

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MIS. LABOUR APPLICATION NO. 2 OF 2020  
(C/F Application for execution No. 99 of 2016)**

**REGIONAL MANAGER TANROADS-ARUSHA.....APPLICANT  
VERSUS  
LEON FRANCIS SHINE.....RESPONDENT**

**RULING**

**11/05/2020 & 10/08/2020**

**GWAE, J**

The applicant named herein has preferred this application for stay of execution No. 99 of 2016 under Rules 24(1), 24(2)(a)(b)(c)(d)(e)(f) & 24 (3) (a)(b)(c)(d) and 36 (1)(2)(3) of the of Labour Court Rules, GN. 106 2007,section 91 (3) of the Employment and Labour Relations, Act, 2004 and order xxi Rule 24 (1) of Civil Procedure Code Cap 33, R. E, 2002. The award sought to be enforced is emanating from a Labour Dispute registered as CMA/ARS/ARB/88/2014.

According to the applicant's affidavit sworn by **Mr. Johnny D. EKalupale** is to the effect that,the applicant delayedfiling of this application due to reasons that, initially, he filed an application of this nature vide Misc. Application No. 28 of 2016 nevertheless the same was



ground that it was overtaken by event namely; Revision Application No. 99 of 2016 which was struck out for being incompetent on 29.11.2019. The affidavit is further to the effect that, given the order of the court striking out the application for revision, the applicant found himself to be barred by law of limitation as result he subsequently filed an application for extension of time within which to file an application for revision (Misc. Labour Revision No. 72 of 2019) on the same date on which the former application for revision was struck out with costs.

The respondent, through his counter affidavit, resisted this application by asserting that, there is no good cause that has been given for grant of the order staying the intended execution of the CMA award and that, the intended revision has no overwhelming chances of success.

At the hearing of this application, Mr. Gulisha Mwanga, the learned advocate appeared for the applicant while the respondent appeared in person. Mr. Mwanga merely prayed grant of this application on the grounds contained in the applicant's affidavit while the respondent argued that this application is aimed at defeating ends of justice since the matter was lodged way back in 2014.


Having carefully traversed the parties' averments, I am convinced that, this application is suitable for consideration since it is evident the applicant initially filed the application of this nature (Misc. Application No. 28 of 2016) and it is undoubtedly clear that the former application was bound to collapse following the applicant's former application for revision was struck out with costs for being incompetent. More so the applicant has vividly filed an application for extension of time (Misc. Application No. 72 of 2019) which

will be rendered nugatory if this application is not granted. In weighing convenience of balance between the parties, I am persuaded that the applicant will inevitably suffer loss if this application is not granted as his efforts to have the CMA award revised and set aside will be defeated (See a land mark case of **Attilio vs. Mbowe** (1970) HCD No. 3. And persuasive decision of South Africa in **Magidiwana and Others v. President of the Republic of South Africa and Others** (CCT 100/ 13) [2013] ZACC 27; 2013 (11) BCLR 1251 (CC) 19<sup>th</sup> Day of August 2013 at [www. saflii.org/za/cases/ZAcc/2013/27. html](http://www.saflii.org/za/cases/ZAcc/2013/27.html)

In light of the above reasons and without further ado, the applicant's application is not without merit. Consequently, the respondent's application for execution, Miscellaneous Labour Application No. 99 of 2016 is hereby stayed pending hearing and determination of Misc. Labour Application No. 72 of 2019 for extension of time to file revision application out of the prescribed period. I shall dismiss not make any order as to costs of this application.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**10/08/2020**