

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. APPLICATION NO 58 OF 2020

(C/F Original Dispute No CMA/ARS/ARB/176/18)

COMPASSION INTERNATIONAL TANZANIA APPLICANT

VERSUS

NICKSON ALEX RESPONDENT

RULING

4/11/2020 & 24/3/2021

ROBERT, J:-

The applicant, Compassion International Tanzania, seek an order of this Court for Stay of execution of the Award passed by the Commission for Mediation and Arbitration (CMA) against the applicant in Labour Dispute No. CMA/ARS/ARB/176/18 pending the outcome of Revision No. 66 of 2020 before this court.

The application is made under section 91(3) of the Employment and Labour Relations Act, No. 6 of 2004, Rule 24(1), (2)(a)(b)(c)(d)(e)and (f)and (3)(a)(b)(c) and (d) of the Labour Court Rules, G.N. No. 106 of 2007 and Order XXI, Rule 24(1)

OF THE Civil Procedure Code, Cap. 33 R.E. 2002 and supported by an affidavit sworn by one Makene Elias Mafwele, the Senior officer of the applicant.

The respondent herein filed a Dispute against the applicant alleging unfair termination in Labour Dispute No. CMA/ARS/ARB/176/18. The CMA decided in favour of the respondent herein and ordered the applicant to reinstate the respondent with effect from 1st September 2020 and to pay the applicant salary arrears from 2nd July, 2018 to 1st September, 2020 which is equal to TZS 96,811,632/=. Aggrieved, the applicant registered Revision No. 66 of 2020 before this Court and proceeded to file this application seeking stay of execution of the CMA Award pending the determination of Revision No. 66 of 2020.

The applicant was represented by Mr. Ipanga Kimaay, learned counsel. In the course of this matter Mr. Kimaay informed the Court that the applicant failed to locate and serve the respondent who was reportedly residing in Kigoma. However, they decided to serve him by placing a copy of application at his office in Arusha.

Considering that this application was filed under certificate of urgency, he implored the Court to grant an interim ex-parte order restraining the respondent from resuming employment with the applicant that was due on 1st September, 2020 as ordered by the CMA pending the hearing of the application inter-partes.

The prayer was made under Rule 25(7) and (9) of the Labour Court Rules, 2007, G.N. No. 106/2007 which provides that:

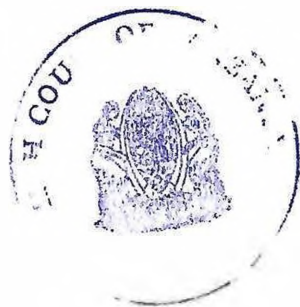
"(7) any party who intends to oppose the application or to make any representations relating to the application, shall file a counter affidavit immediately after the application has come to that party's notice, save that a presiding judge may make such interim orders as maybe necessary.

(9) the court shall deal with an urgent application in any manner it thinks just, and may make any necessary orders".

Guided by the cited provisions of law and the reasons adduced by the applicant, this Court finds no reason not to grant the prayer sought. Given that this application is made pending the determination of Revision No. 66 of 2020 and it cannot stay open endlessly hoping the respondent will enter appearance, this court finds it convenient to allow this application pending the determination of Revision No. 66 of 2020.

Consequently, this application is allowed, the respondent is hereby restrained from resuming employment with the applicant pending the determination of Revision No. 66 of 2020.

It is so ordered.




K.N. ROBERT
JUDGE
24/3/2021