

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)  
AT ARUSHA

MISC. APPLICATION NO. 97 OF 2020  
(Originating from Dispute No. CMA/ARS/MED/595/2016)

ENYATI LODGE LIMITED ..... APPLICANT

*Versus*

KALIST KWANG ..... 1<sup>ST</sup> RESPONDENT  
ZAKARIA C. BURA ..... 2<sup>ND</sup> RESPONDENT  
JEREMIA BOAY ..... 3<sup>RD</sup> RESPONDENT  
FRANKO CHARLES ..... 4<sup>TH</sup> RESPONDENT  
MARTIN DANIEL ..... 5<sup>TH</sup> RESPONDENT  
PASKALI STEPHANO ..... 6<sup>TH</sup> RESPONDENT  
JOHN DEODATUS ..... 7<sup>TH</sup> RESPONDENT  
MANJO SARWAT ..... 8<sup>TH</sup> RESPONDENT

RULING

*2<sup>nd</sup> November & 7<sup>th</sup> December, 2021*

Masara, J.

**Enyati Lodge Limited** (“the Applicant”), has preferred this application against the Respondents asking the Court to stay Application for Execution No. 38 of 2020, in respect of the award of the Commission for Mediation and Arbitration of Arusha (“the CMA”) in Labour Dispute No. CMA/ARS/MED/595/2017 delivered on 16/8/2017. The Applicant brought this application pending hearing and determination of Application No. CMA/ARS/MISC. APP/42/2020 pending at the CMA. Application No. CMA/ARS/MISC. APP/42/2020 is for extension of time to file application

employment principle. The Applicant was ordered to reinstate the Respondents without loss of remuneration. The award was to be complied with by the Applicant within 14 days.

On 27/10/2017, the Applicant lodged Application No. CMA/ARS/MISC. APP/39/2017 in the CMA, seeking to set aside the ex-parte award that was delivered on 16/10/2017. In that application, the Applicant also defaulted appearance for four months, leading to dismissal of the application for want of prosecution on 26/2/2018. The Applicant did not give up. On 20/4/2018, the Applicant filed another application at the CMA, seeking to set aside the dismissal order of 26/2/2018 and the ex-parte award of 27/10/2017. As usual, neither the Applicant nor its advocate entered appearance in the CMA to prosecute the application. Consequently, on 17/7/2018 the application was as well dismissed for want of prosecution. The Applicant was held to be troublesome for failure to prosecute the applications twice, therefore the CMA ordered it to pay compensation of TZS 500,000/= to each Respondent, making a total of TZS 4,000,000/= to all the eight Respondents.

In a bid to execute the award, the Respondents lodged Labour Execution No. 38 of 2020. That Application prompted the Applicant to once again knock the doors of the CMA. On 13/11/2020, the Applicant filed

In rebuttal, Mr. Mwaimu submitted that the dispute is late for about 851 days. He further stated that the Applicant has been filing multiple applications without attending in the CMA, despite being dully served. He propounded that the right to be heard claimed by the Applicant's counsel was given to the Applicant whereby the Applicant decided to forego that right by sleeping over it. The learned advocate urged the Court not to buy the contention of denial of the right to be heard considering the number of times the Applicant failed to prosecute the Applications. To buttress his contention, the learned advocate cited a myriad of this Court's decisions including: **Elias Joseph Kivambe vs. Stephania Liganga**, Misc. Land Appeal No. 74 of 2017, **Habiba Ahmadi Nangulukuta and 2 Others vs. Hassan Ausi Mchopa and Another**, Land Appeal No. 7 of 2018 and **Bakari Rashidi Kaunda vs. National Microfinance Bank PLC and 3 Others**, Misc. Land Application No. 17 of 2020 (all unreported). It is Mr. Mwaimu's view that since 2018 the Applicant has stayed the execution by filing numerous applications in both the CMA and in this Court, a clear indication that the Applicant intends to delay the Respondents' rights. Mr. Mwaimu maintained that since the Applicant has failed to adduce sufficient reasons, it implies that the Applicant is playing delaying tactics. Mr. Mwaimu prays that the application be struck out with costs.

paragraph 7(iii) of the affidavit in support of the application is couched that if the application is not granted the Applicant will suffer irreparable loss and would feel to have been denied justice. However, the Applicant did not clarify on the magnitude/amount of loss or on how he would suffer loss if a stay order will not be issued. This Court is not in a position to speculate the loss that the Applicant is likely to suffer in the event stay of execution is refused. It was incumbent upon the Applicant to specify the extent of loss that it would suffer in case stay of execution is refused and not merely assert the same in the affidavit. That is the holding in **Aidan George Nyongo vs. Magese Machenja and 3 Others**, Civil Application No. 237/17 of 2016 (unreported). In that case, the applicant did not clarify on the magnitude of loss or on how he would suffer loss if a stay order was not issued. The application for stay was refused. Likewise in the present application, the Applicant has failed to satisfy the Court that if execution is not stayed it will suffer irreparable loss.

On whether there are chances of success in the intended application for extension of time and whether it will render the application nugatory, this Court has the following observations: First, Application No. 42 of 2020 pending in the CMA is aimed at seeking extension of time to file application to set aside the dismissal order and ex-parte award. As pointed out earlier



years. Litigation has to have an end. In any case, the Applicant is at liberty to continue with hearing of the Application at the CMA.

On the issue of balance of convenience, it is my considered view that if execution is stayed the Respondents will be more inconvenienced than the Applicant. I hold this view because the award subject to be executed was delivered in 2017, and the Respondents' have not enjoyed the fruits of their victory to the moment. Therefore, the balance of convenience tilts more to the Respondents than the Applicant.

Fortified by the above reasoning, it is the finding of this Court that no sufficient ground for staying execution has been advanced by the Applicant. Consequently, the application is hereby dismissed in its entirety. Considering this to be a labour dispute, I make no orders as to costs.

Order accordingly.



  
Y. B. Masara  
**JUDGE**

7<sup>th</sup> December, 2021