

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 38 OF 1997
~~In the Matter of an Intended Appeal~~

BETWEEN

NATIONAL PAINTS (T) LTD. APPLICANT

AND

UJAMAA HARDWARE & AUTO PARTS LTD. RESPONDENT

(Application for Stay of the order for
Temporary Injunction from the Ruling
and Order of the High Court of Tanzania
at Dar es Salaam)

(Mkwawa, J.)

dated the 5th day of June, 1997.

in

Civil Case No.308 of 1996

R U L I N G

MFALILA, J.A.:

In this application, the applicant is seeking an order that the order of temporary injunction granted by the High Court (Mkwawa, J.) against it be stayed pending the determination of the intended appeal against the ruling granting the temporary injunction. In the High Court, the present respondent company applied for a temporary injunction to restrain the present applicant company from displaying and/or disposing in any way products marked "NATIONAL PAINTS" with the logo "PAINTCO" pending the final determination of the suit. At the end of the hearing, the learned judge, granted the temporary injunction sought and imposed the following conditions:

(a) That the said order shall be valid only during the validity of the claimed trade mark.

~~That both the applicant and respondent~~
shall keep account and proper record of the products now in question.

(c) That the applicant shall undertake to pay damages suffered by the respondent by reason of the operation of the temporary injunction if it turns at the end of the main suit that the ~~applicant~~ applicant was not entitled to the ~~temporary injunction~~ temporary injunction.

At the hearing of this application, Mr. Luoga, learned advocate who appeared for the applicant company, attacked the order for temporary injunction as being unclear, confusing and consequently not easy to carry out. For instance he said the order is silent as to how the record and accounts are to be kept and also the form in which the undertaking to pay damages is not provided for. Secondly he said, the Court order for a temporary injunction would mean very little to the respondents because there are other importers of the disputed product who are not touched by the order.

In reply Dr. Tenga learned advocate who appeared for the respondent company, argued that if Mr. Luoga thought that the High Court order was not capable of execution because it is unclear and confusing, he should have gone back to the High Court to seek a clarification of the terms of the order and that therefore he

should not have come to this Court at this stage. But Dr. Tenga pointed out the order is quite clear in its terms and that they can easily be carried out. In the circumstances, he urged the Court to dismiss the application.

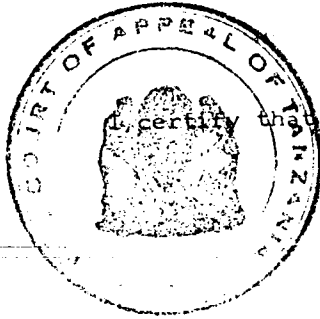
I think that the present order for a temporary injunction cannot be stayed on the basis that it is not clear and it is confusing because if moved the High Court which issued the order for temporary injunction could provide the clarification on its order and remove any confusion surrounding it. But the difficulty I think lies in the fact that the temporary injunction is predicated by a condition precedent, namely that the respondent must undertake to pay compensation for damages suffered by the respondent by reason of the operation of the temporary injunction, if it turns out at the end of the main suit that the applicant was not entitled to be granted the temporary injunction. The other two conditions (a) and (b) imposed by the learned judge are obviously to be complied with as part of the temporary injunction but the temporary injunction can only come into operation after applicant has complied ~~with condition (c), otherwise the protection afforded to the~~ respondent by this condition would be rendered meaningless. In the course of the hearing of this application, I asked Dr. Tenga, if the condition precedent had been met, he replied that it has not as the applicants have given no such undertaking. With this reply, it is obvious that the temporary injunction granted by the High Court is not yet operational. The respondent is not as yet obliged to comply with its terms, consequently there is nothing which is operational to be stayed. To issue an order of stay would be speculative on the part of this Court that the condition precedent is going to be met by the applicant.

applicant could as well find that such a condition is too onerous and therefore decide not to comply with it rendering the temporary injunction inoperative. This Court cannot indulge in such speculations.

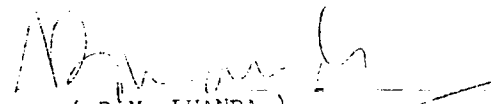
The temporary injunction is as it were currently dormant, it is pointless to order stay of a dormant order. It would be a waste of time. Accordingly this application fails and it is dismissed with costs.

DATED AT DAR ES SALAAM THIS 24TH DAY OF JULY, 1997.

L.M. MFALILA
JUSTICE OF APPEAL



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


(B.M. LUANDA)
SENIOR DEPUTY REGISTRAR