th</sup> January 2010***

**in**

**H.C.C.C. NO. 779 OF 2009)**

**\*\*\*\*\***

**RULING OF THE COURT**

The notice of motion at Bar is the one dated 13<sup>th</sup> April, 2010. It is filed by the firm of *Iseme, Kamau & Maema Advocates* on behalf of the applicant, **KENYA PLANTERS CO-OPERATIVE UNION LIMITED**. The same is pronounced to be premised on **Sections 3A and 3B of the Appellate Jurisdiction Act, Rules 4, 39(2) and 47 of the Court of Appeal Rules**. It has 5 prayers but save for prayer No. 2, all the other prayers are spent. That prayer seeks this Court's leave to appeal from the ruling of Hon. Justice Apondi made on 18<sup>th</sup> January, 2010. The said ruling was in respect of a similar application for leave to file an appeal against the same ruling which application was dismissed.

That dismissal prompted the applicant to move this Court under **Rule 39(b) of the Court of Appeal Rules**. The application is supported by the 26 paragraph affidavit sworn by one *Jacob Unda* a relationship manager of the applicant herein dated 12<sup>th</sup> April, 2010.

The gravamen of the said lengthy affidavit is that the applicant herein has a "good appeal with overwhelming chances of success" as deponed in paragraph 12 of the same.

Learned counsel for the applicant addressed us briefly and submitted that there are two parallel suits before the High Court i.e **H.C.C.C. No. 779 of 2009** and **Petition No. 700 of 2009** between the same parties both of which are dealing with the same issues. He submitted that this amounts to an abuse of the process of the court which is one of the issues they have raised in the intended appeal. He also submitted

that they have a good appeal and they should therefore be allowed to pursue the same. There was no replying affidavit filed against the notice of motion and counsel for respondent though duly served did not attend court at the hearing.

We have considered this application along with the supporting affidavit and learned counsel's submission in court and the authorities he tendered. We have also perused the annexed draft Memorandum of Appeal. We are satisfied that the draft memorandum Appeal raises pertinent issues which need to be canvassed in the intended appeal. We are also satisfied that the appeal raises some arguable issues and is not frivolous. We note further that the respondent will not suffer any prejudice if this application is allowed as they will have a chance to be heard at the hearing of the intended appeal.

For the foregoing reasons, we allow the notice of motion and grant the applicant leave to appeal as prayed. We order that the intended appeal be filed within 14 days from the date of this ruling.

The costs of the motion will be in the main Appeal.

*Dated and delivered at Nairobi this 20<sup>th</sup> day of April, 2012.*

**ALNASHIR VISRAM**

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**JUDGE OF APPEAL**

**W. KARANJA**

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**JUDGE OF APPEAL**

**D. K. MARAGA**

.....

**JUDGE OF APPEAL**

I certify that this is a

true copy of the original.

**DEPUTY REGISTRAR**