**East African Development Bank v Blueline Enterprises Limited**

**Division:** Court of Appeal of Tanzania at Dar-es-Salaam

**Date of judgment:** 5 May 2006

**Case Number:** 130/05

**Before:** Lubuva JA

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Evidence – Admissibility of tape recordings – Exceptions to admissibility of relevant material –*

*Standard of proof of prosecution to prove admissibility of tape recording – Duty to keep original*

*recording in safe custody at all times.*

**Editor’s Summary**

The respondent was awarded USD 275 099 and TShs 161 000 as costs by the Taxing Officer. The applicant, being dissatisfied, filed a reference in the High Court on 9 August 2004. The court however reduced the costs slightly to USD 180 000 and TShs 161 000. Still dissatisfied, the applicant filed a Notice of Appeal and this application for stay of execution.

**Held –** The intended appeal is with regard to the costs as awarded by the Taxing Officer. The position therefore is different from the situation in which stay of execution is sought pending hearing and determination of an intended appeal against judgment and decree. The guiding principles in applications for stay are well settled. However, the application of these guiding principles would depend on the individual circumstances and merit of each case. The individual circumstances of each case would determine whether the case falls within the scope and parameters of any of the laid down principles. One of the factors to be considered in an application for stay of execution is whether the outcome of the appeal if successful would be rendered nugatory if execution is not stayed. (*Tanzania Cotton Marketing Board v Cogecot Cotton Company* SA [1997] TLR 63; *Tanzania Electrical Supply Company and others v Independent Power Tanzania Limited* consolidated civil applications numbers 10 and 22 of 1997 (UR) followed). The outcome of the appeal would not be rendered nugatory if stay of execution is not granted. The issue pertains to costs after the decision of the High Court was passed in favour of the respondent. Costs indisputably follow the event in favour of the winning party, the respondent in this case. Whatever the outcome of the intended appeal against the decision of the High Court following the taxation of the bill of costs by the Taxing Officer, the applicant cannot escape paying some costs incurred by the winning party in prosecuting the case to the stage of taxation of bill of costs. The appeal if successful would in any event only affect the quantum of the costs and not exoneration from payment of costs. In that situation the outcome of the appeal would not be rendered nugatory. The guiding factor relating to substantial loss to be incurred if stay of execution is not granted relates to loss that would follow from the execution of the judgment and decree and not from costs on bill of taxation as in this case. These as already indicated are costs that a winning party is entitled to be paid after the suit or petition is over. Whether or not the instruction fees are not sustained on appeal, payment of some costs cannot be avoided all together in favour of the winning party. This is because it is common knowledge that costs follow the event, irrespective of whether or not the matter arose from a suit or a petition. In the circumstances it would be prudent to stay payment of costs until the intended appeal against costs is heard and determined. Upon the determination, the applicant would be certain of the amount involved in the costs, if any. (*Zacharia Barie Bura v Thereia Maria John Mubiru* civil application number 10 of 1991 (UR), *Ravindra R Desai and another v Co-operative and Rural Development Bank* civil reference number 2 and 3 of 1996 (UR) applied). There is sufficiently good reason for granting stay of execution. There is an appeal pending in this Court against the very decision of the learned Judge on costs which is sought to be stayed. Granting stay of execution would be in the interests of justice rather than carrying on the execution process pertaining the costs in which there is some uncertainty. Having regard to the circumstances of the case, the balance of convenience and common sense tilts in favour of the applicant to grant stay of execution. Application granted.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Ignazio Mesina and National Shipping Agencies v Willow Investment and Costa Shinyanga* civil reference number 8 of 1999 (UR)

*Kuljeet Singh Naha v Indevjeet Kaul Nahal* civil application number 90 of 1998

*Ravindra R Desai and another v Co-operative and Rural Development Bank* civil reference number 2 and 3 of 1996 (UR) – **AP**

*Stanbic Bank Tanzania Limited v Woods Tanzabia Limited* civil application number 196 of 2001 (UR)

*Tanzania Cotton Marketing Board v Cogecot Cotton Company SA* [1997] TLR 63 – **F**

*Tanzania Electrical Supply Company and others v Independent Power Tanzania Limited Consolidated* civil applications numbers 10 and 22 of 1997 (UR) – **F**

*Tanzania Tele Communications Company Limited v MIC Tanzania Limited* civil application number 125

of 2002 (UR)

*Zacharia Barie Bura v Thereia Maria John Mubiru* civil application number 10 of 1991 (UR) – **AP**