

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

CIVIL APPLICATION NO. 69 OF 1998
In the Matter of an Intended Appeal

BETWEEN

ARUSHA INTERNATIONAL
CONFERENCE CENTRE APPLICANT

AND

EDWIN WILLIAM SHETTO. RESPONDENT

(Application for Stay of Execution from
the decision of the High Court of
Tanzania at Arusha)

(Mroso, J.)

dated the 17th day of June, 1998
in

Civil Case No. 3 of 1997

R U L I N G

LUGAKINGIRA, J.A.:

This application for stay of execution does not present much controversy and, therefore, does not invite much discussion. In a judgment delivered on 17 June, 1998, the High Court sitting at Arusha declared void the termination of the respondent's employment by the applicant and awarded the respondent 10m/= as damages for defamation of character as well as arrears of salaries. The applicant lodged a notice of appeal on 22 June and followed it up with this application praying for stay of execution of the decree pending determination of the intended appeal.

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The applicant's main ground, as I see it, is that the applicant stands to suffer irreparable loss if execution proceeds, because the respondent would not be able to repay the money should the appeal succeed. Although Mr. Makange who appeared for the applicant also made reference to the chances of the intended appeal, it was not lost on me that this came as a by the way, inasmuch as it did not feature in the applicant's affidavits. It was initially contended by Mr. Makange that the respondent had no other source of income after termination of his employment but the same learned gentleman had annexed to the applicant's affidavit-in-reply a document suggesting that the respondent was gainfully employed elsewhere, and referred to that document in the course of his submissions. This prompted Mr. Loom-Ojare to submit for the respondent that the applicant would not suffer irreparable loss if stay were refused because the respondent is in a position to repay. Learned counsel was also concerned that the respondent should not be denied the benefit of his judgment but for good cause, but and such cause had not been shown in this case.

I must confess that I am not sufficiently assured of the respondent's ability to repay but, at the same time, I note that the applicant is prepared to furnish security to meet the decree should the appeal fail. Therefore, in order to ensure that the applicant does not suffer loss should the appeal succeed, I will grant the application; and in order to assure the satisfaction of the judgment should the appeal fail, I will predicate the stay on security. Accordingly, the application is allowed and execution of the decree is stayed

provided the applicant deposits in court the sum of 10m/= within 30 days from the date hereof. Costs will be in the cause.

DATED at ARUSHA this 26th day of October, 2000.



K.S.K.LUGAKINGIRA
JUSTICE OF APPEAL

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



(*[Signature]*)
DEPUTY REGISTRAR