

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT MUSOMA

MISCELLANEOUS LABOUR APPLICATION NO. 19 OF 2020
(Arising from Application for Execution No. 30 of 2020)

NYANZA ROAD WORKS LIMITEDAPPLICANT
VERSUS
FESTO ADAMURESPONDENT

RULING

17th and 22nd December, 2020

KISANYA, J.:

The applicant, Nyanza Roads Works Limited has brought this application seeking for the following orders:

- 1. That the Court be pleased to stay the execution No. 30 of 2020, until the intended Appeal to the Court of Appeal of Tanzania is heard and determined to its merit.*
- 2. Any other relief the Court may deem fit and just to grant.*

Reading from the affidavit in support of the application, the execution sought to be stayed arose from the judgment and decree issued by this Court in Labour Revision No. 2 of 2020 on 8th May, 2020. Aggrieved by the judgment and decree of this Court, the applicant filed a notice of appeal to the Court of Appeal on 22nd May, 2020.

Therefore, upon noting that there is a pending notice of appeal lodged in the Court of Appeal, parties were asked to address the issue whether this Court has

jurisdiction to hear and order stay of execution of its judgment and decree.

Before me, Mr. Ludovick Joseph and Ms. Milembe Faith Lameck, learned advocates appeared to argue the application on behalf of the applicant. The hearing proceeded in the absence of the respondent who failed to appear without notice.

Submitting on the issue raised by the Court, Mr. Joseph argued that the application had been made under section 91(3) and 94(1) (f) of the Employment and Labour Relation Act, R.E. 2019 (the EALRA).

I have read the said provision together with Rule 24(1), Rule 24(2),(a), (b), (c), (d) (e), (f), Rule 24(3)(a)(b),(c),(d) and Rule 24 (11) of the Labour Court Rules, G.N. No. 106 of 2007 cited in the Chamber Summons. None of the cited provisions empower this Court to hear and determine application for stay of execution where an appeal is pending in the Court of Appeal. Pursuant to section 91(3) of the EALRA, the power of this Court is to order stay of execution pending its decision. The said section provides as follows:-

"The Labour Court may stay the enforcement of the award pending its decision."

When probed by the Court as to whether there was a decision pending in this Court, Mr. Joseph's reply was in affirmative. He contended that the applicant had filed an application for revision against the ruling of the Commission for Mediation and Arbitration for Mara at Musoma which was delivered on 1/12/2020. That was a new fact. It was not pleaded in the pleadings filed in the Court. The law is settled that, parties are bound by their pleadings. The matter before the Court is an application for stay of execution pending hearing and determination of appeal filed in the Court of Appeal.

It is trite law that once a notice of appeal is duly lodged in the Court of Appeal, this Court ceases to have jurisdiction over the matter. This position was stated in **Serenity on the Lake Ltd vs Dorcus Martin Nyanda**, Civil Revision No.1 of 2019 (unreported) where the Court of Appeal cited with approval its decision in **Tanzania Electric Supply Company Limited vs. Dowans Holdings S. A. (Costa Rica) and Dowans Tanzania Limited (Tanzania)**, Civil Application No. 142 of 2012 (unreported) that:-

"It is settled law in our jurisprudence/ which is not disputed by counsel for the applicant that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court commences proceedings in the Court. We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter."

The Court of Appeal went on to hold that, the High Court has no jurisdiction to hear and order stay of execution of decree if the notice of appeal had already filed before it (the Court of Appeal). It held as follows:-

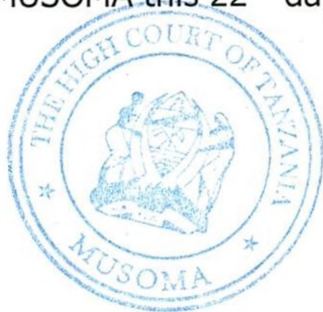
*"On the strength of the above decisions, we are settled in our minds that the Deputy Registrar, of **the High Court (Labour Division)** **did not have jurisdiction to hear and order stay of execution** and at the same time order the applicant to deposit a sum of Tshs. 2,500,000/= to that court as security for the due performance of the decree in Revision No. 24 of 2017 while already there was a Notice of Appeal filed in this Court. That order had no backing of the law. What he was supposed to do after realizing that there was a pending appeal before this Court was to halt the proceedings and pave way for the appeal process to proceed. **By***


entertaining the application for stay of execution while there was a pending notice of appeal lodged in this Court, the Deputy Registrar slipped in an error for lack of jurisdiction. The order was therefore unlawful." (Emphasize supplied).

I associate myself to the above position of law held by the highest court of this land. Much as there is a pending notice of appeal filed in the Court of Appeal, this Court has no mandate to hear and order stay of execution as sought in the Chamber Summons. In terms of Rule 11(2) and (3) of the Court of Appeal Rules, 2009, such power is vested in the Court of Appeal.


In the final analysis, I find the application incompetent before the Court. Accordingly therefore, this application is struck out. Costs are not awarded because this is a labour matter.

Dated at MUSOMA this 22nd day of December, 2020.




E. S. Kisanya
JUDGE
22/12/2020

COURT: Ruling delivered this 22nd day of December, 2020 in the presence of the Ms. Milembe Faith Lameck, learned counsel for the applicant and in the absence of the respondent.


E. S. Kisanya
JUDGE
22/12/2020