

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 296/18 OF 2021

WHIPAZ..... APPLICANT

VERSUS

AMINA SALUM.....1ST RESPONDENT

ZAINABU HUSSEIN.....2ND RESPONDENT

PENDO AKO.....3RD RESPONDENT

(An application for Extension of Time to file application for stay of execution of the order of the High Court of Tanzania (Labour Division) at Dar es Salaam)

(Muruke, J.)

dated the 14th December, 2020

in

Misc Labour Application No. 674 of 2019

.....

RULING

22nd February, & 3rd March, 2023

RUMANYIKA,JA.:

This is an application for extension of time made under rules 10 and 48 (1), (2), (4) of Tanzania Court of Appeal Rules, 2009 (the Rules). The applicant is seeking the indulgence of this court to enlarge time for it to file an application for stay of execution of the orders made by the High Court of Tanzania (Labour Division) (Muruke, J.) on 14/12/2021 in Misc. Labour Application No. 674 of 2019. The application is supported by an affidavit of Saida Mavumbi, Principal Officer of the applicant. Amina Salum, Zainabu

Hussein and Pendo Ako (the respondents) did not file an affidavit or affidavits in reply to oppose the application.

From the record of this application, it could be noted that the matter originated from an award issued by the Commission for Mediation and Arbitration where the respondents emerged as the winners. Aggrieved by the decision, the present applicant applied for an extension of time to file revision Vide Misc. Labour Application No. 674 of 2019 before the High Court. That application was dismissed for want of merit. Aggrieved, by the decision, the applicant filed a Notice of Appeal on 23/12/2020 against the said refusal of extension of time. The applicant's intention to appeal aside, the respondents proceeded to executing the award through an application filed on 02/09/2019. That move aggrieved the applicant. However, as the applicant was already late to apply for stay of the execution, it filed the present application which is founded on six grounds:

- a) The respondents had already filed an application for execution No. 626 of 2019 since on 02/09/2019 which is before Hon. Registrar Tengwa.*
- b) If the order of extension of time will not be granted then the execution which is in the High Court labour Division of Tanzania will be granted.*

- c) If the order of extension of time will not be granted then execution is going to proceed and therefore the application for extension of time will be rendered nugatory.*
- d) The respondent will unfairly attach and sale the properties of the Applicant while there is still an application pending before this Honourable Court.*
- e) That, the execution will be doubtful and not executable as the names of the Applicant on the CMA award, form No. 1 and the actual names of the Applicant are greatly different.*
- f) That, the execution will not be possible as the award does not bear a proper name of the Applicant as per paragraph No. 1 of the Affidavit.*

At the hearing of the application, Mr. Saiwello Kumwenda learned counsel appeared for WHIPAZ, the applicant, whereas the first and second respondents appeared in person unrepresented. The 3rd respondent was also proven duly served as reported by her fellows but she did not enter appearance. On that account Mr. Kumwenda successfully prayed to proceed under rule 63(2) of the Rules. Appearance of the third respondent thus, was dispensed with.

Having adopted the contents of the affidavit, expounding his written submission filed on 28/07/2021, Mr. Kumwenda averred that, **one**, initially the applicant's application for revision was struck out. Then, the

respondents were at liberty and initiated the execution proceedings vide Application No. 626 of 2019 filed on 29/08/2019 which the latter became aware of on that day. And **two**, that, the respondents had sued the wrong party which could make the intended execution impracticable.

On her side, in reply the first respondent averred that, the application was purely a delaying technique because, at times the applicants had undertaken to pay them a lesser sum of TZS. 800,000/= each, in attempt to settle but failed. The second respondent took the same course as that of the first respondent. I shall disregard their averments for being purely factual because, as stated earlier, they did not file affidavit in reply to oppose the application.

I have read the record and carefully heard submission made by the applicant's learned counsel. There is only one issue for my determination. This is whether the applicant has met the conditions necessary for the grant of an order of extension of time.

For a court to grant an order of extension of time, good cause must be shown by the applicant, as envisaged under Rule 10 of the Rules. And what amounts to good cause depends on the circumstances of each individual case. See- our decisions in a number of cases including **Sumry**

High Class ltd & Another v. Musa Shaibu Msangi, Civil Application No. 403/16 of 2018 (unreported).

Mr. Kumwenda averred that, the notice of the intended execution was served on the applicant on 02/09/2019 but it filed the present application on 28/06/2021, which is about two years later instead of fourteen days provided under rule 11(4) of the Rules. The applicant has not shown good cause for that long delay nor accounted for each day of the said inordinate delay. The applicant might have timely applied before the Registrar to be supplied with the said documents namely copies of the impugned order and a certificate of delay, without success. However, it did not copy the said letters to the respondents. Therefore, the applicant cannot enjoy exclusion of the about two years' delay which, in terms of each day it has failed to account for. This is irrespective of the threats which might be posed by the respondents to execute the award. The applicant's failure to do so means its failure to show good cause for the grant of an order of extension of time. Whether or not the applicant was wrongly sued and the possibility of the intended execution being impracticable is not an illegality of the decision because that point needed long drawn arguments. The above demonstrated point on time bar is sufficient to dispose of the application.

In the upshot, this application is struck out. I make no order for costs as the matter arises from a labour dispute where ordinarily we do not award costs. Order accordingly.

DATED at DAR ES SALAAM this 1st day of March, 2023.

S.M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 3rd day of March, 2023 in the presence of Mr. Saiwello Kumwenda, learned counsel for the Applicant, first and second respondents present in person, is hereby certified as a true copy of the




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL