**African Banking Corporation Ltd v Mavji Construction Ltd and others**

**Division:** High Court of Tanzania at Dar-Es-Salaam

**Date of ruling:** 12 March 2004

**Case Number:** 282/02

**Before:** Kimaro J

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**RULING**

**KIMARO J:** This case was filed in this Court in November 2002. It went through the process provided for by the Civil Procedure Code 1966 as amended by government notice number 422 of 1994 until the final pre-trial conference stage was reached. The case was called for the final pre-trial conference on 10

December 2003. On that day, Ms Hamida *Sheikh* who had been appearing for the defendants since 10 March 2003 after taking over from Ms Razia Sheikh after her appointment to the bench as a High Court Judge, asked this Court for leave to file an amended written statement of defence. She filed a chamber of application which was heard by way of written submissions. She is the only one who complied with the timeline set for the filing of the submissions. Mr *El-Maamry* who appears for the plaintiff has not filed his submission. The application has been made for purposes of an inclusion of a counterclaim. The only reason given by Mr Naran Mavji Ratna who has described himself as the principal officer of the company is that service was effected on the defendants in February 2003 while all senior officers were on travel duty abroad.

He instructed the advocate while he was abroad and the written statement of defence had to be signed by the advocate because of the absence of senior officers of the defendants at the time it was required to be filed. In her final submissions, Miss *Sheikh* requested this Court to grant the application giving one main reason. The reason is that the principal officer was abroad on medical grounds. With greatest respect to *Sheikh*, there is no evidence to support this submission. What the principal officer deposed to in the affidavit was that he was on travel duty. Paragraphs 2 and 3 of his affidavit are clear. They state as follows:

“That when the plaint and court summons were served on the applicant/defendant company, in early February 2003, all senior officers including myself were on *duty travel*.

It was while checking with our office from abroad that I discovered on the phone that Mr Divu the Assistant Accountant had been served with the plaint and summons of the case”. (Emphasis mine) There is nothing in the remaining paragraphs which show that Mr Naran Mavji Ratna went abroad for treatment. Even the affidavit does not contain any document to support his travel abroad, let alone the treatment. He has not even indicated when he returned to the country. Submissions are not evidence. Theaffidavit is what contains the evidence.

As demonstrated above, this case was filed in this Court in November 2002. The application to amend the written statement of defence is being made after a year and no reason has been offered for the delay. The application is dismissed with costs as no sufficient cause has been offered to support the application. For the plaintiff: *Mr El-Maamry*

For the defendants:

*Ms H Sheikh*

**Attorney**