



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI**

**CIVIL APPEAL/APPLICATION NO. 288 OF 1997  
BETWEEN**

**SALTEC INTERNATIONAL LTD**

**SALT MANUFACTURERS (K) LTD .....APPLICANTS**

**AND**

**INDUSTRIAL DEVELOPMENT BANK LTD**

**INDUSTRIAL & COMMERCIAL DEVELOPMENT CORPORATION**

**MINORITY SHAREHOLDERS .....RESPONDENTS**

**(Appeal from the ruling/order of the High Court of Kenya  
at Nairobi (Keiwua J) dated 21st June, 1995**

**in**

**H.C.C.C. NO. 2096 OF 1991)**

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

**RULING**

Mr Lila Vadgama for the appellant, by his notice of motion dated and lodged in this Court on 29th March, 2000 has made a simple prayer to the court, namely that: "Leave for filing the Supplementary Record of Appeal be and is hereby granted AND that the Supplementary Record be filed with the Registry within seven days."

The motion is said to have been brought under Rules 4, 85 (2A) as amended, 89 (3)"And all enabling appellate Rules."

There is of course nothing odd or remarkable in a party to an appeal asking for leave to file a supplementary record of appeal; such applications are common-place. What is odd or remarkable in the appellant's current application is the nature of the documents the appellant wishes to put in through the supplementary record of appeal. Those documents were never part of the record of the superior court.

The documents consist of a letter written by Mr Vadgama to the Deputy Registrar long after the proceedings in the superior court had come to an end and another document styled as: "CERTIFICATE UNDER COURT OF APPEAL RULE 85(3)" and is in the following terms:

"I, M.J. Bhatt, Principal Deputy Registrar, hereby certify that:

***1. That there are no judges notes of any proceedings before any Judge making any kind of Order, by consent or otherwise, that the Minority Shareholder were joined in this suit and in what***

*capacity.*

**2. Furthermore the court file does not have any application or notice addressed by the Advocates of the Minority Shareholders submitting draft of such order for my approval under sub -rules (2) and (3) of Order XX. 3. Therefore the said Order is directed to be excluded from the Record of Appeal.**

**Dated this 28th day of March, 2000.**

**M.J. BHATT**

**PRINCIPAL DEPUTY REGISTRAR**

**HIGH COURT OF KENYA AT NAIROBI."**

The order against which the appellant is appealing was made way back on the 21st day of June, 1995, and so the above "certificate" which the appellant seeks to put in, like their letter of 23rd March, 2000, was equally not part of the record of proceedings before the superior court. How do these two documents come into the matter? The answer is to be found in the fact that on the 10th June, 1998 when the appellants' appeal came up for hearing the Court made the following order:

**"ORDER OF THE COURT :**

***The case, the subject of this appeal, started in 1991 - the suit itself is titled HCCC NO 2096 OF 1991. It is abundantly clear to us that the proceedings before the High Court and which have been placed before us in the record of appeal, are not complete. The proceedings in our records are clearly not complete. Ground 3 in the memorandum of appeal raises issues which might have taken place in 1991, e.g. that minority shareholders were or were not formally joined as parties on 25/6/91. To avoid doing an injustice to the parties at this stage, we adjourn the appeal and stand it over generally to enable the appellant see whether it is lawfully possible to make the record complete. The costs of to-day shall be in the appeal. ...."***

It is and ought to have been clear to anyone reading this order that the Court itself noticed that part of the proceedings before the High Court was missing. In particular there was the question of whether or not the superior court had, on 25th June, 1991, made the Minority Shareholders' for whom Mr Nyamu appeared and still appears, parties to the suit in the High Court. Mr Nyamu, in agreement with Mr Keyonzo and Mr Lenaola for the other respondents were saying the minority shareholders had been made a party by a consent order recorded before Mr Justice Mbitio on the 25th June, 1991. They say that on that day a Miss Joy Othieno who held Mr Vadgama's brief was present and participated in the recording of the consent order. The proceedings relating to the 25th June, 1991 and the alleged consent order were and are still missing from the record of appeal. That was obviously why the Court adjourned the matter to enable the appellant sort out that issue.

How did the appellant sort out the issue? Mr Vadgama wrote the letter of 23rd March, 2000 to the Deputy Registrar, and in the letter he told the Deputy Registrar about his (Vadgama) repeatedly combing the superior court record for the proceedings and order of 25th June, 1991, and how he had failed to see any of those things in the court file. He therefore asked the Deputy Registrar to certify under Rule 85(3) and 89(3) of the Court of Appeal Rules that the proceedings and order need not be included in the record. Despite Mr Vadgama knowing perfectly well that the respondents were contending that the order had been made by consent and ought to be in the superior court file, Mr Vadgama did not copy his letter to the advocates for the respondents and Mr Bhatt's certificate must have been issued without his knowing what the respondents might want to say on the matter. These are the type of documents Mr Vadgama wishes to include in a supplementary record of appeal - documents which were never before the superior court and whose contents are clearly not admitted. I very much sympathise with Mr Nyamu's spirited contention that Mr Vadgama is out to mislead in the matter and that he is only prepared to include in the

appellants' record of appeal such documents as he is comfortable with. He appears to be uncomfortable with the alleged consent order of 25th June, 1991 and without notifying the other side that he was to ask the Deputy Registrar to dispense with that order, he misled Mr Bhatt into issuing the "certificate" which is sought to be put in through the supplementary record.

I decline to grant the leave sought and order that the appellants' notice of motion dated and lodged in this Court on 29th March, 2000 be and is hereby dismissed with costs to the respondents.

Dated and delivered at Nairobi this 19th day of January, 2001.

**R. S. C. OMOLO**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**