

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**(LABOUR DIVISION)**

**AT MTWARA**

**MISC. LABOUR APPLICATION NO. 8 OF 2020**

*(Originating from Revision No.7 of 2020 of High Court Mtwara and Labour Dispute*

*No.CMA/MTW/03/2020 MTWARA)*

**BETWEEN**

**AFRICA MUSLIMS AGENCY.....APPLICANT**

**VERSUS**

**OTHMAN ABUBAKARI.....RESPONDENT**

**RULING**

24<sup>th</sup> Nov. & 8<sup>th</sup> Dec. 2020

**DYANSOBERA, J.:**

The applicant, Africa Muslims Agency, filed this application by way of notice of application under section 91(3) of the Employment and Labour Relations Act, 2004, Act No.6/2004 and Rule 24 (1), 24(2) (a), (b), (c), (d), (e), (f), 24(3) (a), (b), (c), (d) and 24(11) of the G.N. NO.106 of 2007 of the Labour Court Rules, supported by affidavit of YAHYA AHMED RASHID a

Human Resources Manager of the applicant seeking this court to stay execution of the Award dated on 4.8.2020 in Labour Dispute No. CMA/MTW/03/2020 Mtwara pending determination of the application for revision.

The brief background of the matter is that the respondent was employed by the applicant, the Africa Muslim Agency, as Imam and a teacher on 10.04.1990. His services were terminated on 20<sup>th</sup> day of November, 2019 on non allegations though before he was alleged on witchcraft to female students. He was aggrieved by the said termination and referred the matter to the MCA against the applicant. While at the CMA the dispute went through two stages. The first stage was mediation whereby the mediation was marked failed thus it went to the second stage of arbitration. The dispute was submitted before N.L. Mwabeza, Arbitrator.

During the arbitration proceedings, both parties were accorded a right under rule 24(1) of GN. No. 67 of 2007. Thereafter, the arbitrator and the parties framed issues. The issues were, one, whether the applicant (respondent herein) was employed by the respondent (the applicant herein) or was just a volunteer. Two, whether the applicant was terminated from employment or he terminated himself. Three, if the applicant was

terminated from his services of employment, whether the termination was fair. Four, what were the reliefs of each part. At the hearing before the CMA, the applicant was unrepresented and called three witnesses and tendered two exhibits that is exhibit D1 and D2 whereas the respondent was represented by Mr. Gide Magila, the learned advocate. The respondent paraded four witnesses including him and tendered two exhibits (i.e. P1 and P2).

After a full trial the Arbitrator delivered the Award declaring that the respondent was employed by the applicant and was unfairly terminated. The Hon. Arbitrator went on to order the applicant to pay the respondent compensation of the salaries for thirty six (36) months in the sense that the salary of the respondent which was Tshs.136, 000/= per month was multiplied with thirty six months (36) making a total amount of Tshs.4, 896,000/= in awarding that compensation, the Hon. Arbitrator reasoned that the respondent was denied his working right while his age has been older and had worked for a long time with the applicant and further that reputation of the respondent was ruined in his society since people took him to be a witch.

The respondent was also awarded his terminal benefits as dictated by section 44(1)(a)(b) and (c) of the Employment and Labour Relations Act(supra). The other entitlements the respondent was ordered to be paid were one month's salary/remuneration for work done before the termination of the employment, that is Tshs.136,000/=, annual leave pay Tshs.136,000/= and severance pay due that is Tshs.317,333/=. An order was also made to the respondent to be issued with a prescribed certificate of service. In total, the applicant was ordered to pay the respondent a sum of Tshs.5, 485,333/=.

Aggrieved by the Award and orders of the CMA at Mtwara the applicant lodged his application for revision before this court praying this court to determine several issues arising from the Award and orders of the CMA. In addition to filing the application for revision, the same applicant has lodged this application for stay for execution of an award of the CMA.

When this matter was due for hearing the respondent did not enter appearance thus, this court ordered the matter to be heard exparte by way of written submissions. The applicant's written submission in support of her application was drawn and filed by Juma Nassoro, the learned advocate. In his submission the applicant argued extensively on the pending revision

application which, I think, is not the function of the present exercise as the said matter is pending before this court.

Laying emphasis of the grant of stay of execution, the applicant, through her counsel, submitted that the interest of justice demands stay of execution be ordered so as to give chance the application for revision be heard because there is a prima facie case in it. It is the applicant's further submission that the respondent has no means to recover the decretal sum in case the revision succeeds and the Award is set aside. Learned counsel explains that unless stay order is granted, the application for revision will be rendered nugatory. It was contended also on part of the applicant that he is willing and able to deposit in court any security as the court may deem fit to order for due performance of the award if need be and insisted that this application should be allowed.

I have gone through the submissions of the applicant and the Award at the Commission for Mediation and Arbitration (CMA) at Mtwara. Before going deeply on the submission of the applicant it is important to lay a foundation for my observation.

Stay of execution in labour matters is governed by section 89 (2) of the Employment and Labour Relations Act No. 6 of 2004 read together with

rule 48 (3) Labour Court Rules, GN No. 106 of 2007. An Arbitration Award by the CMA is served and executed by the Labour Court as if it were a decree of the court. It is provided under the rules that a court decree is enforceable by the court exercising powers conferred on it by the Civil Procedure Code [Cap.33 R.E.2019]. The enforcement is made following an application made by the decree holder under rule 49 (2) of the Labour Court Rules. The Registrar of the Court appointed under section 54 of the Labour Institutions Act, No. 7 of 2004 is responsible for execution process as provided for under Order XLIII (g) (i) of the Civil Procedure Code.

The powers to deal with applications for stay of execution are stipulated under Order XXI rule 24 and Order XXXIX rule 5 of the Civil Procedure Code and the principles requisite for the granting the stay of execution must apply. Such principles include, one, an appeal or pending application cannot operate to bar execution of the decree. Two, stay can only be ordered on conditions stipulated under the law. For instance, in the case of **Albert Braganza and another v. Mrs Flora Loundu Braganza** [1992] at page 307, the Court stated:-

*"an order for stay can be given when compelling reasons are shown".*


It should be noted that under the law, stay is granted where substantial loss may result to the party applying for stay of execution unless the order is made. The application for stay has been made without unreasonable delay and the security has been given for the due performance of such decree or order as may ultimately be binding upon him.

In the instant application, apart from the fact that this application has been preferred under wrong provisions of law, the applicant has failed to attach the order she is seeking to be stayed. Furthermore, there is nothing in the affidavit affirmed by Yahaya Ahmed Rashid filed in support of the application indicating that the applicant has satisfied the conditions requisite for stay of execution as stipulated under the law.

The upshot, this application lacks any legal merit, thus the application is hereby dismissed.

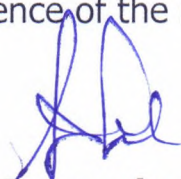
No order as to costs is made.



  
**W. P. Dyansobera**  
**Judge**  
**8.12.2020**

This ruling is delivered under my hand and the seal of this Court on this 8<sup>th</sup> day of December, 2020 in the presence of Mr. Abdallah Seif Kalale representing the applicant but in the absence of the respondent.



  
**W.P. Dyansobera**

**Judge**