

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)**

AT MWANZA

MISC. LABOUR APPLICATION NO. 20 OF 2021

*(Arising from the Labour Dispute No. CMA/MZ/ILEM/155/2020/56/2020
dated 31th March, 2021 by Hon. Msuwakollo, Arbitrator).*

EQUITY FOR TANZANIA LTD APPLICANT

VERSUS

ALFRED ANDREW RESPONDENT

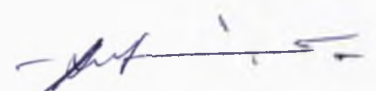
RULING

13th July, & 24th August, 2021

ISMAIL, J.

In this application, the Court is called upon to order stay of execution of the award passed by the Commission for Mediation and Arbitration (CMA) for Mwanza. The award adjudged that termination of the respondent's employment was substantively unfair. Consequently, the CMA ordered that the applicant pays compensation and other associated benefits, the aggregate of which was TZS. 96,540,000/-.

The applicant is dissatisfied with the CMA's finding and has preferred revisional proceedings (Labour Revision No. 24 of 2021) which are pending



in this Court. In the pendency of the revisional proceedings, the instant application has been instituted. The affidavit that supports the application has been sworn by Stephen K. Cleophace, the applicant's duly instructed advocate. Besides averments which challenge the propriety or otherwise of the CMA award, the affidavit has stated the loss that the applicant stands to suffer if the award is executed. In the deponent's own words *"allowing the execution as per Application No. 18 of 2021 by attaching the movable properties and the Bank Account of Equity for Tanzania Ltd.. Accounts will paralyze the whole operations of the Company as the Employees will not get paid their salaries and other entitlements as per law and limit the movements hence none (sic) performance of the Company."*

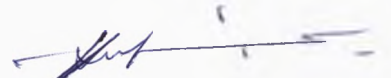
In a swift rejoinder to the application, the respondent has sworn a counter-affidavit in which the applicant's averments have been disputed. With respect to stay of execution averred that were the order for stay to be granted, the same should impose a condition for furnishing a bank guarantee for the sum constituting the decretal sum. Such guarantee should be issued by Standard Chartered Bank or CRDB Bank PLC.

On the parties' consensual basis, disposal of the application took the form of written submissions whose filing was consistent with the schedule drawn by the Court.

In his submission in chief, Mr. Shabani Shirima, learned counsel for the applicant, significantly but needlessly, argued on the propriety or otherwise of the respondent's termination and the CMA proceedings. It was only at the tail end of the submission that the issue of stay of execution was touched. The applicant's counsel contended that the applicant is a financing institution with employees and dependants who solely depend on the applicant. He argued that attachment of the accounts will lead to a paralysis of its operations, as loans will not be repaid. This will, in turn, create an inability to pay its workers.

The learned counsel further argued that there is a pending application scheduled for hearing on 18th August, 2021, and that the same stands an overwhelming chance of success. He took the view that if the stay order is granted, the applicant will be placed in a serious hardship in recovering the properties to be disposed of by the respondent.

A big chunk of the respondent's submission followed the pattern set by the applicant. By and large, the respondent's submission was a reply to the applicant's consternation on the CMA's decision to hold that the termination was unfair. With regards to the pending revisional proceedings, Mr. Bruno Mvungi, learned counsel, was not convinced that the same stand any chance of success since it is clear that the applicant did not have valid



reasons for termination. With regards to stay of execution, Mr. Mvungi cited the case of **Wilson Ndetaramo Minja v. John Godson Ngowi**, CAT-MSH Civil Application No. 2 of 2007 (unreported) in which the Court of Appeal of Tanzania held:

"Otherwise a party who gets from a court a decree in his favour is entitled to enjoy the fruits of his success, even if the other party wishes to challenge such success in appeal. If the decree holder is to be prevented by the court from enjoying the fruits of his success, then there must be good reasons for the court to make such unusual steps."

The learned counsel insisted that, should the Court be pleased to grant the application, then the same should attach a condition for furnishing a bank guarantee issued by either Standard Chartered Bank or CRDB Bank PLC. He argued that this condition is consistent with the Court of Appeal Rules (as amended), as discussed in the case of **Geriod Francis Tairo (As administrator of the Estate of the late Francis Karuwesa Tairo) v. Jumanne S. Kitila (As administrator of the Estate of the late Fatuma Puza @ Fatuma Pyuza & Hamis Said)**, CAT-Civil Application No. 254 of 2019, wherein it was guided as follows:

"In the consequence, we order that the execution of the impugned decree of the High Court be stayed pending the hearing and determination of the Applicant's intended



appeal of this Court. This order is made on condition that the applicant deposits in the court a bank guarantee in the sum of TZS. 20,000,000/- within thirty (30) days from the date of delivery of this ruling.”

Overall, the counsel contended that the application lacks merit and that it be dismissed. Alternatively, the same be granted subject to some conditions.

In his rejoinder, Mr. Shirima reiterated what was stated in the submission in chief. With regards to furnishing of security, the argument is that such order has the impact of letting the company cease to operate. He drew a distinction from the ***Geriod Francis Tairo case*** (supra) on the ground that in the said case, the respondents suffered as a result of the applicants' long possession of the disputed land which was used for business purposes. In the instant case, the counsel argued, the chances of winning the case were massive and that furnishing of the security will bring the applicant's operations to the bottom of the trough.

From the parties' rival submissions, the issue is whether there is ground for staying execution pending the determination of the Revision Application No. 24 of 2021.

The law is clear in this country. It is to the effect that, an applicant of a stay order should demonstrate that his application is consistent with principles that govern grant of an order of stay of execution. These principles are a household guide and they have been accentuated in several decisions of this Court and the Court of Appeal of Tanzania. The most captivating of all, in this respect, is the holding in ***Ignazio Messina & National Shipping Agencies v. Willow Investment & Costa Shinganya***, CAT-Civil Reference No. 8 of 1999 (DSM-unreported). The upper Bench held as follows:

"It is now settled that

- (i) The Court will grant a stay of execution if the applicant can show that refusal to do so would cause substantial irreparable loss to him which cannot be atoned by any award of damage;*
- (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."

See also: ***Stanbic Bank Tanzania Ltd vs Woods Tanzania Ltd***, CAT-Civil Application No. 146 of 2001; ***SDV Transmi (Tanzania) Limited v. MS STE DATCO***, CAT-Civil Application No. 97 of 2004; (DSM-both unreported); and ***Letshego Bank (T) Ltd & Another v. James Kitajo***, HC-Misc. Civil Application No. 113 of 2020 (all unreported).

Both, the affidavit and the submission made in support of the application, point to the fact that the applicant has overwhelming chances of success in the pending revisional proceedings. The applicant takes the view, as well, that execution of the award will impair its financial position and bring its operations to a halt. While the respondent has not seriously challenged the application, his main focus is that, grant of a stay order, if one were to be granted, should attach the condition of furnishing of a bank guarantee in the sum constituting the decretal sum.

While all of the ingredients set out in the cited decisions are not apparent, what is stated in paragraph 6 carries an implicit message that execution of the award, in the manner proposed by the respondent, stands to bring serious damage that may shake the economic position of the applicant company. This loss is neither irreparable nor is it incapable of being

atoned by any monetary compensation. It cannot be said, either, that the positive outcome of the pending revisional proceedings may be rendered nugatory by refusing to grant it.

In my considered view, this application is far from being in conformity with the guiding principles on the basis of which a stay of execution should be granted. It is simply that the application has fallen short of the required threshold for its grant. Acceding to it will be tantamount to an improper exercise of the Court's discretion.

Accordingly, this application is dismissed. No order as to costs.

It is so ordered.

DATED at **MWANZA** this 24th day of August, 2021.


M.K. ISMAIL

JUDGE

