

Civil Application No 111 of 2006 – court of Appeal of Tanzania at Dar es Salaam Msoffe, J.A	Stanbic Bank Tanzania Ltd Vs Plexus Cotton Ltd (Application for stay of execution from decision of High Court of Tanzania at Dar es Salaam (Massati J) Commercial case No 128 of 2005.	Strong grounds for an appeal was not reason for granting a staying for no one ought to appeal without strong ground for doing so. (Passage from English case Smonite Vs. Sheffield county Council cited on pg.68 in Tanzania Cotton marketing Board Vs. Cogecot Cotton Co.ss.(1997)TLR 63.
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**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIIVIL APPLICATION NO.111 OF 2006

STANBIC BANK TANZANIA LTDAPPLICANT

VERSUS

PLEXUS COTTON LTD.....RESPONDENT

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

(Massati J,)

Dated 27th day of July, 2006

in

Commercial Case No.128 of 2005

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RULING

2nd & 18th October, 2006

MSOFFE, J. A:

This is an application for a stay of execution filed under Rule 9 (2) (b) of the Court Rules, 1979. The application arises from the decision of the High Court (Commercial Division) given on 27th /7/2006 in Commercial case No. 128/2005. The applicant is applying for an order that the execution of the above decision be stayed pending the determination of an intended appeal notice of which was given on 31/ 7/ 2006. The application is supported by an affidavit deponed by Mr. Aloysius S. K. Mujulizi.

At the trial the respondent's claim against the applicant and Ushirombo Cotton Ginnery was for payment of USD 172,222 being the value of 930 cotton bales paid for but not supplied, as well as general damages, interest, and costs. In an ex parte judgment the High Court decreed a sum of USD 172, 222, and also USD 50, 000 as general damages, interest at 21% p. a; and costs in favour of the respondent.

In the affidavit in support of the application Mr.Aloysius S. K. Mujulizi advances two main reasons for seeking a stay order. **One**, the decision of the High Court is problematic in that the process

leading to the judgment was improper and amounted to rushed justice in that essential steps in the proceedings were skipped. Also that the judgment did not contain the essential requirements or contents of a true judgment. **Two**, the respondent is a foreign company with no registered office and known properties and assets in Tanzania. So, there is a possibility that the applicant will not be able to recover the decretal amount, if paid to the respondent, in the event the intended appeal succeeds.

Mr. Mujulizi, learned advocate, appeared for the applicant. In his oral submission, he highlighted areas in which he thought the judgment is problematic. He also spent quite some time urging that there is a possibility that the applicant will not be able to recover the decreed sum in the event the intended appeal succeeds. In his view, the possibility is a strong one because the respondent is not registered in Tanzania and has no known properties and assets in the country. In his further view, the balance of convenience tilts in favour of granting an order for stay in that the respondent who submitted to the jurisdiction of this country should allow the process of justice to come to an end in our courts. On balance, therefore, an order for stay is the sensible thing to do in the circumstances, he

emphasized. In conclusion, he submitted that a stay order could be given on such terms as the Court would deem fit. In his opinion, the terms could include a deposit of money in order to take care of any fear or worries on the part of the respondent.

Messrs. Temu and Lyimo, learned counsel, advocated for the respondent. Mr. Temu contended that the applicant has not specified or particularized the kind of loss that is likely to be suffered in the event stay is not granted. He cited this Court's decision in the case of **Tanzania Cotton Marketing Board versus Cogecot Cotton Co.ss** (1997) TLR 63 in support of the point. Besides, he went on to urge, since the matter is a purely monetary claim the applicant will be compensated adequately by damages in case the intended appeal succeeds. As for the contention that the respondent is a foreign company Mr. Temu was of the view that this is not a strong point because as a commercial enterprise the respondent deals with both local and foreign customers. At any rate, a judgment given in Tanzania could still be executed outside the jurisdiction by virtue of the relevant provisions of The Reciprocal Enforcement of Foreign Judgments Act (Cap.8). On prospects of the intended appeal, he urged that this is not a factor in granting a stay order, citing this

Court's decision in **Cogecot**. On balance of convenience, he contended that this is always struck where an order puts no party in jeopardy. In this case, the applicant should not be allowed to continue enjoying the use of the decreed sum as if no judgment had been awarded to the respondent. Therefore, to strike a balance, he went on to say, an order for deposit of the decretal sum could be made if a stay order is given.

In supporting Mr. Temu, Mr. Lyimo was of the view that the applicant's apprehension that it would be costly to recover the decretal sum if stay order is withheld is baseless because the aspect of cost has never been a factor in considering an application for a stay of execution.

To start with, I agree with Mr. Temu that the applicant has not given details and particulars of loss which are likely to be incurred if the application is not granted. As it is, the applicant has merely asserted that loss will be incurred, without more. With respect, it was expected that details and particulars would be given in line with this court's decision in **Cogecot**.

As for chances of success of the intended appeal, again I agree with Mr. Temu that at this stage it is not possible to make a meaningful assessment of the chances because arguments from both sides have not been heard. At any rate, as was observed by this Court in **Cogecot** the current trend, even in other jurisdictions, seems to indicate a move away from this factor in granting a stay of execution. The following passage from the English case of **Simonite v Sheffield County Council** cited on page 68 in **Cogecot** is a relevant example on the point.

“..... and that there were strong grounds for an appeal **was not reason for granting a stay**, for no one ought to appeal without strong grounds for doing so.”

(Emphasis Supplied)

In the justice of this matter, the only factor which appeals to me is balance of convenience. I agree with Mr. Temu that a balance is struck where neither party is put in jeopardy. In this sense, there is merit in the submission of Mr. Mujulizi that since the respondent submitted itself to the jurisdiction of this country it will be fair and

prudent that the process reaches a finality in the courts of this country. In the same vein, I agree with both Messrs. Mujulizi and Temu that this would be an appropriate case in which to make an order for the deposit of an amount of money as security. Such an order would allay any fears that the respondent might have on the applicant.

In the event, I allow the application and accordingly grant a stay of execution of the judgment of the High Court (Commercial Division) given on 27/ 7/ 2006 in Commercial case No. 128/ 2005 against the applicant. I also order the applicant to deposit into the court a sum of USD 100,000 as security. Costs will be in the cause. It is so ordered.

DATED at DAR ES SALAAM this 18th day of October, 2006

J. H. MSOFFE
JUSTICE OF APPEAL

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

S. M. RUMANYIKA
DEPUTY REGISTRAR