IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 19 OF 1997
In the Matter of an Intended Appeal

BETWEEN

TANZANIA BREWERIES LTD. ..... APPLICANT

AND

1. CHARLES J. MSUKU
2. YAHYA MTETE ..... RESPONDENTS

(Application for Extension of Time to file an appeal for Stay of Execution from the decision of the High Court of Tanzania at Dar es Salaam)

(Mapigano, J.)
dated the 15th day of October, 1996
in
Civil Case No. 156 of 1995

R U L I N G

KISANGA, J.A.:

Tanzania Breweries Ltd. filed a notice of motion in this Court seeking for two orders:

(a) Extension of time to file an appeal to this Court, and

(b) A stay of execution pending the results of the intended appeal.

When the matter was called on for hearing Mr. C.K. Semgalawe, learned counsel for the respondent, asked for an adjournment during which to file a notice for preliminary objection to the application. Dr. Tenga, advocating for the applicant, did not wish to oppose the application, and I granted the adjournment sought.

In his preliminary objection Mr. Semgalawe submitted that the application was misconceived in law. The application, he said, was prematurely before this Court. It ought to have been made in the High Court first and in the event it was refused, the applicant could then properly have come to this Court. Dr. Tenga readily conceded to the submission and, in my view, quite rightly so.

The application for extension of time during which to appeal to this Court was in respect of a judgment of the High Court (Mapigano, J.) dated 15.10.96. It was a consent judgement entered in favour of the plaintiff, in the course of mediation process under the Alternative Dispute Resolution Mechanism, but the question of damages could not be resolved amicably between the parties. The question then was whether in the light of such failure to reach an amicable settlement on the issue of damages, there was really a consent judgement/decree enforceable by the plaintiff.

In other words the consent judgement entered by the High Court is now being put into question. As stated before, that judgement was recorded in the course of mediation process under the Alternative Dispute Resolution Mechanism, a procedure now incorporated in the Civil Procedure Code, vide Government Notice No. 422 of 1994. As such it is a judgement which is appealable to this Court under section 5(1) (a) of the Appellate Jurisdiction Act because it is a judgement given by the High Court in a suit under the Civil Procedure Code, 1966, in the exercise of its original jurisdiction. That is

to say a party aggrieved by such a judgement is entitled to appeal to this Court.

However, where a party seeks extension of time to appeal against such judgement, the High Court is empowered, under section 11 (1) of the Appellate Jurisdiction Act, to extend time for filing the notice of appeal. Although under rule 8 of the Court of Appeal Rules this Court is equally empowered to grant such extension of time, rule 44 of the said Rules requires that the application for such extension be made to the High Court first. This was not done in the present case, instead the applicant came straight to this Court and that was wrong.

It is for this reason that I am entirely in agreement with counsel for both sides that the matter is prematurely before this Court, and that it ought to be struck out as being incompetent. It is ordered accordingly.

Once the application for extension of time to appeal is struck out, the application for a stay of execution of the decree can have no leg to stand on. For, the dispute or appeal involving the judgement/decree which it is sought to stay, is not yet before this Court. In the result the preliminary objection is upheld, and the applicant is to bear the costs hereof.

DATED at DAR ES SALAAM this 6th day of June, 1997.

R. H. KISANGA
JUSTICE OF APPEAL

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

(M.S. SHANGALI)
DEPUTY REGISTRAR