

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: BWANA, J.A., MANDIA, J.A., And MUSSA, J.A.,)

CIVIL APPLICATION NO. 52 OF 2013

MUHIMBILI NATIONAL HOSPITAL APPLICANT

VERSUS

COSTANTINE VICTOR JOHN..... RESPONDENT

(Application for Stay of Execution of an award of the Commission for Mediation and Arbitration of Dar e salaam at Ilala in CMA/DSM/ILA/897/09/890 DATED 13TH September, 2011 which was confirmed by the decision of the High Court of Tanzania (Labour Division at Dar es salaam) in Revision No. 186 of 2011 dated February 8, 2013 pending hearing and determination of Civil Application (for revision) No. 44 of 2013

(Moshi, J.)

Dated the 8th day of February, 2013

in

Commission of Mediation and Arbitration No 897 of 890

RULING OF THE COURT

MANDIA, J.A.:

On 1st September, 2014, the applicant lodged in this Court a Notice of Motion under Rule 4(2) (a) of the Court of Appeal Rules 2009, in which he prayed that the decree of the High Court issued on the 8th day of February, 2013 against him be stayed pending the hearing and determination of Civil Application No. 44 of 2013 which is pending hearing in this Court. The grounds upon which the application for stay of execution is based are:-

- a) that substantial loss may result to the applicant if execution of the decree is not stayed.

b) That the application for revision stands on enormous chance of success.

The Notice of Motion is supported by the affidavit of VORONICA HELLAR. In the affidavit the deponent avers at paragraph 3 that the applicant MUHIMBILI NATIONAL HOSPITAL terminated the respondent's employment on 25/9/2009 on the ground of the respondent's absence from work without permission between 7th September and 25th September, 2009. - After the termination, the parties appeared before the Commission for Mediation and Arbitration for resolution of the dispute arising out of the termination as shown in paragraph 1 of the affidavit. Paragraphs 2,4, 5 and 7 of the affidavit show that the Commission for Mediation and Arbitration found for the respondent and made an award of reinstatement and payment of salary arrears totaling Sh. 15,497,500/= in his (i.e respondent's) favour. The applicant challenged the award of the Commission for Mediation and Arbitration in the High Court of Tanzania, Labour Division, in Revision No 186 of 2011. The High Court upheld the award made by the Commission in its decision made on 8th February, 2013. In paragraph

7 of the affidavit by Veronica Heller, it is deponed that on 4th March, 2013 the respondent in the High Court and Labour Division lodged an application for execution of the award through garnishment of the applicant's account with the National Microfinance Bank, Muhimbili Branch. On 26th March, 2013, the applicant lodged in this Court an application for revision of the decision of the High Court of Tanzania, Labour Division in Civil Application No. 44 of 2013, and on 1st September, 2014 the present application for stay of execution was lodged in this Court.

When the application came up for hearing before this Court, Mr. Audax Vedasto, learned advocate, appeared for the applicant while the respondent appeared in person, unrepresented. The respondent notified the Court that in the High Court, Labour Division, he was represented by a representative of his own choice by the name of Mr. Siraju Msomba. After being appraised of the fact that such representation is provided for in the Labour Court Rules only but not under Rule 30 of the Court of Appeal Rules, the respondent elected to appear in person. Arguing the application Mr. Audax Vedasto, learned advocate, put it on record that he opted to proceed

under Rule 4(2)(a) of the Court of Appeal Rules, 2009 because what he has lodged in the Court of Appeal is an application for revision against the decision of the High Court Labour Division. He cited the decision of this Court in **Stephen Mafimbo Madwale versus Udugu Hamidu Mgeni**, Civil Application no 71 of 2011 as support for the line of action he took. In the above quoted case this Court held that in an application for stay of execution where no notice of appeal has been lodged the proper vehicle for moving the Court is Rule 4(2)(a) rather than Rule 11, where an application for stay is maintainable only if there is a notice of appeal lodged prior to the filing of the application for stay. Since what the applicant lodged in this Court, rightly or wrongly, is an application for revision of the ruling of the High Court, Labour Division, he is right in proceeding under Rule 4(2)(a) of the Court of Appeal Rules, 2009 as we have held in the **Stephen Mafimbo Madwale versus Udugu Hamidu Mgeni**, case (*supra*).

While the application was being argued in Court, both the applicant and the respondent brought to the attention of the Court the fact that there is an application for revision, Civil Application No.

44 of 2013, in which the merits of the employment dispute between the applicant and the respondent will be argued. The respective rights of the parties in this application for stay of execution will therefore be determined in the application pending in Court. In these circumstances it is clear that the application for garnishee proceedings lodged in the High Court, Labour Division is a hurried step which will affect one way or another the application which is pending hearing on merits before this same Court. We therefore grant the application, and order that the execution proceedings which have been commenced in the Labour Division of the High Court be stayed pending the hearing of Civil Application No. 44 of 2013. Since what is before us is a Labour matter, we would not make any order as to costs.

DATED at DAR ES SALAAM this 18th day of November, 2014.



S. J. BWANA
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read "F.J. Kabwe".

F.J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL