

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LABOUR APPLICATION NO. 18 OF 2021**

**GEITA GOLD MINING LTD..... APPLICANT**

**VERSUS**

**CHRISTIAN CHRISTOPHER.....RESPONDENT**

**RULING**

15<sup>th</sup> June, 2021 & 30<sup>th</sup> June, 2021.

**TIGANGA, J.**

This application has been preferred by way of chamber summons made under section 91(3), 94(1),(b),(f) of the Employment and Labour Relations Act [Cap 366 RE 2019] and Rules 24(1), (2), (a), (b), (c), (d), (e),(f),(11),(b) and 28(1),(c),(d),(e) of the Labour court Rules of 2007, Order XXI Rule 24(1) of the Civil Procedure Code [Cap 33 RE 2019].

It has been supported by an affidavit dully sworn by Gregory Lugaila, learned counsel for the applicant. The applicant is seeking for the orders that;

1. This honourable court be pleased to stay of the execution of the award dated 09/10/2020 in Gieta, Labour Dispute No. CMA/GTA/49/2018, Hon. Stanslaus, H, Arbitrator pending determination of the applicant's application for revision.
2. Any other order this honourable court may deem just to grant.



It was averred in the affidavit that the respondent was once employed by the applicant as an Operator 1-Dump Truck. However, he was later terminated from his employment due to what was termed as a breach of the applicant's disciplinary code. Unsatisfied, the respondent instituted a complaint against the applicant before the Commission for Mediation and Arbitration (CMA) which was decided in his favour. The applicant was not satisfied with the award that was given in his disfavour thus filed an application for revision which is still pending before this court.

It was further averred that while the revision application is still pending, the applicant was served with an execution application which is what prompted the applicant to file this application praying for the execution to be stayed pending the application for revision. The respondent, through his counter affidavit, opposed the application.

This application was argued orally. Miss Neema Josephat, learned counsel, appeared and submitted on behalf of the applicant whereas the learned counsel, Mr. Mathias Mwilwa appeared and submitted on behalf of the respondent.

Submitting in support of the application, counsel for the applicant stated that the applicant has filed this application praying for this court

to stay the execution because there is still a pending revision application No. 90/2020 before Hon. Manyanda, J. Also prayed for this court's intervention because the value of the properties attached is way higher than what was granted in the award. The respondent was awarded Tshs 16,440,962 while the properties attached are worth Tshs 251,562,801.

Counsel cited the case of **Tanzania Cotton Marketing Board vs Cochcord Cotton Co.** [1997] TLR 63 stating that the decision to grant this application is discretionary and prayed that it be found by this court that the applicant stands to suffer irreparable loss if the execution will proceed. According to her, the respondent will not suffer any loss as the whereabouts of the applicant are known and therefore the respondent will still be able to execute the award after the revision has been decided.

Counsel for the respondent did not object the application but prayed that the applicant be ordered to deposit the amount equal to the claimed amount.

The applicant made no rejoinder marking the end of the submissions by both parties.

Now, having gone through the submission by the counsel for the parties and other documents filed in support of the application, the only

issue that calls for determination is whether or not the application has merit.

It is settled that the decision of the court to grant or not to grant an application of this nature is discretionary and for an application for stay of execution or arbitration award pending the determination of an appeal or application for revision to succeed, the applicant needs to show first, that the application or appeal has a likelihood of success, second, that the refusal of an order to stay execution is likely to cause substantial loss to the applicant and third is the balance of convenience.

In the submission and affidavit in support of the application, counsel for the applicant stated and it is clear that the applicant is the one that stands to suffer irreparable loss if the application is refused, and the revision succeeds as the respondent's current assets and source of income are unknown. But the respondent on the other hand will not suffer as the applicant's assets are well known. On the balance of convenience, it was averred that neither party will be put in jeopardy by the grant of stay of execution as the applicant is willing to provide security for costs just in case the revision fails.

From what has been submitted regarding the factors that have to be shown for an application of this kind to succeed, and from the

submission by the counsel for the respondent that they do not oppose the application except that the applicant must first be ordered to provide security for costs, I see no wrong in granting the application as prayed by the applicant as providing security for costs has also not been protested by the applicant.

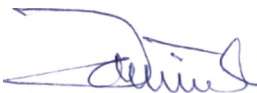
In view of what has been stated above, I see merit in the application and the same is hereby granted. The execution of the award in Labour Dispute No. CMA/GTA/49/2018 is stayed pending the determination of Revision Application No. 90/2020. No order as to costs is given.

Regarding the application for depositing the security for costs, the respondent is ordered to deposit in the Judiciary Deposits Account, the amount equal to the amount of money awarded by the CMA in the contested award pending hearing and determination of the application for revision No. 90 of 2020, before this court, Hon. Manyanda, J.

It is accordingly ordered.

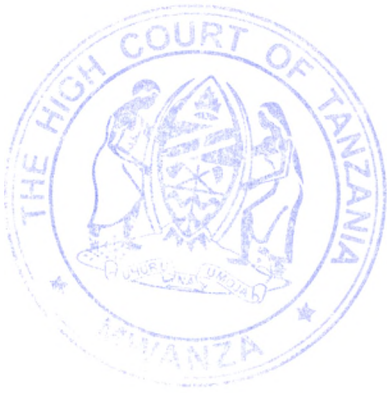
**DATED at MWANZA** this 30<sup>th</sup> day of June, 2021



  
**J.C. TIGANGA**  
**JUDGE**



Judgment delivered in open chambers in the presence Mr. Neema Josephat, Advocate for applicant and Mr. Mathias Mwilwa, Advocate of the respondent through audio teleconference.



A handwritten signature in blue ink, appearing to read "J. C. Tiganga".

**J. C. TIGANGA**

**JUDGE**

**30/06/2021**

ORIGINAL