

IN THE ELECTRONIC COMMUNICATIONS TRIBUNAL



ACCRA

AD 2018

APPEAL NO: ECT/APP/001/2017

GENESIS MEDIA LTD

APPELLANT/APPLICANT

VERSUS

NATIONAL COMMUNICATIONS AUTHORITY

Accra

RESPONDENT/RESPONDENT

15th February 2018

CORAM: JUSTICE DATE-BAH (PRESIDING), PROFESSOR QUAYNOR, MR
AKPADZI

RULING ON MOTION ON NOTICE FOR STAY OF EXECUTION PENDING APPEAL

DATE-BAH, JSC (RETIRED): This is the unanimous Ruling of the Tribunal. The Applicant, on the 26th day of October 2017, filed a Notice of Appeal expressing dissatisfaction with a decision of the National Communication Authority dated the 26th day September 2017. The Appellant/Applicant has pleaded that the decision imposed a fine of eight hundred and fifty

thousand Ghana Cedis on the Appellant/Applicant. The Appellant/Applicant contends that this decision is wrongful and invalid.

On the 21st day of November 2017, the Appellant/Applicant filed a Motion on Notice for Stay of Execution, praying this Tribunal to stay the execution of the decision of the National Communication Authority dated 26th September 2017, which is the subject-matter of the appeal lodged by the Appellant/Applicant. In an affidavit in support of the Motion, Nana Adjei Ampofo, Managing Director of the Applicant, contends that the Applicant's appeal has a good chance of succeeding. He deposes to the assertion that the Respondent is threatening to revoke the licence and authorisation of the Applicant, if the fine remains unpaid after thirty days. He swears that should the Respondent revoke the Applicant's licence and authorisation and re-allocate them to another person, a successful outcome of the Applicant's appeal would be rendered useless and nugatory.

The Respondent, on the 12th day of January 2018, filed an affidavit in opposition to the Motion for Stay of Execution. In the affidavit sworn to by Ruth Essilfie Ntenah of Bentsi-Enchill, Letsa & Ankomah, she contends that this application is without legal basis and has no merit. She further contends that the NCA's Schedule of Penalties is not ultra vires the Electronic Communication Act, 2008 (Act 775). She puts forward the view that in the unlikely event of the appeal succeeding, the Appellant will not suffer any adverse consequences since once its authorisation has expired it cannot operate unless the authorisation is renewed. She argues that the Respondent will suffer damage if execution is stayed pending appeal since its authority would be undermined by the Appellant's continued operation, even though its authorisation has expired. She further contends that the Appellant/Applicant has failed to show any exceptional circumstances warranting the exercise by this Tribunal of its discretion in its favour.

The Tribunal heard arguments from counsel on January 25th 2018 and adjourned the case for ruling on 15th February 2018. During the hearing, counsel for the Respondent abandoned the preliminary objection that she had earlier raised relating to whether the appeal had been brought within the statutory period prescribed by the governing statute, namely the Electronic Communication Act, 2008 (Act 775). Counsel for both the Applicant and the Respondent agree that though the Respondent's challenged decision was made on 26th September 2017, it was not until 28th September 2017 that it was published, as

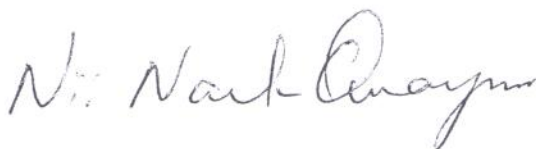
evidenced by the Press Release issued by the Respondent (admitted as Exhibit A in these proceedings).

In our Ruling dated 25th January 2018 in *Ghana Independent Broadcasters Association v National Communication Authority* (Appeal No. ECT/APP/002/17), we set out extensively the principles which we think govern the exercise of our discretion in cases like this. The interests of the Applicant and the Respondent have to be balanced by the Tribunal so as not to render a successful appeal nugatory, while at the same time not unnecessarily depriving the Respondent of the benefits of its regulatory authority. Attention has to be paid to the balance of hardship, on the facts of each particular case. The cases we cited in support of these principles were: *Republic v Court of Appeal, ex parte Sidi* [1987-88] 2 GLR 170; *Joseph v Jebeille* [1963] 1 GLR 387; *Saunders v Awuku (No. 2)* [1962] 1 GLR 545 and *NDK Financial Services Ltd. V Yiadom Construction & Electrical Works* [2007-2008] 1 SCGLR 93.

Applying these principles, we have come to the conclusion that the application for stay of execution should be granted and it is hereby granted.



JUSTICE SAMUEL KOFI DATE-BAH (PRESIDING)



PROFESSOR NII NARKU QUAYNOR (MEMBER)



BIADELA MORTEY AKPADZI (MEMBER)



COUNSEL:

Nana Adjei Ampofo (with him Derek Adu-Gyamfi)

Golda Denyo (with her Nana Adoma Duffour).