

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

(CORAM: MWAMBEGELE, J.A., KOROSSO, J.A. And KITUSI, J.A.)

CIVIL APPLICATION NO. 376/02 OF 2022

ABERCROMBIE & KENT (T) LIMITED.....APPLICANT

VERSUS

DEUS MEELARESPONDENT

**(Application to stay execution of the decision of the High Court of
Tanzania (Labour Division) at Arusha arising from the decision
of the CMA in Labour Dispute No. CMA/ARS/ARS/163/2018)**

(Robert, J.)

dated 10th day of November, 2021

in

Revision Application No. 82 of 2020

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RULING OF THE COURT

2nd & 8th November, 2023

KOROSSO, J.A.:

In this application, by way of notice of motion, the applicant has moved the Court for an order to stay execution of the decree of the High Court of Tanzania sitting at Arusha in Labour Revision No. 82 of 2020 dated 10/11/2021 arising from the award given by the Commission for Mediation and Arbitration (CMA) sitting at Arusha dated 28/8/2020 in Labour Dispute No. CMA/ARS/ARS/163/2018. The application is made under rules 11 (3), (4), (5) (a), (b) and (c), (6), (7) (a), (b), (c) and (d) and 48 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). An affidavit deponed by Qamara Aloyce Peter,

advocate, duly authorized by the applicant, supports the application. It is also accompanied by a copy of the notice of appeal dated 23/11/2021, the impugned ruling and drawn order and a copy of a notification of the intended execution, Execution No. 131 of 2020 pending in the High Court. The respondent did not file an affidavit in reply to resist the application.

Briefly, the facts giving rise to the application as gathered from the record of the application are that the respondent was employed by the applicant holding the position of Sales and Marketing Consultant from 3/4/2013 up to 9/7/2018. The respondent filed a complaint at the CMA against the applicant in Labour Dispute No. CMA/ARS/ARS/163/2018, alleging unfair termination and claiming twelve months salary compensation and other terminal benefits. At the CMA through an arbitrator, the labour dispute was decided in the respondent's favour and the applicant was ordered to pay compensation amounting to Tshs. 23,247,102 in total. Dissatisfied, the applicant filed an application for revision in the High Court of Tanzania (Labour Division), in Revision Application No. 82 of 2020, where it was decided for the respondent, essentially, upholding and confirming the decision of the CMA. Undeterred, the applicant, on 23/11/2021 filed a notice of appeal against the decision of the High Court in Revision.

While the applicant was awaiting the scheduling of the hearing of the appeal, the respondent initiated a process to execute the impugned award as shown above. It is the said application that incited the applicant to file the instant application.

The applicant has provided three grounds that found the application, which we shall not reproduce but address during the course of determining the application. The said grounds essentially complain about the legality of the decision of the High Court in Revision; allege the existence of serious errors in the CMA Award; urge us to find that the instant application was filed without unreasonable delay; and reveal the applicant's readiness to furnish security for the due performance of the CMA award.

On the day the application was called for hearing before us, Mr. Qamara Aloyce Peter, learned Advocate entered appearance for the applicant while the applicant appeared in person, unrepresented.

Amplifying the essence of the application, Mr. Peter commenced by adopting the affidavit supporting the notice of motion and the applicant's written submission filed on 7/6/2022 vide rule 106 (1) of the Rules. He submitted that the applicant has complied with all the relevant conditions to warrant the grant of the prayer sought. He

informed us that as averred in paragraphs 4, 5, 7, 8 and 10 of the supporting affidavit, the applicant has complied with rule 11 (7) (a), (b), (c) and (d) by filing copies of the notice of appeal for the intended appeal, notice of execution and the impugned High Court and CMA rulings and orders. Additionally, he contended that the applicant has complied with rule 11(4) of the Rules as averred in paragraph 10 of the affidavit supporting the notice of motion as the application was filed within fourteen days of being notified of the intended execution of the award. It was thus within time having been filed on 11/4/2022 upon having been served with the notice of execution by the respondent on 30/3/2022.

The learned counsel further alluded that there are averments showing compliance with rule 11 (5) (a) and (b) of the Rules since the applicant impressed on being at risk of suffering substantial loss if the intended execution of the impugned orders are not stayed and has also undertaken to furnish security for the due performance of the decree as stated in paragraphs 13 and 14 of the supporting affidavit. He asserted that despite the applicant in paragraph 13 of the supporting affidavit putting forth as security, his motor vehicle with Registration No. T393 DQR, make Toyota Landcruiser, a station wagon with chassis No. JTELB71J808001212 valued at Tshs. 60,000,000/=, he will abide

by any orders of the Court on the appropriate security for the due performance of the decree.

The learned counsel concluded by imploring us to grant the prayers sought in the application and that in our deliberation of the same, to consider the decision of this Court in the case of **University Computing Centre Limited v. Oysterbay Hospital Limited**, Civil Application No. 106 of 2007 (unreported).

On his part, the respondent resisted the application stating that it was just another way concocted by the applicant to delay execution of the decree. He beseeched the Court to facilitate an expeditious hearing of the intended appeal and where the Court is minded to grant the prayed-for stay of execution, it should ensure that the applicant furnishes cash money as security for due performance of the decree. He also challenged the assertion by the applicant, that he has no fixed place of abode thus enhancing risk if the intended execution of the decree proceeds, arguing that his whereabouts are fully known and he has entered appearance whenever called upon. He prayed that the Court refrain from granting the application, being unmeritorious.

The rejoinder by the learned counsel for the applicant was very brief, reiterating his submission in chief and impressing on the

applicant's willingness and readiness to furnish security as ordered by the Court for the due performance of the decree in its discretion, including a bank guarantee.

In light of the submissions from either side and the record of the application summarized above, the issue for our determination is whether the applicant has fulfilled the requisite conditions provided by the law to warrant the Court to exercise its discretion and grant stay of execution of the impugned award as prayed.

Certainly, an application for stay of execution is governed by rule 11 of the Rules. On the time such an application can be filed, it is governed by Sub-rule (4) of the said Rule that requires it to be filed within fourteen days of service of notice of execution on the applicant or from the date he became aware of the existence of the application for execution. We are satisfied that the application was filed on time since as averred in paragraph 10 of the affidavit supporting the instant application which remained unchallenged by the respondent, the notice of execution was served on the applicant on 30/3/2022. Since the application was filed on 11/4/2022 undoubtedly, it was within 14 days of being served with the notice of execution in compliance with rule 11(4) of the Rules. In the circumstances of the case, we have discerned

nothing to lead us to find that the application is just a ruse to avoid execution of the decree. Having perused the record of the application, it is our considered view that the applicant has shown diligence in pursuing his rights on the matter as alluded to in paragraphs 7 and 8. We have failed to draw out any delaying tactics as contended by the respondent, we thus find the respondent's claims not to be supported by evidence.

Rule 11 (5) of the Rules provides other conditions and it states as follows:

"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".

On the condition relating to security, according to the applicant's counsel, the applicant has shown a willingness to furnish security for the due performance of the decree alluded to in paragraph 13 of the supporting affidavit. The respondent has challenged this, contending that the motor vehicle offered for security is not sufficient under the circumstances. While we agree with the respondent that a motor

vehicle may not be sufficient security under the circumstances, we noted that the learned counsel for the applicant categorically stated the applicant's readiness to comply with any order of the Court regarding security for the due performance of the decree notwithstanding what is stated in the affidavit on the issue, since the Court has the discretion to determine the appropriate security for the same, including a bank guarantee if it so decides. In our view, under the circumstances, the applicant has provided a firm undertaking to furnish security in the manner and to the extent as the Court may determine in compliance with rule 11 (5) (b) of the Rules (see, **Mantrac Tanzania Limited v. Raymond Costa**, Civil Application No. 11 of 2010 and **National Bank of Commerce Limited v. Alfred Mwita**, Civil Application No. 172 of 2015 (both unreported)).

The applicant's counsel further alluded to the fact that if the application is not granted and the intended execution of the decree proceeds, the applicant will suffer a substantial loss, arguing that this is because he will not be able to recover the monies paid to the respondent in the execution of the impugned decree having regard to the respondent's limited financial resources and uncertain whereabouts.

The said stance by the applicant's counsel was challenged by the respondent in his oral submissions and however, no evidence was provided to counter the applicant's claims. We are of the considered view that, the decretal sum of about Tshs. 23,247,102/= which is the total amount awarded in the impugned decree is a huge amount and if it falls in default as a result of the execution before the appeal is determined may result in an irremediable loss on one side. Flowing from the applicant's assertions and on the balance of probabilities, we find that he has satisfied the condition provided under rule 11 (5) (a) of the Rules. Furthermore, our perusal of the record has shown that various documents, such as copies of the notice of the intended appeal, the impugned judgment and order, and the notice of the intended execution, accompanied the supporting affidavit in compliance with rule 11 (7) (a), (b), (c) and (d) of the Rules.

Indeed, for the foregoing, the applicant has cumulatively satisfied the statutory conditions to prompt us to grant the stay order as prayed, which we hereby do. We order that the execution of the impugned ruling of the High Court (Robert, J.) dated 10/11/2021 in Revision No. 82 of 2020 arising from Labour Dispute No. CMA/ARS/ARS/163/2018 dated 28/8/2020 be stayed pending the hearing and determination of the applicant's appeal pending in Court. For the avoidance of doubt, the

order is conditional upon the applicant depositing a Bank guarantee covering the entire decretal amount within thirty (30) days of the delivery of this Ruling. In the circumstances, we make no orders as to costs.

DATED at **ARUSHA** this 7th day of November, 2023.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 8th day of November, 2023 in the presence of Mr. Qamara Aloyce Peter, learned counsel for the applicant and the respondent in person unrepresented, is hereby certified as a true copy of the original.


A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL