

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 42 OF 1998

BETWEEN

1. WANKIRA BETHUEL MBISE )  
2. NATIONAL HOUSING CORPORATION )..... APPLICANTS

AND

KAIKU FOYA ..... RESPONDENT

(Application for stay of execution from the  
decision of the High Court of Tanzania at  
Dar es Salaam)

(Mackanja, J.)

dated the 26th day of June, 1998

in

Misc. Civil Cause No. 146 of 1996

R U L I N G

RAMADHANI, Ag. C.J.:

This is an application for a stay of execution. However, the respondent filed a notice of preliminary objection containing two points but only one of them is relevant and was conceded by the learned advocates of the applicants.

Capt. Sanze, learned advocate for the respondent, pointed out that this matter originated in the Resident Magistrate's court and so, required leave to appeal but none has been obtained. The learned advocate added further that as time has elapsed, there is a need to apply for an extension of time within which to file the application for leave to appeal.

At first, both Mr. Wambali, learned counsel for the first applicant, and Mr. Lugua, learned advocate for the second applicant, resisted the objection saying that there is an application pending before the High Court asking for leave to appeal. However,

is no leave to appeal and also that time to apply for leave needs to be enlarged. Both learned advocates applied for an adjournment so as to consider withdrawing this application formally. Upon being told by the Court that there is this prayer for striking out the application for stay of execution, both learned advocates decided to leave the matter with the Court. Capt. Sanze, on the other hand, stuck to his guns and reiterated his prayer for striking out the application for stay of execution.

The objection has greatly exercised my mind but finally, I am of the considered opinion that I have to follow the decisions of this Court on similar applications like this before me now. It has been decided in a number of instances that where leave to appeal has not been obtained, then an application for stay of execution is not properly before the Court. I held so in The Bank of Tanzania v The Minister of Labour and Eight Others, Civil Applications Nos. 11 and 12 of 1997. In those applications I referred to two decisions of this Court: Willow Investments v Mrs. Maombo Ntumba, Civil Application No. 13 of 1997, and The National Bank of Commerce v Star Transport Co. Ltd., Civil Application No. 60 of 1995 (both unreported).

So, the preliminary objection is upheld and this application is struck out as it is not properly before the Court. Costs to follow the event.

The applicants are free to exercise their right of reference if they so wish.

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DATED at DAR ES SALAAM this 30th day of September, 1998.

A.S.L. RAMADHANI  
ACTING CHIEF JUSTICE



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

  
( A.G. MWARIJA )  
DEPUTY REGISTRAR