**Japan International Co-operation Agency (JICA) v Khaki Complex Limited**

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

**Date of judgment:** 17 November 2005

**Case Number:** 151/05

**Before:** Munuo JA

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Civil procedure – Time within which application for stay of execution must be filed – When*

*limitation period starts counting – Grounds for staying execution pending appeal.*

**Editor’s Summary**

The applicant, Japan International Co-operation Agency (JICA) brought the present application for stay of execution as well as raising a garnishee order attaching the applicant’s operational and development expenditure account on the ground that if execution is not stayed, the operations of the applicant will be paralysed. The respondent filed a Notice of Preliminary Objection under Rule 100 of the Court of Appeal Rules, 1979 to the effect that the application for stay of execution is time barred as it ought to be struck out with costs. There being no extension of time to file this application four months after the first application was struck out, the application is incompetent and should be struck out with costs. The applicant however pointed out that the first application which was struck out on the 8 June 2005 was filed within the prescribed period of sixty days so it was timeous. He contended that the present application was within time because the respondent became aware of the fate of the first application from the Registrar’s letter dated 27 September 2005 whereupon he filed the application on the 7 October 2005, within the prescribed period of sixty days thus, the period of limitation for the present application should be counted from the 27 September 2005.

**Held** – There was no material in the record to show that the applicant had knowledge that the application for stay had been ruled upon by the court. It was therefore reasonable to count the registrar’s letter of 27 September 2005 as the first information reaching the applicant alerting it that the first application for stay of execution had been struck out on the 8 June 2005. The applicant cannot be blamed for the failure of their former advocates to follow up the matter and/or communicate the striking out of the first application for stay of execution because it was not proved that the former advocates of the applicant had knowledge of the Ruling. They might or might not have been present when the Ruling was delivered on 8 June 2005 because there is no indication one way or the other in the records. Under the circumstances, the period of limitation was to be counted from the 27 September 2005 when the Registrar notified the parties that stay of execution was rejected on 8 June 2005. In this respect, the present application was within the sixty days prescribed period of limitation for applying for stay of execution and the preliminary objection was overruled. There was sufficient ground for staying execution in this case pending determination of the appeal. The award of US$ 300 000 damages for breach of the construction and tenancy agreement was a serious triable issue in the pending appeal. The balance of convenience tilted in favour of the applicant because the respondent remained with the building which the applicant declined to rent. If the applicant pays the decretal amount before the pending appeal is determined and later pending appeal succeeds, the applicant would have to suffer the inconvenience of reclaiming the decretal amount from the respondent and there is no guarantee that the said money would be easily retrieved and restored to the applicant. Stay of execution granted and garnishee order nullified.

**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**

*Furaha Shao v National Bank of Commerce* civil application number 9 of 1999 (CA)

*John D Kerenge v Joel Mabiba* civil application number 19 of 1998 (CA) (UR)

*Laswaki Village Council and Paresoi Ole Shuaka v Shibesh Abebe* civil application number 23 of 1997

(CA) (UR)

*National Housing Corporation v Etienes Hotel* civil application number 175 of 2004 (CA) (UR)

*Permanent Secretary Ministry of Agriculture and the Attorney General v 21st Century Food and*

*Packaging Limited and Sugar Board of Tanzania* civil application number 48 of 2004 (CA) (UR)

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*Suleiman Ally Nyamalegi and others v Mwanza Engineering works Limited* civil application number 9 of

2002 (CA) (UR)

*Tanzania Fishing Processors Ltimited v Christopher Lubunyula* civil application number