

TANZANIA / JUDGMENT

20061207 TZCA Dar es Salaam1

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. • _i:\$}1~."Hi IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CIVIL APPLICATION NO. 82 OF 2006 ANVERAL KAKAL~ •...•...•...•...~• APPLICANT AND ALUMINIUM AFRICA LTD RESPONDENT (Application for Stay of Execution from the Decision of the High Court of Tanzania at Dar es Salaam) ' . (BWANAJ.) Dated the 2 nd day of May, 2006 In Commercial Case No. 200 of 2002 RULING:. 30 October & 7 December, 2006 MUNUO, J, A.: • The applicant, Anverali Kakal, through the services of Mr. Chandoo, learned advocate, is seeking stay of execution of the Ruling and Order dated the 2.5.2006 in Commercial case No. 200 of 2002 in the Commercial Division of the High Court, before Dr. Bwana, J. ... ;• 2 The grounds of the application are stated in the Notice of Motion, namely that:

- (a) the applicant will suffer irreparable loss if stay of execution is disallowed;
- (b) on the balance of convenience, the applicant will suffer greater hardship than the respondent if execution proceeds before the intended appeal is determined, and (c) the case is problematic in view of the Bankruptcy Petition No. 1 of 2006 in which a receiving order has been made per annexure MHC 4 to the notice of motion. The application for stay of execution is supported by an affidavit deposed to Mr. Mustafa Chandoo, learned advocate. He stated at paragraph 6 of his affidavit that the applicant is an old man. 3 He was a passive partner in the firm of Alif Hardware, the judgment debtor in Commercial Case No. 2006 of 2002. Being a passive partner, the applicant became a judgment debtor by operation of law. Mr. Chandoo further stated that as the applicant is impecunious, he filed Bankruptcy Cause No. 1 of 2006 in the High Court of Tanzania at Dar es Salaam wherein a receiving order, annexure MHC 4 was issued making the Administrator General, the official Receiver of the Court, the constituted Receiver of the estate of the applicant debtor. It is the view of counsel for the applicant, in view of the above bankruptcy cause, the debt should now be directed not the applicant, but to the receiver of his estate, the Administrator General. Ms Hamida Sheikh, learned advocate for the respondent opposed the application. She filed a counter-affidavit contending that the, applicant admitted the debt but his family arrog,antlY declined to settle it. On the bankruptcy cause putting the estate of the applicant, under receivership, Ms Sheikh contended that the said 4 cause was filed to deceptively avoid settling the debt so execution should proceed by way of civil• imprisonment as there is a warrant of arrest per annexure D1 to the counter-affidavit. Annexure D1, was issued by the

High Court, Commercial Division, on the 16.5.2006 consequent to the Ruling of the Commercial Court on the 2.5.2006 and the Drawn Order arising therefrom, dated the 22 nd May, 2006. Apparently the bankruptcy cause was filed on the 30th January, 2006 and as per the Receiving Order, the said Order was issued on the 20th April, 2006, almost a month prior to the issuance of the Warrant of Arrest on the 16th May, 2006. The issue is whether there is sufficient ground for staying execution in this case. In view of the pending bankruptcy cause and the Receiving Order in force, I am of the settled mind that allowing execution to proceed will be problematic in view of the provisions of Sections 5 to 16 of the Bankruptcy Act, Cap 25 R.E. 2002. The said sections have provisions relating to a Receiving Order and Proceedings Consequent on Order. 5 On the balance of convinience, therefore, and in view of the j provisions of the Bankruptcy Act, section 5 of which protects the estate of the applicant judgment debtort execution is stayed pending the determination of the intended appeal. The respondent would be I well advised to list the debt in question with the Receiver, by I I forwarding the decree to the said Receiver, The Administrator General. ' I I DATED at DAR ES SALAAM this l~th day of November, 2006. < I E. N. MUNUO JUSTICE OF APPEAL I certify that this is a true copy of the original. I I Dated at Dar es Salaam this ih day of December, 2006.

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