

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISCELLANEOUS CIVIL APPLICATION NO. 50 OF 2021

(Originating from H/C Misc. Civil Application No. 46/2021 & Misc. Civil Application No. 230 of 2015 and Arbitration Award dated 6th June, 2015)

BETWEEN

IMMANUEL NIVOKAVIT KOMBE 1ST APPLICANT

JIBU GROUP COMPANY 2ND APPLICANT

VERSUS

SHAMMAH MINISTRY NETWORKS RESPONDENT

RULING

14/2/2022 & 18/7/2022

ROBERT, J:-

The applicants, Immanuel Nivokat Kombe and Jibu Group Company, moved this court to grant an order for stay of execution proceedings in Misc Civil Application No. 230/2015 originating from Arbitration award dated 6th June, 2015 pending the determination of Misc. Civil Application No. 46/2021 which is the application for extension of time to file review application filed

before this Court. The application is supported by an affidavit of the first applicant, Immanuel Nivokat Kombe.

In their written submissions, drawn and filed by their learned counsel, Mr. Emmanuel Aaron Shao, the Applicants submitted that, as a general rule, stay of execution may be granted where execution will result into substantial loss or injury which cannot be atoned by an award of damages. To support his argument, the learned counsel for the applicants made reference to the cases of **Dr. William F. Shija vs Fortunatus Masha, Misc. Civil Application No. 1 of 2002** and **Tanzania Cotton Marketing Board vs Cogecot Cotton Co. SA (1997) TLR 63**.

He submitted further that, the decree derived from arbitration award sought to be executed is problematic, erroneous and improper and there is a point of law of sufficient importance (illegality) sought to be challenged. He clarified that, the Respondent herein had no business to open or be part of the Arbitration proceedings and or in the Misc. Civil Application No. 230 of 2015 before the High Court since he had no locus standi as the proper party to sue for and on behalf of the Shammah Ministry Network is the Board of Registered Trustees of Shammah Ministry Network which is vested with powers to hold properties and all monies of and on behalf of the church.

Further to that, he maintained that the said award traces its origin from an illegal and unenforceable loan agreement between Shammah Ministries Network and Immanuel Nivokat Kombe and another agreement between Shammah Ministry Network and Jibu Group Company.

He submitted further that, the two attached houses purportedly owned by the applicant are far more expensive than the debt hence there was no need to attach both houses which are no longer the properties of the applicant. Hence, he implored the Court to stay execution pending the application for extension of time to file application for review.

Responding to the submissions made, the Respondent, through his written submissions, submitted that the ground of substantial loss alleged by the applicants is not enough to convince this Court to decide the matter at the detriment of the Respondent. He maintained further that, the allegations of substantial loss are baseless, frivolous and fictitious and ought to be dismissed.

Further to that, he submitted that the assertion that, the award sought to be executed is erroneous is just a tactic to delay execution of the decree as this has been the applicants' habit since 2015. He argued that seeking

extension of time to review a typing error on the 8 years record is a contempt of the court's process and should not be allowed to happen.

On allegations of Respondent's lack of locus standi, he submitted that this issue was cleared before the arbitrator. He argued that all the documents were shown before the arbitrator and having been satisfied he continued with the process of arbitration. Hence, calling the documents after all the years to re-assess them is not healthy for the ends of justice to meet and is not part of the grounds for review. To support his argument, he cited the case of **Everist and Others vs Magai and another (1916) TLR 142** at page 150.

With regards to the issue of illegality of the loan agreement, he submitted that, this issue has never existed, He maintained that, if there was capital emanating from the capital amount, the total amount would have built up but the amount received by the applicant is the same since 2013 to date. All the documents were presented to the Arbitrator before the Arbitration process had started. He argued that coming up with forged receipts and vouchers 8 years after the they were checked and determined is starting litigation afresh which is not allowed by the law. He cited the case of Everist (cited above) in support of his argument.

He argued further that, the issue of differentiating the debts to be refunded by the first and second applicants was dealt with by the Arbitrator at page 3 of the Arbitral ruling. Similarly, he maintained that, the issue as to whom the attached immovable properties belong to was also determined, repeating the same issue cannot qualify as a ground for stay of execution.

He submitted that, the purported grounds for stay of execution are devoid of merit and should be dismissed with costs.

In rejoinder submissions the applicants reiterated the arguments in their submissions in chief and prayed for the application to be granted.

From the submissions made by the parties and records of this matter, the issue confronting this Court is whether the applicants have raised sufficient grounds to merit granting of this application.

The application is made under section 68(e) and Order XXI Rule 27 of the Civil Procedure Code, Cap. 33 (R.E. 2019) which allows the Court to stay execution of the decree on such terms as it considers fit until the pending suit has been decided in order to prevent ends of justice from being defeated.

Since parties in this application have a pending application before this Court (Misc. Civil Application No. 46/2021) for extension of time to file application for review and the reasons for such review are based, among others, on issues of illegality, this court is of the views that, the balance of convenience weighs in favour of granting the prayers sought by the applicants because whereas the refusal of the prayers will result in denial of the Applicant's property before the determination of the pending matters, the grant may not cause any new hardships as the Court is striving to determine the matters pending before it.

In the circumstances, this Court finds it appropriate to stay the execution of Miscellaneous Civil Application No. 230/2015 pending the determination of Miscellaneous Civil Application No. 46/2021 before this Court. Accordingly, this application is allowed. Each party to carry its own costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "K.N. Robert".

K.N.ROBERT
JUDGE
18/7/2022