

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. APPLICATION NO. 55 OF 2020**

(Originating from Revision Application No. 213 of 2017, C/F Labour Dispute No.  
CMA/ARS/ARB/17/2017)

**ENZA ZADEN AFRICA LIMITED.....APPLICANT**

**VERSUS**

**LEONARD HAMISI MSANGI.....RESPONDENT**

**RULING**

16/6/2021 & 18/8/2021

**ROBERT, J:-**

The applicant, Enza Zaden Africa Limited, moved this Court to grant an order for stay of execution sought in Application for Execution No. 53 of 2020 filed by the respondent to execute an award dated 29<sup>th</sup> November, 2019 by this Court in Revision Application No. 213 of 2017 pending the hearing and determination of an appeal preferred by the applicant who has filed a Notice of Appeal before the court of Appeal of Tanzania. The application is supported by a sworn affidavit of **Mr. Emmanuel Shio**, counsel for the applicant.

Facts giving rise to this application reveals that, the respondent herein was the applicant at the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/ARB/17/2017 where the award was made in his favour. Dissatisfied, the applicant herein sought to challenge the CMA award by way of revision via Revision No. 213 of 2017 before this court. However, this court delivered its judgment in favour of the respondent and ordered the applicant herein to pay the respondent compensation of twelve months' salaries. Still determined to challenge the arbitral award, on 27<sup>th</sup> December, 2017, the applicant filed a notice of appeal with intent to appeal to the Court of Appeal of Tanzania against the decision of the High Court and he is now awaiting to be supplied with copies of Proceedings, Decree and the Judgement by this Court in order to prepare records of appeal to the Court of Appeal of Tanzania.

Meanwhile, the respondent who was declared a winner by the High Court filed execution proceedings against the applicant herein. Upon receiving summons in respect of execution proceedings, the applicant filed the present application.

At the hearing of this application, **Ms. Vanessa Nyanga**, learned counsel, appeared for the applicant whereas the respondent was present

in person without representation. At the request of parties, the Court ordered parties to argue the application by way of written submissions.

Highlighting on this application, Ms. Nyanga submitted that, the applicant's intended appeal to the Court of Appeal of Tanzania has overwhelming chances of success since the compensation of 24 months salaries with severance pay awarded by the CMA was already reduced to compensation of 12 months' salaries by the High Court. Due to that, he maintained that, the applicant needs to be protected by a stay order so that her appeal to the Court of Appeal is not rendered nugatory.

The learned counsel submitted further that, a Motor vehicle with registration No. T 308 DMT Toyota Hiace which is the subject of the execution process is used by the applicant in her business transactions. If the said vehicle will be attached the applicant will fail to perform her contractual and commercial obligations as a result the business will be eroded. Similarly, if the vehicle is sold and the appeal succeeds the status quo can never be restored and the justice will be defeated. Further to that, if the appeal succeeds the respondent will not be able to refund the money paid to him pursuant to the execution order of this court.

She stated that, the applicant is ready to pay security for costs for the performance of such decree or order as it may be binding upon her. He

argued that, it is a settled law that a decree holder has to enjoy the fruits of the judgment which is in his favour, however, the judgment debtor also has a right to appeal if he is dissatisfied and wishes to appeal.

For the reasons stated herein, she prayed for the application to be granted.

Opposing the application, the respondent argued that, this court has no jurisdiction to entertain this matter as there is already a notice of appeal filed at the court of Appeal (See Rule 11 (3) of the Court of Appeals Rules, 2009 and the case of **Aero Helicopter (T) Ltd vs F. N Jansen** [1990] TLR 142). The court need to satisfy itself if it is clothed with jurisdiction before determination of any matter preferred before it. He argued that, as the issue of jurisdiction is a paramount one, it can be raised at any time (See **Tanzania Revenue authority vs Tango Transport Company Limited**, Civil Appeal No. 84 of 2009, CAT (unreported)).

Further to that, he maintained that, it is entirely in the discretion of the court to grant or not to grant the application. The discretion is exercised judiciously and the overriding consideration is that, there must be a sufficient cause. He submitted that, order XXXIX Rule 5 (1) and (3) (a) of the **Civil Procedure Code** (Cap 33 R.E 2019) is very clear that execution

of a decree cannot be stayed for a reason that an appeal has been preferred from the decree unless a sufficient cause has been shown.

He maintained that, the applicant did not prove how he will suffer if the application is granted, he is only applying a delaying tactic and the court should note that "justice delay is justice denial". It has been almost two years and the applicant has not yet filed any appeal. In spite of writing several letters to be supplied with a copy of judgment, decree and the proceedings, the applicant did not make any follow up to be supplied with the same as the records were ready for collection long time.

He argued that, as the applicant is a legal person who is still conducting his business and making profits daily, the respondent is the one who is suffering following the unfair termination by the applicant which made him unemployed. Even if the said motor vehicle is attached and sold the applicant will not suffer any irrepealable loss as alleged.

For that reason, he prayed for the court dismiss this application with costs and proceed with the execution of a decree.

In his brief rejoinder, counsel for the applicant maintained that, this court has jurisdiction to entertain this application since the application for execution is also before this Court. She denied the argument that the applicant is applying delaying tactics and submitted that, the applicant's

intention is to protect the motor vehicle which is the subject of the execution as their intended appeal has overwhelming chance of success.

Having gone through the rival arguments from both parties, it appears to this Court that the question for determination is whether this application has merit.

In this application, the applicant seek an order for stay of execution on the reason that she has filed a Notice of Appeal to the Court of Appeal of Tanzania. The application is made under Rule 24 (1), 24 (2) (a), (b), (c), (d), (e), (f) and 24 (3) (a), (b), (c) (d), 24 (11) of **the Labour Court Rules** G.N 106 of 2007 and Section 91 (3) of the **Employment and Labour Relation Act**, No. 6 of 2004. The cited provisions do not specifically provide for stay of execution pending an appeal to the Court of Appeal. While Rule 24 of the Labour Court Rules provides for the procedure and manner of filing applications generally, section 91(3) of the Employment and Labour Relations Act which is cited by the applicant allows the Labour Court to stay enforcement of the award pending its decision which means the jurisdiction of the Labour Court to stay execution is limited to awards given by the lower tribunal.

The respondent argued that this Court has no jurisdiction to entertain this application as there is already Notice of Appeal filed by the Applicant

intending to appeal to the Court of Appeal. He referred the Court to Rule 11(3) of the Court of Appeal Rules which states that:

*"In any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 83, an Appeal shall not operate as a stay of execution of the decree or order appealed from nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order."*

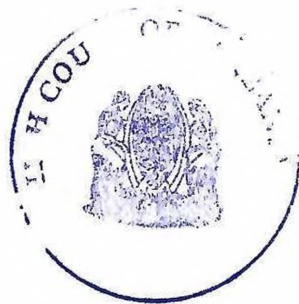
It is apparent that the Court of Appeal Rules are not applicable in this Court and the cited provision allows the applicant who has preferred an appeal to the Court of Appeal to move the Court of Appeal of Tanzania, not the High Court, to grant an order for stay of execution upon good cause shown.


In the case of **Serenity on the Lake Ltd vs. Dorcas Martin Nyanda, Civil Revision No.1 of 2019**, CAT Mwanza Registry (unreported) which is cited by the respondent herein, the Court of Appeal of Tanzania made reference to its decision in the case of Tanzania Electric Supply Company Limited vs Dowans Holdings S.A. (Costa Rica) and Dowans Tanzania Limited (Tanzania), Civil Application No. 142 of 2012 where the CAT stated that:

*"It is settled law in our jurisprudence, which is not disputed by counsel for the applicant, that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court, commences proceedings in the Court. We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter"*

Guided by the cited decision and reasons given hereinabove, this Court decides that it has no jurisdiction to entertain this application. As a consequence, this application is hereby dismissed.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
18/8/2021