

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

ZNZ CIVIL APPLICATION NO. 4 OF 1996

BETWEEN

SALUM ABDULKARIM NATU. . . . . APPLICANT

AND

1. THE HON. ATTORNEY GENERAL   § . . . . . RESPONDENTS  
2. YUSUF MAALIM SOPHAI       §

(Application for leave to appeal to the  
Court of Appeal of Tanzania from the  
Order of the High Court of Zanzibar  
at Zanzibar)

(Mbwezeleni, Ag. J.)

dated the 20th day of December, 1995

in

Civil Application No. 20 of 1996

R U L I N G

RAMADHANI, J.A.:

The applicant, Salum Abdulkarim Natu, is asking for leave to appeal to this Court against an order given by the High Court of Zanzibar (MBWEZELENI, Ag. J.) on 20/12/1995. This is after his application for leave was refused by the High Court of Zanzibar (KANNONYELE, J.).

The learned advocate for the applicant, Dr. Lamwai, has contended that there is a point of law of crucial importance involved and that is whether an inferior Court can order the execution of its decree when there is an application for a stay of execution of that decree before a superior Court.

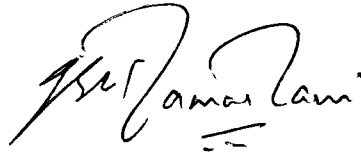
A brief recount of what transpired is a necessary preface to this application. On 4/1/94 Mr. MMILA, S.R.M. (Ext. Jurisdiction) gave a judgment in favour of the two respondents: (1) The Attorney-General of Zanzibar and (2) Yusuf Maalim. A notice of appeal was filed on 17/1/1994 and there was also <sup>an</sup> ~~as~~ application for a stay of execution. On 16/6/95 my learned brother, MNZAVAS, J.A., in two separate applications before him refused to grant a stay of execution (Civil Application No. 1 of 1994) and struck out the notice of appeal (Civil Application No. 2 of 1995).

The order of execution against which this application for leave is made, was given by MBWEZELENI, Ag. J. on 20/12/1995. Admittedly, on that day there were already two references filed from the decisions of MNZAVAS, J.A. These were Civil References No. 9 of 1995 and No. 8 of 1995 respectively. The order of MBWEZELENI, Ag. J. for execution while this Court is seized with a reference against an order of a single judge refusing to stay execution, is what Dr. Lamwai refers to as an important point of law.

I must say that I do appreciate that point of law but the decision of MBWEZELENI, Ag. J., unfortunately, cannot be said to raise it. MBWEZELENI, Ag. J. was making a follow-up of an order of execution which had been given earlier on 26/9/1995 by the Registrar of the High Court after the matter was sent to him by the Honourable Chief Justice of Zanzibar. That was the order which forced the applicant to give vacant possession of the suit premises. The applicant partially observed that order. He surrendered the premises to the second respondent but left some items of his property therein. All that MBWEZELENI, Ag. J. did was to order the applicant to take away his items of property.

So, the application for leave to appeal should have been filed against that order of 21/9/1995 and not that of 20/12/1995 by MBWEZELENI, Ag. J. The application is misconceived and is dismissed with costs. It is so ordered.

DATED at ZANZIBAR this 4th day of July, 1997.

A handwritten signature in black ink, appearing to read 'Justice of Appeal' in a stylized, cursive script.

JUSTICE OF APPEAL