

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT MBEYA**  
**(CORAM: MWANDAMBO J.A. KITUSI. J.A, And MGONYA, J.A)**  
**CIVIL APPLICATION NO. 499/ 06 OF 2022**

**OTTER MINING LIMITED..... APPLICANT**

**VERSUS**

**MAJENGO ATHUMAN MOHAMED..... RESPONDENT**

**(Application for stay of execution of the CMA Award in Labour Dispute  
No. CMA/MBY/CHY/114/2018 pending the determination of an appeal  
from the Judgment and Decree of the High Court of Tanzania  
(Mbeya District Registry) at Mbeya)**

**(Mambi, J.)**

**dated 25<sup>th</sup> day of November, 2020**

**in**

**Revision No. 07 of 2020**

.....

**RULING OF THE COURT**

4<sup>th</sup> & 15<sup>th</sup> December, 2023.

**MGONYA, J.A.:**

This is an application made under rule 11 (3), (4), (4A), (5) (a) (b), (6), (7)(a) (b) (c) (d) and rule 48(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), in which the applicant seeks to stay the execution of the CMA Award, pending determination of an appeal against the judgment and decree of the High Court (Labour Division) in Revision No. 07 of 2020 (Mambi, J.).

The application is supported by two affidavits deponed by Abubakar Mohamed, chief accountant of the applicant and Isaya Zebedayo Mwanri, learned counsel for the applicant. On the other hand, the respondent resisted the application by an affidavit in reply deponed by Majengo Athuman Mohamed, the respondent.

The brief background leading to this application is as follows: The respondent was an employee of the applicant. The employment ended in June, 2018 by resignation. After the said resignation, the respondent referred a dispute to the Commission for Mediation and Arbitration (the CMA) at Mbeya claiming Tshs. 100,000,000/= for unfair termination.

The Arbitrator awarded the respondent a total sum of USD 51,622.09 to be paid by the applicant within 60 days from the date of the award. Aggrieved with the decision, the applicant filed Revision No. 07 of 2020 before the High Court (Labour Division) seeking to revise that decision. The High Court upheld the CMA decision hence the application was dismissed for lack of merit.

Still aggrieved, on 31<sup>st</sup> May, 2022 the applicant filed a notice of appeal intending to challenge the High Court's decision in Revision No. 07 of 2020. On the other side, the respondent did not remain idle as he filed an application No. 40 of 2020 before the High Court Labour Division seeking to

execute the CMA award. It is the said application which triggered the instant application.

At the hearing of the application, Mr. Baraka H. Mbwilo who teamed up with Mr. Isaya Z. Mwanri, both learned counsel entered appearance to represent the applicant, whereas the respondent had the services of Mr. Faraja G. Msuya, learned counsel.

When invited to amplify the grounds of the application, Mr. Mwanri adopted the two affidavits supporting the application. He went on to submit that, the application is made upon good cause and that the application was filed 11 days after the applicant becoming aware of application No. 40 of 2022.

Mr. Mwanri submitted further that, looking at the application, the amount claimed is higher than the award of the CMA. Therefore, unless the order for stay of execution is made, the applicant is likely to suffer substantial loss. In adherence of rule 11(5)(b) of the Rules, Mr. Mwanri asserted, that the applicant is ready to furnish security by way of a deposit bank guarantee. In this regard, it was Mr. Mwanri's argument that the applicant has satisfied all the conditions as stipulated by the Rules.

On his part, Mr. Msuya also adopted the respondent's affidavit in reply as part of his oral submissions. Mr. Msuya opposed the application on the reason that, the applicant has failed to demonstrate that the application was filed within time. Mr. Msuya referred to the letter dated 29<sup>th</sup> April, 2021 attached with the affidavit in reply on the basis that, the applicant was aware since 2021 but he did not file an application until 2022 and no good cause demonstrated.

We have examined and considered the rival submissions and, we think the issue for our determination is, whether the applicant has satisfied all the conditions for the grant of the application.

An application for stay of execution is governed by rule 11 of the Rules. Sub-rule (4) of the said rule requires an application of this nature to be filed within fourteen days of service of notice of execution to the applicant or from the date the applicant became aware of the existence of the application for execution. It is from this condition parties parted ways as to when the applicant became aware of the intended execution.

In paragraph 9 of the affidavit, it is deponed that, the applicant became aware of the execution on 15<sup>th</sup> August, 2022 hence, she filed an application after 11 days on 26<sup>th</sup> August, 2022. Those facts were vehemently disputed by the respondent who deponed in paragraph 9 of the affidavit in reply that,

the applicant knew the said execution before 2020 as she filed an application for stay of Execution No. 07 of 2020 and another application in 2022. He also deponed that, on 29<sup>th</sup> April, 2021 the applicant wrote a letter to the Hon. Judge Incharge of High Court at Mbeya, requesting his intervention in Labour execution No. 40 /2021.

In a bid to prove the fact that the applicant was aware since 2021, the respondent attached a copy of a summons relating to Execution No. 40 of 2020. In the said document there are two affidavits sworn by the court process servers; Eugen T. Kisonga and Maulid Khamis Issah who deponed that, the summonses were rejected by the Managing Director for the reason that, the responsible person to sign was the manager who was out of office. Mr. Msuya referred this Court to the letter written by the applicant to the Hon. Judge Incharge, High Court Mbeya in April, 2021 complaining on the trend and proceedings in Execution No. 40 of 2020.

With due respect, we do not agree with Mr. Msuya's argument that, such documents constitute proof that the applicant was aware since 12<sup>th</sup> February 2021. The reason for our stance is that in the referred affidavits there is no indication of the name of the said person who was served with the summons but refused to sign or receive. Also on the referred letter, we also find the same does not assist the respondent to establish when the

applicant became aware of execution as provided for under rule 11(4) of the Rules. Therefore, without proof that the applicant was served with a notice of execution No. 40 of 2020 since 2021, we are of the firm view that, the facts deponed in paragraph 9 of the affidavit that the applicant became aware of the execution on 15<sup>th</sup> August, 2022 remain proven. Counting from 15<sup>th</sup> August, 2022 to 26<sup>th</sup> August, 2022 when this application was filed, almost 11 days lapsed. Therefore, we agree that the application was filed within 14 days as provided under rule 11(4) of the Rules.

Having heard the parties' submissions and examined the notice of motion and affidavits in support and against the application, we are satisfied that, the applicant has cumulatively complied with the requirement of rule 11 (3), (4), (5) and (7) of the Rules for the Court to grant an application for stay of execution as she has filed an application within 14 days as the law requires.

Accordingly, we grant the application and make an order staying execution of the decree of the High Court in Revision No. 7 of 2020 from an award of the CMA pending hearing and determination of the appeal pending before the Court. This order is conditional upon the applicant depositing with the Court an irrevocable bank guarantee in the sum of USD 51,622.09 in favour of the Registrar Court of Appeal within sixty (60) days from the date

of delivery of this ruling. The guarantee shall be for twelve months effective from its issue subject to renewal should the appeal remain pending upon its expiry.

This being a Labour related matter, we make no order as to costs.  
It is so ordered.

**DATED** at **MBEYA** this 15<sup>th</sup> day of December, 2023.

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

L. E. MGONYA  
**JUSTICE OF APPEAL**

The Ruling delivered this 15<sup>th</sup> day of December, 2023 in the presence of Mr. Isaya Zebedayo, learned counsel Mwanri for the Applicant and Mr. Joseph Tibaijuka, learned State Attorney holding brief for Mr. Faraja Msuya, learned counsel for the Respondent is hereby certified as a true copy of the original.



S. P. MWAISEJE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**