

**IN THE HIGH COURT OF TANZANIA
(HIGH COURT LABOUR DIVISION)**

MWANZA

MISC. LABOUR APPLICATION No. 24 OF 2021

(Originating from Labour Execution No. 191 of 2021)

TUJIJENGE TANZANIA LTD.....APPLICANT

VERSUS

MWAMBA PAUL MADUHU.....RESPONDENT

RULING

Date of last Order: 05.08.2021

Date of Ruling: 06.08.2021

M. MNYUKWA, J.

This application was made by way of chamber summons under Order XXI Rule 27 and section 95 of the Civil Procedure Code, Cap 33 [RE. 2019] accompanied by an affidavit of OLYMPIA MELKIORY KAVISHE. The applicant prayed for a stay of execution of the labour execution award No. 19 of 2021 of the Commission for Mediation and Arbitration at Mwanza in Labour Dispute No. CMA/ MWZ/NYAM/228/2017 which was issued on 26th January, 2021 pending hearing and determination of the Application for restoration or re-enrolment of the labour revision No.10 of 2021. The

respondent did not oppose the application and he opted not to file a counter affidavit.

When the matter was called for hearing on 05th August 2021, Ms. Olympia Melkiory Kavishe, a legal officer of Tujijenge Tanzania Limited represented the applicant whereas Mr. Innocent Michael Ndanga, learned counsel represented the respondent.

The learned counsel for the applicant was the first to kick the ball rolling. She avers that they have duly filed the application and served the respondent who opted not file the counter affidavit.

During submission, the applicant prayed to adopt her affidavit to form part of her submissions. She briefly narrated that, the applicant is a judgment debtor in the CMA award which was delivered on 16.06.2017 following ex-parte proof by the respondent, and the respondent filed execution proceedings before this court which the applicant prays for stay of the same.

She went on to submit that, the applicant filed Revision Application No. 99 of 2021 to this court, which was dismissed before Mashauri, J. She averred that; the applicant filed another application before this court to set aside the dismissal order so as both parties be afforded a right to be heard. She insisted that, there is an overwhelming chance of success of

the Application and if the stay of execution will not be granted the applicant will suffer irreparable loss since the award was given ex-parte.

In conclusion, the applicant's legal officer prays this court to grant the applicant's application since the learned counsel for the respondent had no objection.

In responding, Mr. Innocent Michael was brief and straight to the point. He acknowledged to have received the applicant's pleadings and opted not to file a counter-affidavit for the reason that they did not object to the applicant's application. He supported the applicant's prayers to be granted by this honourable court for the reason that there is pending application No. 28 of 2021 before Hon. Ismail J. for setting aside the dismissal order issued by this court.

As submitted by the applicant's legal officer and conceded to by Mr. Innocent Michel Ndanga learned counsel for the respondent, it is clear that there is no objection to the applicant's prayers. This court is left with one issue to decide as to whether the application is proper before this court?

After carefully going through the available record, I find the application at hand for stay of execution was filed under Order XX1 Rule 27 and section 95 of the Civil Procedure Code, Cap 33 [RE 2019]. Being a

miscellaneous labour application arising from the labour execution, its application ought to have been filed in accordance with the Labour Laws and its Rules.

The Employment and Labour Relations Act, Cap 366 R. E 2019 under section 91(3) provides that:

"The labour court may stay the enforcement of the award pending its decision."

Furthermore, the Labour Institutions Act, Cap 300 [R.E 2019] under section 55(1) gives mandate to the Chief Justice after consultation with the Minister, to make Rules to govern the practice and procedure of the Labour Court. That as to say, the Labour Court Rules, 2007 G. N No 106 of 2007 is the one which is applicable in labour matter as it provides the mandatory requirement in filling any application before the labour court.

The Labour Court Rules, 2007 under Rule 24 describes on how the application can be made. Therefore, it is expected that the applicant in this application could have moved this court for an application to stay execution by referring to the provision of section 91(3) of the Employment and Labour Relations Act, Cap 366 [R.E 2019] and Rule 24(1). 24(2). 24(3) and 24(11) (b) of the Labour Court Rules, 2007 instead of Order XXI Rule 27 and section 95 of the Civil procedure Code Cap 33 [RE: 2002].

It is a settled principle of law that being a specialized court, the labour court had its own laws and procedure which need to be complied with when one is moving this court. That is to say, the other laws will only be used when there is a *lacuna*. This has been observed in the case of **Reli Assets Holding Co. Ltd vs Japhet Casmil & 1500 Others**, Lab. Div. TBR, Revision No. 10 of 2014 the court among others, held that: -

"In practice the Civil Procedure Code is not applicable in the Labour Court. The Civil Procedure Code is applicable in the Labour Court when there is a lacuna in its Labour Court Rules, but where there is a specific rule or law providing a certain aspect then the Civil Procedure Code or any law thereof cannot apply...."


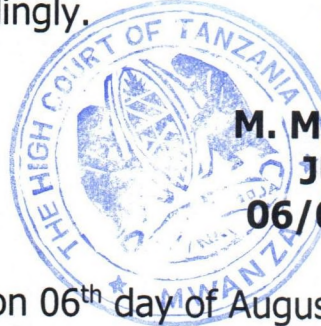
Guided by the above provisions of law and decided case, it is clear that since this application is a Labour matter, the applicant was required to properly move this court using the labour laws dully enacted and not the Civil Procedure Code as preferred by the applicant. That is to say, the applicant was required to move this court by filling an application for stay of execution under section 91(3) of the Employment and Labour Relations Act, Cap 366 [R.E 2019] and Rule 24 (1) (2) (3) and (11)(b) of the Labour Court Rules, 2007. The applicant's failure to move properly this court

makes its application fatal and such irregularity makes the application incompetent before this court.

For the afore stated reasons, though the respondent conceded to the applicant's prayers for a stay of execution of the award of the Commission for Mediation and Arbitration at Mwanza in Labour Dispute No. CMA/MZ/NYAM/ 228/ 2017 which ordered payment of Tshs. 56,440,000/= by the applicant pending the determination of the application for restoration of the Labour Revision No. 99 of 2019, I find that this court was not properly moved.

In the upshot, I hereby struck out the Miscellaneous Labour Application No 24 of 2021 with a leave to refile a proper application within 7 days with no order as to costs.

Order accordingly.

M. MNYUKWA
JUDGE
06/08/2021

Ruling delivered on 06th day of August, 2021 via audio teleconference whereby all parties were remotely present.



M. MNYUKWA
JUDGE
06/08/2021