

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWARIJA, J. A., KENTE, J. A. And RUMANYIKA, J.A.)

CIVIL APPLICATION NO. 429/18 OF 2021

J.S. EXACT COMPANY LIMITED.....APPLICANT

VERSUS

RENOVATUS RUMANYIKA..... RESPONDENT

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

(Mwipopo, J.)

dated the 16th day of April, 2021

in

Labour Revision No. 579 of 2018

RULING OF THE COURT

8th June & 24th October, 2023

MWARIJA, J.A.:

The applicant, J. S. Exact Company Limited has brought this application seeking an order staying execution of the decree of the High Court of Tanzania, Labour Division in Revision No. 579 of 2018 dated 16/4/2021. In that matter, the respondent, Renovatus Rumanyika had successfully applied for revision of the decision of the Commission for

Mediation and Arbitration (the CMA) in Labour Dispute No. CMA/DSM/KIN/R.1162/16/21 dated 10/9/20218.

The respondent was an employee of the applicant in the capacity of a Manager. He was at one time entrusted to oversee the business affairs of the applicant company at the time when its Director was out of the country. When the Director returned, he found that some of the money, the proceeds of sales by the company was not deposited in the company's Bank Account. He therefore, ordered that an audit be conducted. During the time of audit of the company's accounts in October, 2016, the respondent did not report on duty. He reported back on 1/12/2016 and demanded his salary for the month of November, 2016 but the applicant refused to pay him on account that he did not work in that month following his abscondment thus amounting to have terminated him from employment.

The respondent was dissatisfied with the decision of his employer and therefore, filed the said labour dispute in the CMA. The dispute was decided in the favour of the respondent. The CMA found that, his

termination was substantively fair but procedurally unfair and thus awarded him two months' salary compensation.

The applicant was aggrieved and therefore, filed the said application for revision in the High Court. The court (Mwipopo, J.) agreed with the CMA that, although the respondent's termination was substantively fair, the procedure was unfair because the applicant ought to have followed the procedure stipulated under rule 13 of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007. As a result, the learned Judge upheld the decision of the CMA that the respondent was, in the circumstances, entitled to a compensation which was, in the circumstances, below the statutory twelve months' salary. He however varied the compensation of two months' to six months' salary. The respondent was also awarded one months' salary in lieu of notice of termination of employment contract. He was in effect, awarded a compensation of a total sum of TZS 21,000,000.00.

The applicant was aggrieved by the decision of the High Court and thus on 2/4/2021, lodged a notice of appeal intending to challenge that decision. It also filed this application for stay of execution.

The application, which was brought under *inter alia*, rule 11 (3) and 11 (5) of the Tanzania Court of Appeal Rules, 2009 is supported by an affidavit sworn by Mutabazi Julius Lugazia. The respondent did neither file any affidavit in reply nor appeared at the hearing of the application despite having been notified accordingly.

At the hearing of the application, Dr. Mutabazi Julius Lugazia, learned counsel appeared for the applicant while as indicated above, the respondent did not enter appearance despite having been duly served. In his submission, the learned counsel for the applicant started by adopting his affidavit and the notice of motion. He submitted that the applicant has complied with the requirements of rule 11 (5) (a)-(c) of the Rules and for that reason, prayed that the application be granted.

In paragraphs 6 and 7 of the affidavit, the deponent states as follows:

"6. That, unless the execution of the decree of the High Court is stayed in the manner set out in the notice of motion, the applicant will suffer irreparable financial and economic loss which cannot be atoned by the award of damages. If the amount is paid to the respondent, there is no guarantee that in the event that the appeal is successful, the applicant will be able to recover the amount paid through execution, thereby rendering the appeal nugatory and of no consequence.

7. That on the other hand, the applicant is a reputable enterprise possessed of sufficient means and adequate means to pay the amount in the decree should the appeal be unsuccessful."

Rule 11 (5) of the Rules provides for the conditions which an applicant must comply with for a stay order to be granted. The provision states as follows:

"11 (1)-(4)N/A

(5) No order for stay of execution shall be made under this rule unless the Court is satisfied that: -

(a) substantial loss may result to the party applying for stay of execution unless the order is made;
(b) Security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him."

In our considered view, the conditions stated in the provision which has been reproduced above, have been complied by the applicant under paragraphs 6 and 7 of the supporting affidavit, the contents of which were not countered by the respondent. We agree that, if execution of the decree is carried out and later the intended appeal succeeds, the recovery of the money paid to the respondent will not be without a difficulty and costs to the applicant. On the other hand, since the applicant has undertaken to furnish security for the due performance of the decree, the respondent is assured of his decretal amount in the event the intended appeal fails.

On the basis of the above stated considerations, we grant the application. We order that, execution of the decree of the High Court be

stayed pending determination of the intended appeal. The stay order is conditional upon the deposit in Court by the applicant, of a bank guarantee in the sum of TZS 21,000,000.00 within the period of thirty (30) days from the date of delivery of this Ruling.

Since the matter arose from a labour dispute, we make no order as to costs.

DATED at DAR ES SALAAM this 20th day of October, 2023.

A. G. MWARIJA
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 24th day of October, 2023 in the presence of Ms. Justina Sabinus Kweka holding brief for Dr. Mutabazi Lugazia, learned counsel for the Applicant and in the absence of the respondent, is hereby certified as a true copy of the original.




S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL