

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

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**MISC. LABOUR APPLICATION NO. 30 OF 2021**

**NATIONAL INSTITUTE FOR**

**MEDICAL RESEARCH (NIMR).....APPLICANT**

**-VERSUS-**

**KASEMBE MDIRA.....1<sup>st</sup> RESPONDENT**

**MR. HAMISI ABDUL MWALUGAJE t/a**

**BONGE GENERAL TRADERS & CO. LIMITED.....2<sup>nd</sup> RESPONDENT**

**RULING**

*Date of Last Order:* 06/05/2022

*Date of Ruling:* 18/05/2022

**AGATHO, J.:**

This is an application for stay of execution, the same has been presented before this Honourable Court under a Certificate of Urgency it has also been brought by way of a Notice of Application, Chamber Summons supported by an affidavit of Rashid Mohamed, State Attorney. The application is made under Section 91(3) of the Employment and Labour Relations Act No. 6 of 2004 as amended, Rule 24 (1), (2)(a), (b), (c), (d), (e), (f), (3)(a), (b) (c), (d) and 11(b) of the Labour Court Rules G.N.No.106 of 2007.

In the Application, the Applicant is praying for an order of stay execution of the execution order of the Court dated 26<sup>th</sup> day of November, 2020 vide Execution No. 02 of 2019 pending the determination of the Application for extension of time within which to apply for Revision and any other order(s) as the Court deems fit and just to grant.

Briefly, the background of the Application is that vide the decision of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/TAN/MUH/23/2014 where the 1<sup>st</sup> Respondent was entitled to benefits resulted from termination of his employment, he then applied to this Court for execution of the award where he prayed for an order for attachment and sale of the three motor vehicles namely Toyota Hilux SU 39722, Toyota Land Cruiser SU 39725 and Nissan Patrol SU 35137. Upon determination of the Application, the Application was granted, an order for attachment of one property make Toyota Hilux SU 39722 was issued which the Court believed will suffice to enforce the award. Dissatisfied with an order, the Applicant preferred an application to stay the execution.

In response thereto, the 1<sup>st</sup> Respondent filed a Notice of Opposition and a Counter Affidavit unlike the 2<sup>nd</sup> Respondent. The

Court fixed a hearing date. The 2<sup>nd</sup> Respondent did not appear in Court. That led the Court to proceed with the matter *inter parte* with respect to the 1<sup>st</sup> Respondent and *ex parte* with respect to the 2<sup>nd</sup> Respondent. During the hearing, the Applicant was represented by Mr. Rashid Mohamed, State Attorney whereas the 1<sup>st</sup> Respondent represented himself.

In his submission, Mr. Rashid Mohamed prayed to adopt the affidavit in support of the Application and proceeded stating that there are conditions to be fulfilled for the Court to grant an order for stay of execution and those are; **whether there are triable issues, whether there are sufficient causes for staying the execution and whether the applicant will suffer irreparable loss if the application is not granted.**

The counsel further submitted that the above conditions have been fulfilled referring paragraph 8 to 14 of the Affidavit and page 2 of the Ruling (the decision of the Deputy Registrar) stating that the Honourable Deputy Registrar overlooked that the 1<sup>st</sup> Respondent was paid, again referring paragraphs 10 to 14 the counsel stated that there is an Application for Revision No. 4 of 2021 which is

pending before this Court since the execution order has some defects and there is a chance success.

The counsel added that the application for execution contravened Section 15 and 16 of the Government Proceedings Act [Cap 5 R.E 2019] and that the decision of the Deputy Registrar did not comply with the above provisions stating that if the application for stay of execution is not granted, the government property will be attached and the Applicant will suffer irreparable loss since the 2<sup>nd</sup> Respondent will have been paid twice and if the property subject to execution will be sold, the 1<sup>st</sup> Respondent will not be able to refund the Government if the Application for revision will be successful. The counsel referred the case of **WS Risk vs Labour Commissioner, Misc. Labour Application No. 16 of 2021, High Court of Tanzania at Tanga, page 4 to 9** where the conditions for the grant of an order for stay of execution were discussed. From the above submissions, the counsel prayed that the application be granted and an Order granted by the Hon. Deputy Registrar be stayed pending the determination of the revision.

The 1<sup>st</sup> Respondent on his part submitted that the Applicant is not a government entity. It is rather an independent organ. It has a Board of Trustees established by Act No.23 of 1979. He therefore submitted that the property subject to the execution is not a government property and that the matter was referred to the Commission for Mediation and Arbitration on 23/12/2014 before the operation of the law which is Miscellaneous Amendment Act No. 1 of 2020.

The 1<sup>st</sup> Respondent further contended that the documents evidencing payments were not admitted before the Court since they were not tendered at the Commission for Mediation and Arbitration. The 1<sup>st</sup> Respondent also denied to have been paid by the Applicant and stated that he was merely provided with a Certificate of Service. He further argued that the decision of the Deputy Registrar was proper and prayed the Application be dismissed for want of merit and the decision of the Deputy Registrar be upheld for it was correct.

In his rejoinder, the counsel for the Applicant insisted that the Applicant is a Government entity. He stated that according to the Written Laws Miscellaneous Amendment Act No. 1 of 2020

published on the 21<sup>st</sup> of February, 2020, Section 25 of the Act amended Section 6 of the Government Proceedings Act by providing a guidance on how cases against the government should be handled and that Section 26 of the Act also amended Section 16 of the Government Proceedings Act by defining Government to include government entities including parastatal corporations in which the government is a major shareholder. He therefore argued that the Applicant is a government entity because when the Ruling was delivered by the Deputy Registrar on 26/11/2020 the law was already in force and added that procedural laws apply retrospectively. The counsel further submitted that all the documents proving payment were brought before the Honourable Deputy Registrar. He referred to page 2 of the Ruling in Execution No.2 of 2019 stating that a certified true copy of payroll overall summary, adjustment of salaries and salary slips were tendered in Court and further stated that the decision of the Commission for Mediation was delivered on the 15/06/2016 and that by that time the 1<sup>st</sup> Applicant had already been provided with a termination letter outlining all his entitlements and that the Applicant paid all

the benefits as per the termination. On the basis of his submissions, he prayed that the application be granted.

Having heard both sides, the first issue to consider is whether there are triable issues with respect to the intended application for revision. The Court of Appeal of Tanzania in the case of **Tanzania Railways vs Mrs Augusta Upendo Rweyemamu, Civil Application No. 106 of 2004** granted an order for stay of execution since there was a triable issue in the intended appeal. In the instant application there are several issues to be examined. To begin with, whether there were termination benefits paid to the 1<sup>st</sup> Respondent. Having considered the Ruling in Execution No. 2 of 2019 at page 2, it appears that monetary claims were paid to the 1<sup>st</sup> Respondent and relevant documents evidencing such payments were tendered. Another issue that has to be considered is whether the Applicant is a government entity and that the property subject to the execution is attachable. This is vide the operation of the law (Miscellaneous Amendment Act No. 1 of 2020). I am of the view that these should be considered during the revision, especially the issue as to whether the law has a retrospective effect with respect to the Application for execution.

Yet another issue to be considered is whether the Applicant is likely to suffer irreparable loss if the application is not granted. This factor was considered in the case of **Israel Joseph vs Stephano Joseph, Misc. Land Application No. 40 of 2018, HCTZ at Arusha**. Regarding this issue, I concur with the Applicant's learned State Attorney and considering that there were documents that evidenced payments, it means that if the application for stay of execution is not granted, there is likelihood of double payments, and that the Applicant will incur an irreparable loss.

From what has been stated herein above, I find that there is a reasonable cause to grant the application for staying the execution pending the determination of revision. The Application is therefore granted as prayed.

It is so ordered.

**DATED at TANGA this 18<sup>th</sup> Day of May 2022.**

**U. J. AGATHO**

**JUDGE**

**18/05/2022**



**Date: 18/05/2022**

Coram: Hon. Agatho, J

Applicant: Luciana Kikala S/A

Respondent: Present

B/C: Asumpta

JA: Ms. Husna Mwiula

**Court:** Ruling to be delivered on this 18<sup>th</sup> day of May, 2022 in the presence Luciana Kikala the Applicant's State Attorney, and the Respondent.



**U. J. AGATHO**

**JUDGE**

**18/05/2022**

**Court:** Right of Appeal fully explained.



**U. J. AGATHO**

**JUDGE**

**18/05/2022**