

TANZANIA / JUDGMENT

19981106 TZHC Dar es Salaam

COURT
TZHCDECIDED
6 November 1998

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL APPLICATION NO. 1 OF 1998
MOHSIN MOHAMED TAKI ABDALLAH. (Petitioner) vs. TARIQ MIRZA (Deceased)
KISTATW.) MOHAMED DAM.) Respondents T.J.T., f. AND T.I.J.H. LTD)
REGISTRAR OF COMPANIES) .RU T, ___ T N ___ G KAT, RGF.VA. , J .. Dissatisfied with the ruling of
the High Court (No. 1106 of 1998) which dismissed their preliminary objections, the 1st and 4th
Respondents, who, filed an appeal to the Court of Appeal, proceeded to apply
for copies of proceedings, ruling and order, which up to the time of this ruling (as per
their representations made by parties during the hearing of the matter leading to this ruling)
the same have not been supplied. Mr. Taki Abdallah being the Petitioner applied to the court
to have his Application for temporary injunction heard, which prayer attracted a stiff
objection from Respondents who counter-pleaded that the Petitioner is not a notice of Appeal to the
Court of Appeal. The Petitioner's counsel has argued that the Petitioner cannot proceed with such application.
This finding is in respect of that controversy. For clarity some further background to the case is
relevant. It is necessary. According to the records at hand, the Petitioner, Mohsin
Mohamed Taki Abdallah and the 1st - 3rd Respondents (Tariq Mirza, Deceased, Kikisiwa,
Mohamed Namji) formed a company in the name of the 4th Respondent (Tile and Tnh Ltd) in
1992. Their business went on undisturbed until 1997 when they fell apart. Joint
deliberations settled on an understanding, among others, that the 1st and 2nd Respondents
buy out the Petitioner from the 4th Respondent. The terms, as well as whether the terms
were fulfilled are contested between them. The Petitioner alleges that not only were the terms
not complied with but also the Respondents went further to fraudulently misrepresent
a document which purports to show that he had already transferred his shares. The Petitioner
therefore urged this court for judgment and decree against Respondents for, among
other things, (a) A declaratory order that the petition of the Petitioner's share to
the 2nd and 3rd Respondents is null and void.

- (b) That this court be pleased to order the winding-up of the 4th Respondent company.
The Petitioner did not end there for he filed a chamber summons supported by affidavit
prayering for "(i) to X.P. to (the writs herein and claim, with, in, <1 in 1.;
the application should be heard; it is the Petitioner's (b) T.N.T.F. PARTS

1. That this Honourable court. bP. pler1sen t.o i ss11P. i'l tP.mporary injunct.ion rest.raining t.hP. 1st_. ?nd i'l nrl 3rd Respondents from moving or trr1nsfP.rring in any w;;iy the st.oc:k of the 4th Respondent. Comp;;iny hv locking up the showroom ;:rnd warehouse of the afor.ement i orn=id Comp;;iny si t.w=;it_P.rl on Plot Nn. 4 Nyerere Ror1d pending the hearing ;:incl oet.e rmi nr1 t. ion of the Pet i_ t. ion.
2. That this Honourable Court. he plMtseo to i i;:::ue n t.empor.ary :injunct.ion restraining the 1st_. ?nd rino 3rd Respondents from conduct.jng ;:ind\or mrinaginy thA affairs of the 4th Respondent Company pending the hearing and oetermination of the Peti ti.on". In response to the whole issue ;:nrnl when the r1ppl i crlt ion for temporary injunction wns about. t.o be hear.Ii t.he 1st. anr1 4t'h 7. \...;, Respondents raised prel imi nrJry objections that_. "(a) That this Honour.ahlR Court has no j11r:i.s<li.ct.ion to entertain both the appl.icRtion for temporary injunction and the Petition.
- (b) That the Applicant\PetitionAr hiis no locus :=;t.rrndi
- (c) That the Petitioner has no cause nf Rction against the Respondents". The court tackled the objections first whir:h were dismissed and this was followed by the lodging of the Noti~e of Appeal ~s already referred to. The Petitioner insists that let the appeal against the ruling proceed but that the application for temporary injunction should meanwhile be heard and decided, whjch is heing vigorously contested by the Respondents. The only issue in this matter i.s whether in the circumstances this court can now proceed to hear and determine the applf~ation for temporary injunction. Having carefully considered the same I have arrived at the opinion that it can't. I purposely quoted above the prayers contained in the petiti.on; the preliminary objections and the prayers that are to be considered in the application for temporary injunction - j11st for clarity, by putting together the gist of the whole controversy. The Respondents.are contesting among others, the jurisdiction of this court and the existence of a cause of action. In the circumstances, would it he proper to proceed with the hearing of the application for temporary injunction when the main body on which that applicatj_on is hinged is being challenged in the Court. of Appeal? My simple answer is no. The matt.er for which the temporary inj11nction i.s being applied for is nn longer within the powers of this court but that of the Court of Appeal by virtue of the Notice of Appea]. already filed. On this I am treading on the guid, :=rnc:e of the Court. of Appeal of 'Pan?.iin i ;:-1 in CIVIL REFERENCE NO. ' 25 . OF 1997 , ' In U1e Matt'er of an Tntfrnc'led 3
- . I ·V Appeal between THE; NATIONAL INSURANCE CORPORAI"TON (Appl i r.nnt.) and KWEYAMBAH QUAKER (Respondent), Dsm Registry, unreported. In the abov cited case, following r1rlisrmissal of his two applications - an applic-1t ion to set aside r1n exp;;irtA j11<'lgAmeni-. and stay of execution, the applicnnt file<l two applications, namely, an application for extension nf tin1e to prP.sent a fresh application to set aside th?. expart.e j1JclgP-me11t anrl afresh application for stay of execution. A wP-ek L=iLP.r the applir.rint. employed another tactic, for, he longed a notice of AppP.al against the exparte judgernP-nt. Again, shortly therP-after, the applicant's Counsel approached the Hi.gh Cnuri". with a certif.icr,1te of urgency urging for ear 1 y he:n .ing of the two ;:;ippl i cat.inns_. adding that

he was withdrawing the appeal. R1~fon~ the Collrt of Appeal, the argument, among others was whethP-r the High Collrt could proceed with the heriring of the two applicationR whi.le the notice of Appeal subsisted. 'The Court of App ea l r l f tP.r ho l r l i n g that the notice could not be removed by the High Court alsn decided that once there j:=; such notice the matt.er is removed from the High Court unto the r:ourt of Appe.:il. 'The Court hel<'l, ""'There are therefon~ two issue:=; for cons i clP.r.:it.ion and determin;::ition, that is, whether a nnticP. of Appeal removes a case,from thA High Court t.o the Court of Appeal and beginning with the fi.rst issue, we have no hestation .:=inswering it in the positive, and for these reasonR. First of all., as pointed out by the Learned single judge, .:=i notice of ;:ippeal, is as per Form n, ins ti tut.eel 'Tn the C:ourt. of Appeal of 'fanzani..:=i' .- and t.hi R in our vi P.W, means that the notic~ is r l.ddressed to the (;n11rt. nf Appeal We are satisfied having regard to these fr1ctors, and agree with Kisanga, J.A, that a notice of Appeal has the effect of removing a case to the r'ourt of Appeal". In that case, the Counsel for the applicant also argued that· notwithstanding t.he lodging of a notice of r1ppP.al the High m;:iy 4 _ ~- st.ill deal with the mat.t.t=ff r1nd cited the qnestion of gnrrnting leave or decidi.ng on the existence or otherwise of n point nf law. The Court of Apper1l n~F-pondecl r1s unsJHr·,

- The provision is merely proce<'l11n:il Ann its 11 pr imr:lry purpose .i. s to provide thr1t r1 notice nf r1pper1 l can be lodged before ler1ve to r1pper1l or a certifier1te on a point of law is obta.i ned: cf. Mnt.el _ _schwei tzer v T •• E. G_unni,noha!"__ ~__ Anot.her, (1q~~) 7.?. F.ACA ?!1?.,. ?~4. The rule takes into ;:iccount thR frict thr:1t it involvei=; r1 process, which invariably spills i_nto weeks and months to obtain leave to appeal or to nhtrlin a certifier1te on a point of law, whereas a notice nf appeal has to be lodged within fourteen days of the decision against which it is desired to apper1l. T!:.i..!':... ,:r_11-J~ does not.__ purport. to brina hack for t.hP. {lt~t~--t~i on of thP. **Higb Court pmat ter** _gJ,ready .l>~f.Q!:.!LJ~_t!_~ . (:_c:>J1_rt ____o._f _Anneal 11 (en10h;:i sis mine). Tn the circumstances then~fore, the RespnndP.nt.s nrgument is sound. T~ey are saying that therP. sho1ld be no case r1lg;:iir-;t them 1(;,r - ' , , , c _ in this court. . This' court decided that the case is properly filed ~ before it. The Res~ondents are chrillenging this before the Collrt of Appeal. They are; challenging the whole decision hence evP.rything has been TP.moved unto the r.011rt of Appeal. Whr1t· then can be said to have r.emained wi. th th j s con rt nn wh i r.h the application as the one at. hand can be based? T see nothing. For the clear reasons discl1ssed nhove the ;:ippl i cr1t ·inn hy the Petitioner that the appl i cr1tion for temporr1ry injunction shoul cl be heard by this court is dismissed. (T.. R. K.:ilegeyr1) ,TUDGF. DelivP.red in the presence nf Mr. Msemwa, MisA Sheikh and Magafu. AT DAR ES SALAAM (r.. R. Ka legeyri) 2ND NOVEMBRR, 1998 ,TUDGF. 5 l certly lhat this 15 11 ir 1J) [of lbc Ur /J

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