

**IN THE COURT OF APPEAL OF TANZANIA  
AT IRINGA**

**(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And MJASIRI, J.A.)**

**CIVIL APPLICATION NO. 1 OF 2013**

**THE NEW FOREST COMPANY LTD .....APPLICANT**

**VERSUS**

**TINASHE BHUNU.....RESPONDENT**

**(Application for stay of Execution of Decree from the judgment of the High  
Court of Tanzania (Labour Division) at Iringa)**

**(Kalombola, J.)**

**Dated 23<sup>rd</sup> day of March, 2013**

**in**

**Revision No. 2 OF 2013**

.....

**ORDER OF THE COURT**

**6<sup>th</sup> August, 2013**

**RUTAKANGWA, J.A.:**

Before the Court is an application by notice of motion under Rules 11 (2) (b) (c) and (d) and 49 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). Through the notice of motion, the applicant is moving "the Court for an order for Stay of Execution of the Judgment and Decree dated March 23, 2013 in Revision No. 2 of 2013" of the High Court (Labour Division), "pending hearing and determination of the Intended Appeal against the said decision."

The facts leading to this application are undisputed. The respondent was an employee of the applicant. The respondent's services were terminated on 13<sup>th</sup> April, 2012. The respondent was aggrieved and challenged the termination before the Commission for Mediation and Arbitration (the Commission) in accordance with the provisions of the Labour Relations Act. The Commission held that the termination was wrongful. It granted the respondent a number of reliefs. The Commission's monetary decree in favour of the respondent amounted to USD 139,026.20. The applicant was dissatisfied with the Commission's decision. He applied for its revision in the High Court (Labour Division). The High Court confirmed the Commission's decision and dismissed the application with costs. The applicant was again aggrieved and wishes to prefer an appeal to this Court. It has already lodged the requisite notice of appeal, hence this application, which was prosecuted before us by Ms. Samah Salah, learned advocate.

The relevant provisions of Rule 11 (2) of the Rules under which the application is based are very clear. They read as follows:-

*"11- (2) Subject to the provisions of sub-rule (1), the institution of an appeal, shall not operate to suspend any sentence or to stay execution, but the Court may:-*

*(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 83, an appeal **shall not operate as a stay of execution of the decree or order appealed from** except so far as the High Court or Tribunal may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order.*

*(c) where an application is made for stay of execution of an **appealable decree or order** before the expiration of the time allowed for appealing therefrom, the Court may upon good cause shown, order the execution to be stayed.*

*(d) no order for stay of execution shall be made under this rule unless the Court is satisfied:-*

*(i) that substantial loss may result to the party applying for stay of execution*

*unless the order is made;*

*(ii) that the application has been made without unreasonable delay; and*

*(iii) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him."*

*[Emphasis is ours.]*

We have deliberately provided the above emphasis although the application is untested. The sole reason being our desire to underscore the plain fact that under this Rule what is envisaged to be stayed pending the hearing of an intended appeal is an appealable decree or order which is capable of execution and not a judgment or ruling. The Court explicitly pronounced itself on this in **Peter Siniga v. New National Steel (2000) Limited & 8 Others**, Civil Application No. 98 of 2011 (unreported). The Court said:-

*"...this Court has jurisdiction under Rule 11 (2) (b) of the Rules to issue an order to stay execution of the decree or order appealed from and not a judgment. We are alive to the fact that a judgment can in law be arrested before it is delivered. However, we are a shade unsure if it can be stayed once it has been delivered. It is trite law that once a judgment or ruling has been delivered, a decree or order must be extracted therefrom. It is this decree or order from which an appeal lies to a higher Court. If that decree or order is capable of execution, it is that decree or order which is legally capable of being stayed pending appeal."*

But why have we opted for this long preface to our decision in this uncontested application? The simple reason is that we are being moved to stay the execution of both the judgment and decree of the High Court. This is irregular, although not necessarily fatal to this particular application. We hope future similar applications will seek stays of decrees or orders and not judgments.

As alluded to above, the respondent is not opposed to this application. The applicant has in its notice of motion and written submissions, made it clear that it "is willing and financially able to provide a bank guarantee as security for the due performance of such decree or order which may ultimately be binding upon it." The respondent, through Mr. Evance R. Nzowa, learned advocate, has accepted this proposal in its totality.

On our part, we, are satisfied that with the applicant's proposal to furnish security, and bearing in mind the undisputed fact that respondent is an unemployed foreigner, all the conditions precedent for the grant of a stay order under Rule 11 (2) (d) of the Rules, have been satisfied. We, therefore, find ourselves constrained to allow this application. We order that the execution of the High Court decree

appealed from be stayed pending the hearing and determination of the applicant's appeal. This stay order is conditional upon the applicant providing security by depositing a bank guarantee to the tune of USD 148,113.44 within two (2) weeks of the date of delivery of this ruling. Costs to be in the cause.

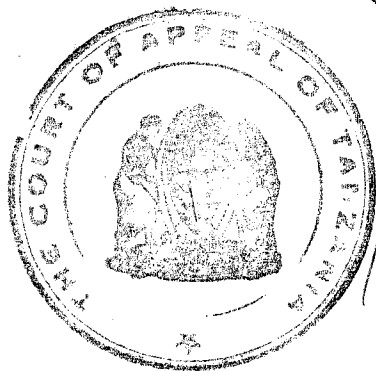
**DATED** at **IRINGA** this day of 6<sup>th</sup> August, 2013

E. M. K. RUTAKANGWA  
**JUSTICE OF APPEAL**

B. M. LUANDA  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



M.A. MALEWO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**