



IN THE INDUSTRIAL PROPERTY TRIBUNAL

AT NAIROBI

IPT APPEAL NO. 21 OF 2018

IN THE MATTER OF APPEAL AGAINST THE DECISION OF THE MANAGING DIRECTOR DATED 9/4/2018 REFUSING TO REGISTER A PATENT APPLICATION NUMBER KE/P/2013/001836 IN THE NAME OF JOHN KAMONJO MWAURA BY KENYA INDUSTRIAL PROPERTY INSTITUTE

BETWEEN

JOHN KAMONJO MWAURA.....APPELLANT

VERSUS

KENYA INDUSTRIAL PROPERTY INSTITUTE.....1ST RESPONDENT

THE MANAGING DIRECTOR,

KENYA INDUSTRIAL PROPERTY INSTITUTE.....2ND RESPONDENT

AND

NATIONAL COMMERCIAL BANK OF AFRICA

(NCBA).....1ST INTERESTED PARTY

SAFARICOM PLC.....2ND INTERESTED PARTY

RULING ON THE APPLICATION DATED 14/05/2020

1. On 19th December, 2019 the Appellant indicated to the Tribunal that he would proceed with the appeal orally on the basis of his appeal as initially filed and would not amend his documents; In line with the directions given on 31st October, 2019, while the interested parties indicated that, they would file and highlight written submissions at the trial of this appeal. The Appellant on his part stated that he would rely on the material already filed with the Tribunal and make oral submissions.

2. We then gave timelines for filing of responses to the appeal as originally filed and fixed the matter for hearing on 8th April, 2020 but the matter could not proceed for hearing on that day due to the guidelines for social distancing given on account of the COVID-19 situation in the country.

3. Subsequently, guidelines were issued by the Chief Justice of Kenya to Courts and Tribunals to leverage on technology to ensure that access to justice is not impeded in the period when the country is grappling with the Corona pandemic. The Tribunal and Courts adopted a virtual system of hearing cases before them and this matter was then fixed for submissions on 27th may, 2020 and all parties notified that the matter would proceed virtually. The Appellant then filed an application dated 14/05/2020 seeking 45 days to

file evidence in support of the case and when this appeal matter came up for submissions he sought to prosecute that application.

4. We have considered that application and dismiss it for the reason that it is not merited as all the material needed by the Appellant to prosecute the appeal are already on record. That essential material is contained in the five (5) volumes initially filed and includes; the decision appealed from the Appellant's patent application before the Managing Director, which was declined, the Appellant's grounds of appeal and his arguments challenging the decision of the examiner as well as his list and bundle of authorities. The Managing Director has not filed any additional material before this Tribunal and the decision to refuse the Appellant's application for patent will stand or fall on the basis of the consideration of the factual material considered by the examiner before making the determination and the applicable law. There is absolutely no occasion for introduction of new evidence by the Appellant at this stage.

6. That being our view of the matter the Appellant is now directed to proceed to make his oral submissions in support of the appeal and the interested parties to highlight the written submissions.

Dated at Nairobi on this 27TH Day of MAY 2020.

Signed:

Brown Kairaria - Chairman

Wycliffe Swanya - Member

Pauline Mudeshi - Member

Brettah Muthuri - Member

Dr. Frasia Wangari - Member

Delivered Virtually before:

1. John Mwaure Kamonjo the Appellant.
2. John Syekei and Effie Omondi for the 1st Interested Party.
3. Patrick Ikimire for the 2nd Interested party.



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