

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: WAMBALI, J.A., KEREFU, J.A. And MASOUD, J.A.)

CIVIL APPLICATION NO. 35/18 OF 2022

SHELYS PHARMACEUTICALS LIMITEDAPPLICANT

VERSUS

SALOME MAWOLLE.....RESPONDENT

**(Application for stay of execution of the judgment and decree of the High Court of
Tanzania, Labour Division at Dar es Salaam)**

(Maghimbi, J.)

**Dated the 5th day of October, 2021
in
Labour Revision No. 816 of 2019**

RULING OF THE COURT

19th July & 9th August 2023

MASOUD, J.A.:

The applicant, Shelys Pharmaceuticals Limited, has instituted this application against Salome Mawolle, the respondent, for stay of execution of the judgment and decree of the High Court, Labour Division, Dar es Salaam in Labour Revision No. 816 of 2019 dated 5th October, 2021, pending the hearing and determination of an intended appeal. The application is brought under the provisions of rule 11 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It

is supported by an affidavit deponed by Samwel Mwita, a principal officer of the applicant, on 25th January, 2022. The respondent filed an affidavit in reply deponed by herself.

The decretal sum in the decree sought to be executed by the respondent vide Execution Application No. 519 of 2021 pending in the High Court Labour Division at Dar es Salaam is TZS 187,936,786.00. This sum is apparent in the copy of the decree which accompanied the affidavit supporting the application.

According to the record of the application, the respondent was initially employed by the applicant on 15th June, 2001 as a Sales Representative Promotion Trainee. She rose to the managerial position as a Logistics Distribution Manager before she was terminated on 13th October, 2016. Dissatisfied, the respondent referred the dispute to the Commission for Mediation and Arbitration (the CMA) which was registered as Labour Dispute No. CMA/DSM/KIN/R.1119/16/233. In its decision dated 7th August, 2019, the CMA ordered reinstatement of the respondent without loss of remuneration. The decision did not please the applicant who filed Labour Revision No. 816 of 2019 before the High Court to contest it.

The background giving rise to the decree sought to be executed by the respondent, and hence the instant application for stay of execution by the applicant, follows the finding by the High Court that the termination of the

respondent's employment by the applicant was unfair both procedurally and substantively. Consistent with such finding was, a further finding that, given the time lapse after the termination of the respondent's employment and the manner in which the termination was carried, reinstatement of the respondent was not the best option in the circumstances. It was thus ordered that the respondent is entitled to be paid TZS 187,936,786.00 which shall be subject to statutory deduction.

In the affidavit in support of the application, the applicant, among other things, deponed in paragraph 7 that if the execution of the decree involving a sum of TZS 187,936,786.00 is not stayed and left to proceed, the applicant would suffer a substantial loss. She averred further in paragraph 9 of the same affidavit that not only is the decretal sum involved in the intended execution exorbitant, but also the intended execution if left to proceed would render the intended appeal nugatory and paralyse her operations. The applicant in the said affidavit also deponed under paragraph 8 that she undertakes to furnish security for the due performance of the decree as may ultimately be ordered by the Court.

Once the application was called on for hearing before us, and upon engaging the learned counsel for both sides, Ms. Mariam Ismail, learned advocate who appeared for the applicant, adopted the affidavit supporting the applicant's affidavit to form part of her submission. She briefly submitted that the applicant

has complied with the requirements of the law under the provisions of rule 11 of the Rules.

The compliance with such requirements, according to Ms. Ismail, entailed: **One**, filing of the instant application on 26th January 2022, which is within fourteen days of service of the notice of execution on 13th January, 2022 as prescribed by rule 11(4) of the Rules; **two**, accompanying the application by copies of relevant documents as prescribed by rule 11(7) of the Rules; **three**, showing substantial loss that may result to the daily operations of the applicant if the execution of the decree is not stayed as required by rule 11(5)(a) of the Rules; and **four**, the applicant's willingness to furnish security for due performance of the decree as prescribed by rule 11(5)(b) of the Rules. To support her arguments, Ms. Ismail referred us to the contents of paragraphs 7, 8, and 9 of the applicant's affidavit. Finally, the learned advocate prayed that the application be allowed as the applicant has complied with the requirement of the law.

Mr. Prosper Mrema, learned advocate for the respondent, in his response, did not oppose the granting of the application subject to the applicant being ordered to give sufficient security for due performance of the decree. When we probed him on the context of the affidavit in reply of the respondent filed on 11th February, 2022, Mr. Mrema clarified that the respondent does not in the said

affidavit dispute the substance of the application in which the requirement of the law has been met. However, it is the respondent's emphasis that the granting of the application by the Court should be subject to the applicant furnishing sufficient security in accordance with the law as it may ultimately be binding on her.

On our part, we have examined the application and supporting affidavit and taken into account the respondent's concession through Mr. Mrema, in relation to the affidavit in reply. We did so in our endeavour to satisfy ourselves that the application, despite being uncontested, has met the requirements and conditions set under the provisions of rule 11 of the Rules as submitted by Ms. Ismail.

We are, as a result, persuaded that the applicant has complied with requirements under rule 11(4) and (7) of the Rules. The application was as required by the law lodged within fourteen days on 26th January, 2022 after the service of the notice of execution on 13th January, 2022, and accompanied by copies of the relevant documents, namely, the impugned judgment, the decree, the notice of appeal, and the notice of execution as required by the respective sub-rules.

We are, likewise, persuaded that the conditions for the stay of execution provided for under rule 11(5)(a) and (b) of the Rules were cumulatively fulfilled by the applicant. The applicant has shown in paragraphs 7 and 9 of her affidavit

in support of the application the substantial loss she stands to suffer if the execution is not stayed. She has in addition given a firm undertaking under paragraph 8 to furnish security for the due performance of the decree as may ultimately be binding on her.

It is trite law that, in order for the Court to allow the application for stay of execution, the conditions under rule 11(5)(a) and (b) of the Rules must be cumulatively fulfilled. For this stance, see for instance, **Gilbert Zebedayo Mrema v Mohamed Issa Makongoro**, Civil Application No. 369/17 of 2019 [2022] TZCA 813: [13 December 2022: TANZLII] and **Ongujo Wakibara Nyamarwa v Beatrace Grayson Mmbaga**, Civil Application No. 200/17 of 2021 [2022] TZCA 732: [21 November 2022: TANZLII].

In the instant case, we have no doubt therefore that the applicant brought her application in compliance with rule 11(4) and (7) of the Rules and cumulatively fulfilled the conditions under rule 11(5)(a) and (b) of the Rules to warrant the grant of the application for stay of execution. It is no wonder that the respondent does not contest the substance of the application but urges the Court to order the applicant to furnish security for the due performance of the decree.

In the end, we allow the application. Consequently, we order that the execution of the judgment and decree of the High Court, Labour Division, in

Labour Revision No. 816 of 2019, be stayed pending the hearing and determination of the intended appeal to this Court. We further, order that, the stay of the execution herein granted is subject to the applicant depositing a Bank's Guarantee in the sum of TZS 187,936,786.00 within thirty days of the date hereof as the security for the due performance of the decree. Costs shall be in the cause.

It is so ordered.

DATED at **DAR ES SALAAM** this day of August, 2023.

F. L. K. WAMBALI
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

I certified that this is the true copy of the Original.



[Signature]
R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL