

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DEVISION

AT MUSOMA

LABOUR EXECUTION NO. 11 OF 2020

*(Arising from the Labour Execution No.32 of 2019 before the High Court of Tanzania enforcing the Commission for Mediation and Arbitration of Musoma at Musoma)*

MAGNET CONSTRUCTION LTD ..... APPLICANT

VERSUS

BRUCE WALLACE JONES ..... RESPONDENT

RULING

Date of Last Order: 28/05/2020

Date of Ruling: 14/08/2020

**KISANYA, J.:**

This application has been made by way of Chamber Summons which is predicted under rule 24(1), 24(2)(a)(b)(c)(d)(e)(f) and 24(3)(b)(c)(d) and 55(2) of the Labour Court Rules, 2007 and section 91(3) of the Employment and Labour Relations Act, 2004. It is supported by an affidavit of Christopher M. Wantora, learned advocate for the applicant. The order sought by the applicant are as follows:

- 1. That this honourable court be pleased to Stay of execution of application of Execution No. 32 of 2019 before Deputy Registrar against the award given by Commission for Mediation and Arbitration of Musoma at Musoma- NNEMBUKA.K.-ARBITRATOR) be stayed, pending determination of Application No...../2019 to this Court.*
- 2. Any other relief the Honourable Court deems fit and just to grant.*

Before going into the substance of this application, the brief back background which led to the application at hand is narrated. Sometimes on 2/12/2016, the Commission for Mediation and Arbitration (hereinafter referred to as “the CMA”) delivered an arbitration award in favour of the respondent. That was through Labour Dispute No. CMA/TRM/64/2016. Dissatisfied, the applicant lodged an application for revision of the arbitration proceedings and award. It is deposed in paragraph 3 of the applicant’s affidavit that, the said application was struck on legal technicality. Still determined to challenge the arbitration award, the applicant filed an application for extension of time to file revision. This time, her application was struck for want of prosecution.

In that regard, the respondent applied for execution of the arbitration award. Upon receiving the summons in respect of the execution proceedings, the applicant filed the present application.

This application was disposed of by written submission. Ms Noelina Bippa Ibrahim, learned advocate for the applicant filed submission in support of the application. On the other hand, submission against the application was filed by Mr. Christopher Waikama, learned counsel for the respondent.

In her submission in chief, Ms, Noelina argued, among others that, the Court’s interference is necessary and that, the applicant will suffer an irreparable loss if the application is not granted. This argument was based on the reasons that, the execution will render the application for extension of time to file revision (Application No. 3 of 2020) pending before his Lordship Galeba, J., nugatory. The learned counsel contended that, other conditions for the court to grant the application for stay execution had been met. Thus, Ms. Noelina was of the firm view that, there was a prima facie case and likelihood of success in the pending application, and that, common sense and balance of convenience were in the

applicant's favour. In view of the aforesaid, the learned counsel requested the Court to grant the application.

Mr. Waikama, learned advocate objected the application. He contented that, the applicant had no chance of succeeding in the pending application on the ground that, she was negligent. On the issue whether the applicant would suffer irreparable loss, Mr. Waikama argued that, the applicant was misleading the Court. He was of the view that, the pending application was filed to delay the respondent's right of executing the award. He went on to submit that, the applicant who will suffer irreparable loss if the execution is granted. That said, Mr. Waikama urged the Court to dismiss the application for want of merit

In her rejoinder, Ms. Noelina averred that, the applicant was diligent in prosecuting the struck out revisional proceedings. She reiterated that, the condition for granting stay of execution had been met.

I have gone through the Chamber Summons, affidavit, counter affidavit and the rival arguments by the learned counsel for both parties, and I think the main issue for determination is whether the application has merit.

It is settled that, for the application of stay of execution of decree or arbitration award pending the determination of an appeal or application for revision to stand, any or more of the following factors have been established:

- (a) Whether the appeal or application has, prima-facie, a likelihood of success;
- (b) Whether the refusal of staying execution is likely to cause substantial and irreparable injury to the applicant.
- (c) Balance of convenience.

See **Ignazio Messina & National Shipping Agencies V. Willow Investment & Costa Shinganya** Civil Reference No. 8 of 1999 (unreported).

The duty to prove and demonstrate the existence of factors or circumstances which will justify the grant of an order of stay of execution lies on the applicant. Further, the factors must relate to the enforcement of the award and should be deposed in the affidavit in support of the application.

In the instant application, neither the Chamber Summons nor the affidavit in support of the application stated the application that was pending in the Court. It is deduced from paragraph 6 of the affidavit that, what was pending in the Court was the application for extension of time. It is was not stated what the extension was all about. The applicant ought to have stated the particulars of the said application. It was during her submission when Ms. Noelina disclosed that, the matter pending before this Court was “application for extension of time to file revision” (Application No. 3 of 2020).

I have gone through the record of this Court. The only case which was pending between the parties before my learned brother Geleba, J., at the hearing of this matter was Misc. Labour Application No. 3 of 2020. However, the said application was finally disposed of on 26/06/2020. It ended in favor of the respondent. Pursuant to the ruling, the applicant had sought for “extension of time within which to file an application to restore an application which was seeking for extension of time to file application for revision”. The Court dismissed the said application on the reason that, the applicant had not demonstrated sufficient cause for the delay.

Therefore, it is clear that, this application for stay of execution was based on the application for extension of time which was before Hon. Galeba, J. In the circumstance where the said application was dismissed in favour of the respondent, the present application for stay of execution has no legs to stand on. In other words, there is no prima facie case against the respondent and other factors for granting an order for stay of execution.


In view of this, I find no merit in the application. It is hereby dismissed with no order as to costs due to its nature.

Dated at MUSOMA this 14<sup>th</sup> day of August, 2020.

  
E. S. Kisanya  
JUDGE  
14/8/2020

COURT: Ruling delivered this 14<sup>th</sup> August, 2020 in the absence of the applicant and the respondent but with leave of the Court. Parties to be notified to collect copy of ruling.



  
E. S. Kisanya  
JUDGE  
14/8/2020