

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
LABOUR DIVISION
AT MWANZA**

MISCELLANEOUS LABOUR APPLICATION NO. 57 OF 2020

(Originating from CMA/MZ/ILEM/133/2019)

MULTICHOICE (T) LTD.....APPLICANT

VERSUS

JOHN KASUKU MUNGUSA..... RESPONDENT

RULING

Date of Last Order: 14/07/2021

Date of Ruling: 29/07/2021

F. K. MANYANDA, J

This ruling is in respect of stay of execution of an arbitral award made by the Commission for Mediation and Arbitration for Mwanza hereinafter referred to as "the CMA" against the applicant Multichoice (T) Ltd. The CMA decision was given in Labour dispute No. CMA/MZ/ILEM/133/2019 in favour of the Respondent and the same is pending revision in this Court.

The Application is made under Rule 21(1), (2), (a), (b), (c) and (f), 3(a), (b), (c) and (d) and 11 of the Labour Court Rules GN. No. 106 of 2007 and Section 91(3) of the Employment and Labour Relations Act No. 6 of 2004. It is supported with an affidavit sworn by **Tike Wiltress Mwakitwange**. The application is opposed by a counter affidavit sworn by Suzan N. Gisabu, the counsel for the Respondent. Hearing was, with leave of the Court, argued by way of written submissions. The written submission for the Applicant to support the application was drawn and filed by Ndanu Emmanuel, learned Advocate, those for the Respondent were drawn and filed by Suzan N. Gisabu, learned Advocate.

Mr. Ndanu argued generally that the application satisfies the three tests for grant of stay as laid down in the case of **Ignazio Messina and National Shipping Agencies vs Willow Investment and Costa Shinganya**, Civil Reference No. 08 of 1999(unreported) namely: -

- i. The Court will grant a stay of execution if the Applicant shows that refusal to do so would, cause substantial loss to him which cannot be atoned by any award of damages.

- ii. It is equally settled that the Court will order a stay if refusal to do so would, in the event the intended appeal succeeds, render that success nugatory.
- iii. Again, the Court will grant a stay if in its opinion, it would be on a balance of convenience to the parties to do so.

It was the views of Mr. Ndanu that the application meets the said standards for three reasons as well, which he stated that:-

- (a) The value of the attached motor vehicle, which is a vital tool for day to day activities of the firm in Mwanza Region, exceeds by far the value of the award of Tshs. 53,854,988.6. He stated that the motor vehicle is a Nissan Hard Body Reg. No. T802 DQH is a brand new, in case the same is sold the Applicant will be drastically affected. Moreover, it was argued that the permanent physical address of the Respondent been unknown and having no known property which may be attached to recover the value of the motor vehicle in case the decision is reversed. He referred to the case of **Indian Oceans Hotel t/a Golden Tulip Dsm vs Nitesh Suchak t/a Smart Dry**

Cleaners (unreported) but no citation was given; so this Court will not act on it.

- (b) Secondly, Mr. Ndanu argued that the revision has high prospects of success, the said success will be nugatory in case the motor vehicle is attached and sold, the proceeds of which will be paid to the Respondent.
- (c) Lastly, the Counsel argued that the Applicant been an international firm with branches all over the Country, has nowhere to hide in case the revision is resolved in favour of the Respondent. He is ensured payment of the award. He cited the case of **SDV Transmi (T) Ltd vs Ms STE DATSO**, Civil Application No. 97 of 2004 (unreported).

The Counsel for the Respondent, Ms. Gisabu, learned advocate, adopted the counter affidavit and counter argued conceding on the principles laid down in the case laws including the case of **Ignazio Messina's case (supra)**. However, she pointed out that the reasons given by the Applicant are too general, as such they don't reveal how the Respondent will suffer

the irreparable loss, other than giving a mere assertions of loss which are more theoretical than practical.

She was of the views that the Applicant has failed to demonstrate how the Respondent would fail to repay the money in case the award is reversed. Moreover, she challenged the Applicant for failure to furnish any security. She cited the case of **Tanzania Cotton Marketing Board vs COGECOT Cotton Co. SA [1997]**, TLR 63 where it was held inter alia that grant of stay is a matter of discretion, the Applicant is required to go beyond mere assertions that he would suffer great loss, he must give details and particulars of the loss.

Lastly, Ms. Gisabu argued that the Respondent, who has the award in issue, should not be deprived of his enjoyment of the same. She relied on the authority in the case of Winchester **Cigarette Machinery Ltd vs Payne and Another**, 2 Times Law Reposts 15 December, 1993 (A copy was not supplied).

In rejoinder the Applicant reiterated his submissions in chief and added that in the **SDV Transmi (T) Ltd case (supra)** the Court of Appeal said

the tests are not cumulative but proof of one or more entitles a Court to grant a stay.

Those were the submissions by the Counsel for both parties. I must appreciate their well researched works, the same has easened my duty of determining this matter.

First of all I am in agreement with both Counsel that the guide lines for grant of a stay has been spelt out by our superior Court in various case including the **Ignazio Messina's case (supra)** as being: -

- i. The Court will grant a stay of execution if the Applicant shows that refusal to do so would cause substantial loss to him which cannot be atoned by any award of damages.
- ii. It is equally settled that the Court will order a stay if refusal to do so would in the event the intended appeal succeeds, render the success nugatory.

- iii. Again, the Court will grant a stay if, in its opinion, it would be on balance of convenience to the parties to do so.

Another test was added by the Court of Appeal as stated in the recent case of **Lomayan Langaramu vs Christopher Pelo**, Civil Appeal No. 453/02/2018 that:-

*".....it is clear that an application for stay of a decree may be granted upon compliance of the applicant with three conditions: firstly that the application has been made within the prescribed time, secondly showing that the substantial loss may result if execution is not stayed and **thirdly that the applicant has given security for the due performance of the decree**". (Emphasis added)*

The said tests are to be satisfied cumulatively. In the said case of **Lomayan Langaramu vs Christopher Pelo (supra)** it was also stated that:-

" it is trite law that for an application for stay of execution of a decree to succeed the applicant must cumulatively comply with the conditions listed under the law." (Emphasis added).

The decision in the case of **Lomayan Langaramu** (supra) was decided on 25/02/2021, therefore it is the most current position of the law.

The issue in this matter is whether the Applicant has cumulatively satisfied the tests set up in the cases above.

Starting with the first test that if the Applicant shows that refusal to do so would cause substantial loss to him which cannot be atoned. To put it in the other way round that none granting of the stay will cause the Applicant suffer irreparable loss. In this case it has been argued for the Applicant that the value of the attached motor vehicle is higher than the awarded amount of Tshs 53,854, 988.6. However, there is no evaluation report to show the value of the said motor vehicle. There has not been adduced evidence to establish its condition as well.

Therefore, there is a mere assertion that the motor vehicle value is greater than the awarded amount.

Secondly it was argued for the Applicant that since the place of abode of the Respondent is unknown, and has no property for the Applicant to recover, then if stay is not granted he will have no property to attach and sell in case the award is reversed. I have scrutinized this argument and

found the same is baseless. I say so because, the Respondent also has the right of enjoying his award.

Thirdly it was argued for the Applicant that the revision has prospect of success. This ground in my understanding is obsolete. I say so because it tends to move this to deal with determination of the revision itself which is not proper.

Lastly it was argued for the Applicant that since she has branches all over the country she has nowhere to hide in case the revision is decided in favour of the Respondent. In my understanding the Applicant is trying to ensure security to the Respondent's due performance of the award. I think this falls short of the require security. I say so because such assurance is vague. The Applicant was supposed to furnish specific security as was held in **Lomayan Langaramu's case (supra)**.

I agree with the Counsel for the Respondent that the Applicant was required to go beyond mere assertions of suffering loss by giving details and particulars of the loss.

In the result, for reasons stated above, I find that the Applicant has failed to meet the standards set up by case laws stated above to enable this Court exercise its discretionary power to grant a stay of execution.

Consequently, I do hereby dismiss this application for want of merit with costs. Order accordingly.




F. K. MANYANDA
JUDGE
29/07/2021