

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 110 OF 1999  
In the Matter of an Intended Appeal

BETWEEN

1. TANZANIA UNION OF INDUSTRIAL  
AND COMMERCIAL WORKERS  
(TUICO-GTTU UNION)
  2. JOHN NDOKILE MWAKABWALE  
(TUICO Branch Chairman at TIFER)
- . . . APPLICANTS

AND

TANZANIA AND ITALIAN PETROLIUM  
REFINING COMPANY LTD. (TIFER) . . . . . RESPONDENT

(Application for Interim Injunction Pending  
Appeal from the Decision of the High Court  
of Tanzania at Dar es Salaam)

(Manento, J.)

dated the 16th day of December, 1999

in

Civil Case No. 422 of 1999

R U L I N G

RAMADHANI, J.A.:

The applicants filed a suit in the High Court asking for declaratory orders on a number of matters. However, pending the disposal of that suit, they applied for a temporary injunction to restrain the respondent from terminating their employment on redundancy.

On 16/12/99 MANENTO, J. dismissed the application for temporary injunction. The applicants have appealed against that refusal. Pending the hearing of that appeal, the applicants have come before me for a temporary injunction.

Prof. Shivji, learned counsel for the applicants, took some time showing that this Court has powers to grant temporary injunctions pending appeals. However, Mr. Kilindu, the learned advocate for the respondent, conceded that this Court has such inherent powers. It is also my

considered opinion that that is so and thus the issue need not detain us. Prof. Shivji also, and rightly, too, cited an authority to the effect that an appeal lies against an order granting or refusing an interim or interlocutory injunction (Richard Kuloba in Principles of Injunctions, Oxford University Press, Nairobi, 1987 p. 70). Mr. Kilindu, again, agreed with this. Therefore, the appeal against the ruling of MANENTO, J. is quite in order and so is this application.

Both learned counsel are again at one that there is abundant authority for the proposition that temporary injunction is granted in an application pending appeal where the appeal has chances of success. This is to avoid rendering the appeal nugatory. It follows then, that injunctions will not be granted in the case of a frivolous appeal. (See Wilson v. Church, (No. 2) (1879) 12 Ch. D. 454, C.A. and Polini v. Gray, (1879) 12 Ch. D. 438, C.A. and as propounded by authors like Kuloba at p. 70 and David Bean in Injunctions (FT Law & Tax, 7th. ed. 1996 p. 119). Likewise, a temporary injunction will not be granted where it would inflict greater hardship than it would avoid. (Enrinford Properties Ltd. v. Cheshire County Council, [1974] 1 Ch. 261 at 268).

Let us see how the established legal principles apply to the present application.

Prof. Shivji submitted that the intended appeal has great chances of success because in dealing with that application for temporary injunction, the learned Judge touched upon merits and demerits of the suit. So, one of the grounds of appeal is that the learned trial judge took into account matters which he should not have taken into account.

Mr. Kilindu, on the other hand, had four points in resisting the application. First, he argued that the applicants are merely apprehensive that they are going to be laid off because of redundancy and that is not

a sufficient circumstance for ordering a temporary injunction. Second, and in the alternative, even if there is redundancy, the respondent is obliged by law to consult the applicants or else the exercise is going to be a nullity (Hamisi Ally Ruhondo v. Tanzania-Zambia Railway Authority, Civil Appeal No. 1 of 1986 (C.A.) (unreported) and George Barabara v. Minister of Labour, Misc. Civil Cause No. 30 of 1995 (H.C.) (unreported). Therefore, this application is superfluous. Thirdly, the employer - employee relation is contractual and a remedy for breach of contract is damages and not a temporary injunction. He cited Cresswell v. Board of Inland Revenue, [1984] 2 All ER 713 at 719 and also David Bean at p. 45. Lastly, if an injunction is ordered in the present case, the injury which is going to be caused will be greater than that which is sought to be averted. The reason given is that business on the part of the respondent is bad and if the company is prohibited from declaring the applicants redundant, then it will be forced to borrow money in order to pay them salaries.

Prof. Shivji replied that the authorities which Mr. Kilindu cited dealt with private law, contract, but in the present application the issue is a statutory provision requiring consultation with workers in the case of impending redundancy.

In this application to deal with the issue of the success of the appeal will be skating on extremely thin ice and I might find myself dipping into the merits of the application just as the High Court did. And that is one of the reasons why there is an appeal pending in this Court.

However, I think that I am in order to say that Mr. Kilindu conceded that declaring the applicants redundant without consultation is illegal. In fact, he went further to say that the respondent company



has committed itself to negotiate with the applicants before declaring them redundant. If that is so, I ask myself, what harm is there in backing up that commitment with a Court order for temporary injunction? I cannot find any.

There is a passage in Erinford Properties v. Cheshire County Council at p. 268 which supports this inclination of mine in backing up this commitment:

A judge who feels no doubt in dismissing a claim to an interlocutory injunction may, perfectly consistently with his decision, recognise that his decision might be reversed, and that the comparative effects of granting or refusing an injunction pending an appeal are such that it would be right to preserve the status quo pending the appeal. I cannot see that a decision that no injunction should be granted pending the trial is inconsistent, either logically or otherwise, with holding that an injunction should be granted pending an appeal against the decision not to grant the injunction, or that by refusing an injunction pending the trial the judge becomes functus officio quoad granting any injunction at all.

Here I am like a trial judge because whatever decision I make, it can be subjected to a reference before a full Court and I think it may be right to preserve the status quo.


I agree with Prof. Shivji that this matter is unlike the situations obtained in breaches of contracts. Here there is a statutory requirement. As to whether or not the applicants are apprehensive, I think, is an issue to be determine in the main application for a declaratory order that there should be consultation pending imminent redundancy.

For this reasons given above I grant the application. Costs to follow the event.

DATED at DAR ES SALAAM this 6th day of March, 2000.

A.S.L. RAMADHANI  
JUSTICE OF APPEAL

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

  
( A.G. MARIJA )

DEPUTY REGISTRAR