

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
 CIVIL APPLICATION NO. 73 OF 1997
 In the Matter of Intended Appeal
 BETWEEN
 TANZANIA PORTLAND CEMENT CO. LTD. ... APPLICANT
 AND
 THE MINISTER FOR LABOUR ... RESPONDENT
 (Application for stay of execution from the decision of the High Court
 at Dar es Salaam)
(Bubeshi, J.)
 dated the 8th. October, 1997
 in
Miscellaneous Civil Application No. 16 of 1996

R U L I N G

RAMADHANI, J.A.:

The applicant company dismissed sixteen employees but was ordered by the respondent Minister to reinstate them and that order was upheld by BUBESHI, J. Dissatisfied, the applicant company has filed a notice of appeal in this Court and, meanwhile, there is this application for stay of execution.

In the counter-affidavit, the respondent appeared to put forward a preliminary objection. It has been contended that the intended appeal requires leave to appeal which has not been obtained. Dr. Mapunda, the learned counsel for the applicant, pointed out that there is already an application for leave to appeal before the High Court. In addition, the learned advocate pointed out that there is no need for such leave. He cited s. 17(5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance (Amendment) Act, 1968. The objection is without merit as there is already an application for leave to appeal which was filed by the applicant in ignorance of the said s.17(5), as it was put by Dr. Mapunda, learned counsel of the applicant.

That subsection provides as follows:

- (5) Any person aggrieved by an order made under this section may appeal therefrom to the Court of Appeal of East Africa.

My understanding of that section is that leave to appeal is not required.

Dr. Mapunda has submitted that if stay of execution is not granted, the applicant is going to suffer irreparable injury in that at the moment it is in financial doldrum and has cut down employment, so the dismissed employees cannot be given any employment to do. The employees will also have to be paid their arrears and if the intended appeal is successful, it will be difficult to recover the sums paid to them. That will make the appeal redundant. On the other hand, the applicant company

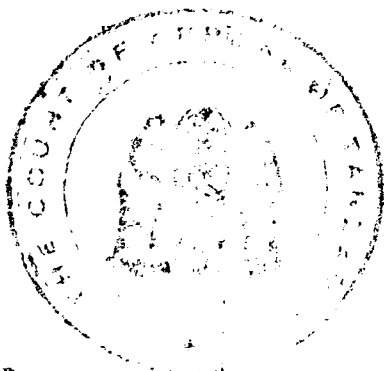
can, at any time, pay the employees their dues should the appeal fail. Dr. Mapunda has also said that the intended appeal has great chances of success.

On behalf of the respondent, was Mr. Malaba, Senior State Attorney. He submitted that the applicant company has not shown in the affidavit what irreparable damage a refusal to grant stay of execution will result. In addition the learned Senior State Attorney has said that the applicant company is applying for stay of execution to suit its convenience and that the state of its economic position is irrelevant.

As properly pointed out by Mr. Malaba, in The Bank of Tanzania v. The Minister of Labour & Eight Others, Civil Applications Nos. 11 and 12 of 1997, which was like this application, this Court refused to grant stay of execution. In the present application, if the applicant company is in financial difficulties, then the more the reason that the employees be paid their dues. Should the intended appeal fail, the employees may face the same difficulty of recovering their dues like that which may face the applicant company fear~~s~~ should it succeed. A number of decisions, including the one cited of The Bank of Tanzania, provide that if the loss feared is monetary then courts are reluctant to order stay of execution as the loss cannot be said to be irreparable.

The application is dismissed with costs. It is so ordered.

DATED in DAR ES SALAAM this 18th. day of December, 1997.



A handwritten signature in black ink, appearing to read "A.S.L. Ramadhani", is written over a horizontal line.

A.S.L. RAMADHANI
JUSTICE OF APPEAL.