

IN THE ELECTRONIC COMMUNICATIONS TRIBUNAL

ACCRA

AD 2018

APPEAL NO: ECT/APP/012/2018

MEDEAMA FM LIMITED APPELLANT/APPLICANT

TARKWA

VRS

NATIONAL COMMUNICATIONS AUTHORITY

ACCRA RESPONDENT/RESPONDENT

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

1st April 2019

RULING

Prof. Date-Bah JSC (Retired):

This is the unanimous ruling of the Tribunal on an application for stay of execution brought by the Appellant/Applicant in this case. The Appellant filed a Notice of Appeal on 13th December 2018 expressing dissatisfaction with the Respondent's decision, contained in its letter of 29th November 2018, directing the Appellant to cease operating its FM Radio Station at Tarkwa with immediate effect until the Appellant's application for renewal of its FM Authorisation had been reviewed and the outcome communicated to the Appellant. The



reliefs sought by the Appellant are that the decision of the Respondent directing the Appellant to cease from operating its FM Station should be reversed and an order be made directing the Respondent to enter into an arrangement with the Appellant to regulate the Appellant's operations, pending the determination of the Appellant's renewal application, to avoid irreparable damage to Appellant and its consumers.

During the argument by counsel for the Appellant before this Tribunal, it pointed out the weakness of the Appellant's case to him. Consequently, he filed a Supplementary Written Address on Stay of Execution on 30th January 2019. In that Address, counsel endeavours to respond to the point that the Appellant's Licence/Authorisation had already expired. Counsel relies on regulation 107 of the Electronic Communications Regulations, 2011 (LI 1991), which provides that:

- “(1) The Authority shall base its decision for renewal on the evidence and comments presented at the hearing and the evaluation report of the Authority.
- (2) Where the Authority finds on the basis of the evaluation report and the public hearing that the operator has violated its obligations under the licence to an extent that does not justify denial of the renewal, the Authority may renew the licence for less than the full period for which a Class I Licence could be renewed, taking into account the nature and the degree of the violation.
- (3) The Authority shall communicate to the applicant its decision on the application for renewal within sixty days from the date of receipt of the application to renew and if it fails to do so, the licence shall be deemed to be automatically renewed for the period requested in the application for renewal.”

The Appellant/Applicant contends that it submitted its renewal application in June 2017 and paid the requisite fee. The Applicant submits that the Respondent did not reject the Applicant's renewal application nor notify the Applicant of any deficiencies in the application to enable the Applicant to remedy them. The Applicant submits that the Respondent's decision against which this Appeal has been brought constitutes a flagrant breach of regulation 107(3) of LI 1991, set out above. The Applicant contends that enactment requires the Respondent to renew its Authorisation/Licence within 60 days. The licence is automatically renewed for the period requested, if such renewal is not carried out.



In response to the Applicant's Supplementary Written Address, the Respondent filed a Written Address on 21st February 2019. The Respondent avers that, according to the conditions of the Applicant's Authorisation, it should have applied for a renewal of its Authorisation three months prior to its expiry. The Respondent also relies on regulation 105(1) of LI 1991 which provides that: "A Class 1 licensee who wishes to renew the licence shall apply to the Authority for the renewal of the licence at least three months before the expiry of the licence."

The Respondent therefore contends that the Applicant, having failed to comply with this requirement of applying at least 3 months before the expiry of its Authorisation, cannot turn round to hold the Respondent to the timelines provided in LI 1991.

In effect, the Respondent's argument is that the Applicant cannot validly apply for a renewal of its expired Authorisation after the period starting from three months before the expiry of its Authorisation. The Applicant's remedy is to apply for a fresh Authorisation, rather than apply for a renewal. The default provisions on automatic renewal of its Authorisation are therefore inapplicable.

The Tribunal is persuaded by these arguments and therefore finds that the Applicant does not have a valid application for renewal of its Authorisation. What the Applicant needs to do is to apply for a fresh Authorisation.

In *Genesis Media v NCA*, this Tribunal said:

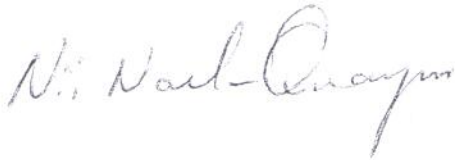
"In our Ruling dated 25th January 2018 in *Ghana Independent Broadcasters Association v National Communication Authority* (Appeal No. ECT/APP/002/17), we set out extensively the principles which we think govern the exercise of our discretion in cases like this. The interests of the Applicant and the 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."



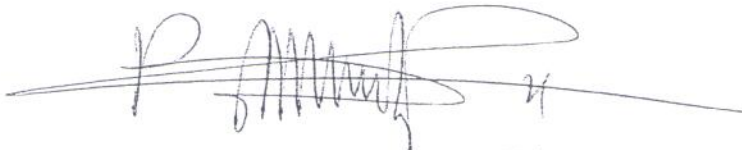
In addition to the factors referred to above, it is significant to note, without yet determining the merits of the appeal, that the Appellant has a weak case, since it is seeking a stay of execution of a decision to close down FM radio operations not covered by a valid Authorisation.



JUSTICE SAMUEL KOFI DATE-BAH (PRESIDING)



PROFESSOR NII NARKU QUAYNOR (MEMBER)



BIADELA MORTEY AKPADZI (MEMBER)

