

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 25 OF 1997

In the Matter of an Intended Appeal

BETWEEN

GENERAL TYRE E.A. LTD. APPLICANT

AND

MANDAVIN CO. LTD. RESPONDENT

(Application for Stay of Execution from
the Judgement/Decree of the High Court
of Tanzania at Arusha)

(Nchalla, J.)

dated the 17th day of February, 1997

in

Civil Case No. 4 of 1995

R U L I N G

MFALILA, J.A.:

This is an ex parte application filed under Rule 52 (2) of the Rules of this Court under a Certificate of Urgency for stay of execution of the decree issued by the High Court at Arusha. The reasons for filing this ex-parte application is that the respondent could not be traced to effect service. In execution of this decree, the High Court issued a garnishee order directed to the applicant's bankers, the National Bank of Commerce Clock Tower Branch at Arusha. The consequences of the garnishee order are of course known and are to be expected, but Mr. Ngalo Counsel for the applicant submits that as the applicant is a public company with an established address, there was no need to paralyse its operations by this garnishee order. Secondly, he stated that in the event the intended appeal is successful, the applicant stands to suffer irreparable losses because the moneys so paid in execution of the decree cannot be recovered

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from the respondent whose whereabouts are unknown. However, to protect the respondent's interests, Mr. Ngalo stated that the applicant is willing to execute a guarantee bond in the sum of the decretal amount in favour of the respondent.

Without wishing to hazard a guess on the possible outcome of the intended appeal as I do not have all the papers in front of me, I am satisfied that the offer by the applicant to execute a guarantee bond for the payment of the decretal amount would evenly balance the interests of both parties. The Managing Director of the respondent company could not be traced, hence it would not be safe to make the judgement debtor pay the whole decretal amount before the appeal is finally determined.

Accordingly I allow this application for stay and make the following orders:

- (1) The execution of the decree issued by the High Court is hereby stayed pending the final determination of the appeal between the parties pending in this Court.
- (2) The Garnishee Order issued by the High Court in execution of the decree is lifted.
- (3) The applicant is to execute a guarantee bond in the sum of the decretal amount in favour of the respondent.
- (4) The costs of this application to abide the outcome of the appeal.

DATED AT DAR ES SALAAM THIS 13TH DAY OF MAY, 1997.

L.M. MFALILA
JUSTICE OF APPEAL

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

(M.S. SHANGALI)
DEPUTY REGISTRAR