

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
MISC. LABOUR APPLICATION No. 47 OF 2020
(Original CMA/GTA/124/2018)
SYNERGY (T) CO. LTD..... APPLICANT
VERSUS
JASSON IBRAHIM.....RESPONDENT

RULING

09th June, & 20th July, 2021.

TIGANGA, J.

This application has been preferred by way of chamber summons made under section 91(3), of the Employment and Labour Relations Act [Cap 366 RE 2019], Rules 24(1), (2), (a), (b), (c), (d), (e),(f), and (3)(a), (b), (c), (d), (11),(a) read together with Rule 28(1)(b),(c),(d) and (e) of the Labour court Rules of 2007,GN. No.106 of 2007.

It has been supported by an affidavit dully sworn by Frolian Kivamba who introduced himself as the Principal Officer of the Applicant, who participated in the prosecution of Labour Dispute No. CMA/GTA/124/2018 and thus conversant with the facts of the case. The applicant is seeking for the following orders;



1. This honourable court be pleased to grant stay of application No. 52 of 2020 pending the determination of the application for revision.
2. Any other reliefs this court may deem fit to grant in the circumstances of this case.

In the affidavit filed in support of the application, it was deposed that, the respondent was employed by the applicant in the scientific research of mining activities which later was closed by the applicant on the economic crisis reasons something which necessitated termination of employees' employments who among others was the respondent.

That termination was challenged before the CMA where it was found in the favour of respondent. However, the award aggrieved the applicant who challenged it before this court, in Labour Revision No. 79 of 2020 which is pending before this Court. It is deposed further that during the pendency of the said Revision No. 79 of 2020, the respondent filed Labour Execution No. 52 of 2020 seeking to execute the award in Labour Dispute No. CMA/GTA/124/2018. This application therefore asks for the same to be stayed pending hearing and determination of Labour Revision No. 79 of 2020 which is pending before this Court.

The application was opposed by the respondent and in the counter affidavit filed in opposition of the same, the respondent deposed that, if the applicant wants the execution to be stayed then, they should as a matter of law, deposit cash money of the decretal sum in the trial court account pending the outcome of the revision pending before this Court.

By the order of the court, this application was argued by way of written submissions, in the submission in chief the applicant reiterated the contents of the affidavit filed in support of the application, save in the third paragraph from the end of the submission, where he submitted that basing on the balance of convenience, the applicant is a reputable company in this country, he urged this court to find that, even if the revision fails, the respondent will be able to execute the decree satisfactorily. Moreover, he submitted that as the award is illogical that is the reasons he asks for stay of its execution, but if the same is left to be executed, it may cause disturbance in future. He prayed the application for stay of execution to be granted as prayed.

In the reply, the respondent did not strongly object the prayers, but he asked this court to grant the stay on the condition that, the applicant should deposit Tshs. 23,095,385/= which is the decretal sum in the impugned award. To support his such prayer the respondent cited the

case of **Geita Gold Mining Limited vs Dominic Ishengoma**, Misc.
Civil Application No.32 of 2010, in which it was held *inter alia* that;

"Justice will even be balanced if execution is stayed on condition that, the applicant deposits cash money of the decretal sum in the trial court pending the outcome of the revision"

In rejoinder submission, the applicant insisted that, in the application for revision which is pending before this Court, they are contesting the amount in the award; therefore making an order to deposit the said amount is tantamount to blessing the award. He insisted that the applicant has assets which will be attached in case the revision fails. He reminded this Court the fact that, the case cited is just persuasive, it is not binding to this court and there is no statutory condition or criteria set out by law to require the applicant to deposit the decretal amount of the award in labour matters.

Now, that being the summary of the application, counter affidavit and arguments by the parties, it is worthy to remind that as earlier on pointed out, this application does not seem to be objected by the respondent, but he asks that, should the same be granted, then it be with an order that the applicant should deposit cash equal to the decretal sum as security. In so asking, the respondent has relied on the

decision of this court in the case of **Geita Gold Mining Limited vs Dominic Ishengoma**, Misc, Civil Application No. 32 of 2010.

On the other hand, the applicant has resisted the order requiring it to deposit the decretal sum, on the ground that there is no statutory requirement in labour laws to mandate the court to order deposit of the decretal sum contained in the award as the condition for stay of execution. Regarding the cited authority herein above, the counsel for respondent submitted that, the same is persuasive, it is not binding to this court and it is out of context therefore he asked the court to disregard it.

In response to these arguments, I entirely agree with the applicant that labour laws do not make any provision making it a condition that execution of the award should not be stayed unless the judgment debtor deposits cash equal to the decretal sum in the trial court account. However, it has been the practice of this court, taking inspiration from the decision of the Court of Appeal of Tanzania while interpreting Rule 11 of the Court of Appeal Rules, specifically Rule 11 (5) (a) (b) of the Rules as amended by GN No. 344 of 2019, as interpreted in the case of **Mohamed Masuod Abdallah, and others vs Tanzania Road**

Haulage (1980) Ltd, Civil Application No. 58/17 of 2016 where it was held *inter alia* while quoting the provision that;

(5) No order for stay of execution shall be made under this rule unless the Court is satisfied that:

(a) Substantial loss may result to the party applying for stay of execution unless the order is made;

(b) Security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him."

The Court of Appeal held so while relying on the similar position of the said court as has been positively applied in a number of its previous decisions to mention few of them, are; **Mantrac Tanzania Limited v. Raymond Costa**, Civil Application no. 11 of 2010, **Joseph Antony Soares @ Goha V. Hussein s/o Omary**, Civil Application no. 6 of 2012 and **National Bank of Commerce Limited v. Alfred Mwita**, Civil Application No. 172 of 2015 (all unreported).

This position has been so adopted by the High Court for the sole reason that, the person against whom the stay of execution is made needs to have his interests protected so that in case the application for revision fails, he be in the position to realise the fruit of his award. Further to that, the practice has been either to deposit cash equal to the

decretal sum, or to give Bank guarantee. Likewise in this case, the interest of the respondent needs to be protected, and I see no reason as to why I should be against the already established position in a number of cases including the case of **Geita Gold Mining Limited vs Dominic Ishengoma**, (supra) as relied upon by the respondent that;

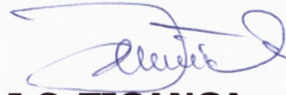
"Justice will even be balanced if execution is stayed on condition that the applicant deposits cash money of the decretal sum in the trial court pending the out come of the revision"

Also see the recent case decided by this court on 30th June 2021 of **Geita Gold Mining Ltd vs Christian Christopher**, Misc. Labour Application No. 18 of 2021 holding on the same position.

That said, the application is granted, the execution of the award in CMA/GTA/124/2018 is hereby stayed on the condition that, the applicant should deposit, in the Deposit Account of the Judiciary (to be furnished by the Court Administrator), the amount which is equals to the decretal sum awarded in the award. The order for stay shall exists and be valid pending the hearing and determination of the Labour Revision No. 79 of 2020 before this court.

It is accordingly ordered.

DATED at MWANZA this 20th day of July, 2021


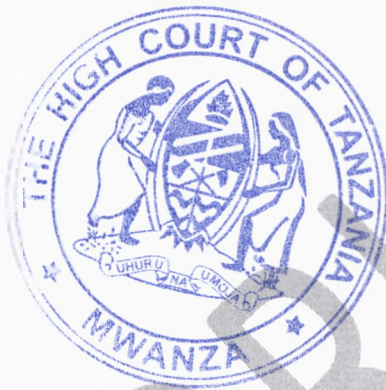


J.C. TIGANGA

JUDGE

20/07/2019

Ruling delivered in open chambers in the presence Mr. Innocent Bernard, Advocate for applicant and Ms. Makoba, Advocate of the respondent through audio teleconference.



J. C. TIGANGA

JUDGE

20/07/2021