

TRINITY ENGINEERING (PVT) LIMITED v ZAMBIA NATIONAL COMMERCIAL BANK LIMITED (1997) S.J. 12 (S.C.)

SUPREME COURT

B. K. BWEUPE, D.C.J., CHIRWA AND MUZYAMBA, JJ.S.
10TH APRIL 1997 AND 12TH MAY 1997
S.C.Z. JUDGMENT NO. 4 OF 1997

Flynote

Judgment - Final judgment - Stay of execution not possible.

Headnote

Appeal from an order in the High Court in respondent's favour for a stay of execution.

Held:

There can be no stay of execution of a final judgment of the Supreme Court

For the Appellant: Mr. E.C. Lungu, Andrea Masiye & Co.

For the Respondent: Mr. A. Siwila, Senior Manager, Legal Services, Zambia National Commercial Bank Limited

Judgment

MUZYAMBA, J.S.: delivered the Judgment of the court.

For convenience we shall refer to the appellant as plaintiff and respondent as defendant for that is what they were in the court below.

This is an appeal against the order of stay of execution of this court's decision given on 29th January, 1996. When we heard the appeal we allowed it and said we would give our reasons later. We now do so.

The facts of this matter are quite familiar to us. In the court below the parties signed and filed a consent judgment that was approved by the court. Later, the defendant applied to set aside the judgment on the ground of fraud. The court found that there was no fraud in obtaining the defendant's consent but nevertheless set aside the judgment on the ground that the contract leading to the consent judgement was illegal as it contravened the exchange control regulations then in force. The plaintiff appealed. We heard the appeal and allowed it and restored the consent judgment. Later the defendant applied under the slip rule to correct clerical errors in and /or to set aside the judgment. In the meantime the defendant, on 8th February, 1996, obtained an ex-parte order from a single Judge of the court staying execution of the judgment. On inter-party hearing on 15th February, 1996, the ex-parte order was discharged whereupon the defendant made an application to the High Court for a stay of execution which was granted and hence this appeal.

Originally, three grounds of appeal were listed but at the hearing of the appeal, learned Counsel for the Plaintiff, Mr. Lungu abandoned grounds 2 and 3 and argued ground 1 only; that the learned trial court erred in not realising that it had no jurisdiction to stay execution of a judgement of the Supreme Court. He argued that the High court had no jurisdiction to order a stay of execution of this court's decision. That by ordering a stay of execution of this court's judgment the High Court assumed a supervisory role over this court which was wrong and should not be the case. That, if the plaintiff was not happy with the decision of the single Judge in discharging the ex-parte order it should have applied to the full court in terms of Section 4 (b) and rule 48 (4) of the Supreme Court Act and Rules Cap.52.

In reply and in response to questions by the court Mr. Siwila conceded that it was improper for the defendant to have applied to the High Court for a stay of Judgment. That the proper course would have been for the defendant to apply to the full court after the ex-parte order

was discharge. That the order by the High Court was therefore null and void.

We have considered the arguments. As we see it, the question is not whether or not the High Court has jurisdiction to order a stay of execution of this Court's decision but whether or not there can be a stay of execution of a final judgment. Judgments of this court are final and there can be no stay of execution of a final judgment. It is for this reason that the single Judge of this court discharged the ex-parte order. For this reason we would allow the appeal and set aside the order of stay of execution.

Costs to follow the event and to be taxed in default of agreement.

Appeal Allowed
