WANKIRA BETHUEL MAISE AND NATIONAL HOUSING CORPORATION *v.* KAIKU FOYA

COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM

(Ramadhani, J.A)

CIVIL APPLICATION No. 42 OF 1998

(From the decision of the High Court of Tanzania at Dar es Salaam, Mackanja, J., dated 26 June 1998 in Dar es Salaam)

Civil Practice and Procedure – Execution of decree – Stay of execution pending appeal – Application for stay of execution pending an appeal that requires Leave to Appeal – Whether stay of execution may be granted where no Leave to Appeal has been sought and granted.

The applicant filed an application for stay of execution of a decree of the Court of the Resident Magistrate pending appeal to the Court of Appeal. The intended appeal required leave to appeal but no such leave had been obtained or applied for.

Held: Where Leave to Appeal has not been sought and obtained, an application for stay of execution pending appeal is not properly before the court.

Application is struck out

Cases referred to:

(1) *Bank of Tanzania v. Minister of Labour and 8 others*, Civil Applications Numbers 11 and 12 of 1997 (unreported)

(2) *Willow Investments v. Mrs Mbombo Ntumba* [1997] T.L.R. 93

(3) *National Bank of Commence v. Star Transport Co. Ltd*, Civil Application Numbers 60 of 1995 (unreported)

Mr Wambali, for the first Applicant

Mr Luguwa, for the second Applicant

Capt. Sanze, for the Respondent

JUDGMENT

(Dated 30 September 1998)

RAMADHANI, Ag. C.J.: This is an application for a stay of execution. However, the respondent filed a notice of preliminary objection containing two points but only one of them is relevant and was conceded to by the learned advocates of the applicants. Captain Sanze, learned advocate for the respondent, pointed out that this matter originated in the Court of the Resident Magistrate and so, required Leave to Appeal but none has been obtained. The learned advocate added further that as time has lapsed, there is a need to apply for an extension of time within which to file the application for Leave to Appeal.

At first, both Mr Wambali, learned counsel for the first applicant, and Mr Lugua, learned advocate for the second applicant, resisted the objection saying that there is an application pending before the High Court asking for leave to appeal. However, at the end of the day, they threw in the towel and conceded that there is no leave to appeal and also that time to apply for leave needs to be enlarged. Both learned advocates applied for an adjournment so as to consider withdrawing this application formally. Upon being told by the court that there is this prayer for striking out the application for stay of execution, both learned advocates decided to leave the matter with the court. Captain Sanze, on the other hand, stuck to his guns and reiterated his prayer for striking out the application for stay of execution.

The objection has greatly exercised my mind but finally, I am of the considered opinion that I have to follow the decisions of this court on similar applications like this before me now. It has been decided in a number of instances that where leave to appeal has not been obtained, then an application for stay of execution is not properly before the court. I held so in *Bank of Tanzania v. Minister of Labour and eight others* (1). In those applications I referred to two decisions of this court: *Willow Investments v. Mrs Mbombo Ntumba* (2); and *The National Bank of Commerce v. Star Transport Co. Ltd.* (3).

So, the preliminary objection is upheld and this application is struck out as it is not properly before the court. Costs to follow the event. The applicants are free to exercise their right of reference if they so wish. Overruled by *East African Developemnt Bank v. Blue Enterprises Ltd and another*, Court of Appeal of Tanzania at Dar es Salaam, Civil Reference Number 7 of 2004 (12 November 2004).

SAID A. MARINDA AND THIRTY OTHERS *v.* MINISTER OF LABOUR AND YOUTH DEVELOPMENT AND THE ATTORNEY GENERAL

HIGH COURT OF TANZANIA
AT DAR ES SALAAM

(Mapigano, Mackanja and Kalegeya, JJ.)

MISCELLANEOUS CIVIL CAUSE No. 57 OF 1996

Labour Law – Labour disputes resolution – Jurisdiction of the Minister in labour disputes – Whether the Minister has jurisdiction to adjudicate on disputes founded on redundancy – Sections 39(2) and 40A of the Security of Employment Act 1964.

Labour Law – Voluntary Agreement – Voluntary agreement signed by employer and employees' union but neither party takes steps to get it registered by the Industrial Court – Effect of the failure to register the agreement – Section 39(4) of the Industrial Court Act 1967.

As part of an exercise to restructure its business the Bank of Tanzania, as employer, declared a number of its employees redundant and terminated their employment. Those terminated included the applicants who, being aggrieved by the termination, sought to challenge it through their trade union. The trade union reported the matter as a trade dispute to the Labour Commissioner who, with the consent of the Minister for Labour, the first respondent, referred it to the Industrial Court for inquiry in terms